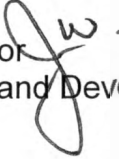




Interoffice Memorandum

DATE: October 12, 2020

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

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

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

SUBJECT: November 17, 2020 – Board Called Public Hearing
Applicant: Solange Dao
BZA Case #VA-20-04-017, May 20, 2020; District 3

Board of Zoning Adjustment (BZA) Case # VA-20-04-017, located at 6682 Hoffner Ave., Orlando, FL 32822, in District 3, is a Board called public hearing. This item was continued from the July 28, 2020 BCC hearing at the request of the applicant. The applicant is requesting a variance to allow for the construction of seven (7) industrial buildings with a 15 ft. (east) setback from a residential zoning district in lieu of an increased setback of 60 ft. The subject property is only 187-feet wide.

The subject property is located on the south side of Hoffner Ave., approximately 0.3 miles west of S. Goldenrod Rd.

At the May 20, 2020, BZA hearing, staff recommended denial of the setback request due to the variance criteria, as it was a self-created hardship, it was not the minimum possible variance, and it did not meet the purpose and intent of the code. The adjacent single-family residence is incompatible with the IND-2/IND-3 zoning district without adequate setbacks as required by the code. The BZA concluded that due to the narrow width of the property and the adjacent property having an underlying future land use of Industrial, they recommended approval of the variance with a 6-0 vote subject to six (6) conditions.

This hearing will be held concurrently with an appeal of the Zoning Manager's determination (ZM-20-09-080) that a reduction in the required 25 ft. buffer yard should not be granted.

Page Two
November 17, 2020 – Board Called Public Hearing
Solange Dao
BZA Case #VA-20-04-017, May 20, 2020; District 3

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

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

ACTION REQUESTED: Approve the applicant's request; or approve the applicant's request with modifications and/or conditions; or deny the applicant's request. District 3.

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

November 17, 2020

The following is a public hearing before the Board of County Commissioners on November 17, 2020 at 2:00 p.m.

APPLICANT: SOLANGE DAO

REQUEST: Variance in the IND-2/IND-3 zoning district to allow for construction of seven (7) industrial buildings with a 15 ft. (east) setback from a residential zoning district in lieu of an increased setback of 60 ft.

LOCATION: 6682 Hoffner Ave., Orlando, FL 32822, south side of Hoffner Ave., north side of Seminole Ave., approximately 0.3 miles west of S. Goldenrod Rd.

TRACT SIZE: 187 ft. x 634 ft./ 5.45 acres

ZONING: IND-2/IND-3

DISTRICT: #3

PROPERTIES NOTIFIED: 142

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

Staff noted that even though the property to the east is zoned A-2, it is used for residential purposes. Therefore, an increased setback of 60 ft. versus 15 ft. is required. In addition, there is a need for a Type B buffer requiring a 25 ft. buffer area that cannot be used for anything other than landscaping. The applicant is developing essentially from scratch, and has not attempted to use any other design techniques such as the use of multi-story buildings. Staff explained that the applicant intended to request waivers to the Type B buffer; however, the Zoning Manager had noted that there was insufficient justification to grant a waiver. Staff stated that it had received one (1) letter in support of the application from the residence to the east, and one in opposition from a property approximately 1/4 mile away.

The applicant gave a presentation, noting that the property was slightly over 180 ft. wide, so a 60 ft. setback would deprive them of nearly 1/3 of their site. They also noted that the cell tower on the adjacent property was permitted as a commercial use, and the property owner is realizing a good profit from the lease to the tower owner. That fact caused the applicant to assume that the property was being used commercially.

There being no one wishing to speak in favor or opposition, the public hearing was closed.

The BZA concluded that the loss of nearly 1/3 of the site due to a property which will one day be zoned industrial, was a true hardship and special condition.

The BZA unanimously recommended approval of the variance subject to the six (6) conditions in the staff report.

BZA HEARING DECISION:

A motion was made by Juan Velez, seconded by Gregory A. Jackson and unanimously carried to recommend 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 (unanimous; 6-0 and 1 absent):

1. Development shall be in accordance with the architecture and site plan dated April 16, 2020, subject to the conditions of approval and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviation, change, or modification shall be subject to the Zoning Manager's review and approval. Any proposed substantial deviation, change, or modification shall 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 project shall comply with Article XVI of Chapter 9 of the Orange County Code, "Exterior Lighting Standards."
5. Noise shall be regulated by Chapter 15, Orange County Code "Environmental Control", specifically Article V "Noise Pollution."
6. The applicant shall provide a "Type B" buffer along the east property line.

BZA STAFF REPORT

Planning, Environmental, & Development Services/ Zoning Division

Meeting Date: **MAY 20, 2020**

Case Planner: **David Nearing, AICP**

Case #: **VA-20-04-017**

Commission District: **#3**

GENERAL INFORMATION

APPLICANT(s): SOLANGE DAO

OWNER(s): DELTA KILO ACQUISITIONS LLC

REQUEST: Variance in the IND-2/IND-3 zoning district to allow for construction of 7 industrial buildings with a 15 ft. (east) setback from a residential zoning district in lieu of an increased setback of 60 ft.

PROPERTY LOCATION: 6682 Hoffner Ave., Orlando, FL 32822, south side of Hoffner Ave., north side a Seminole Ave., approximately .3 miles west of S. Goldenrod Rd.

PARCEL ID: 14-23-30-5240-13-012

LOT SIZE: 187 ft. x 634 ft./5.45 acres

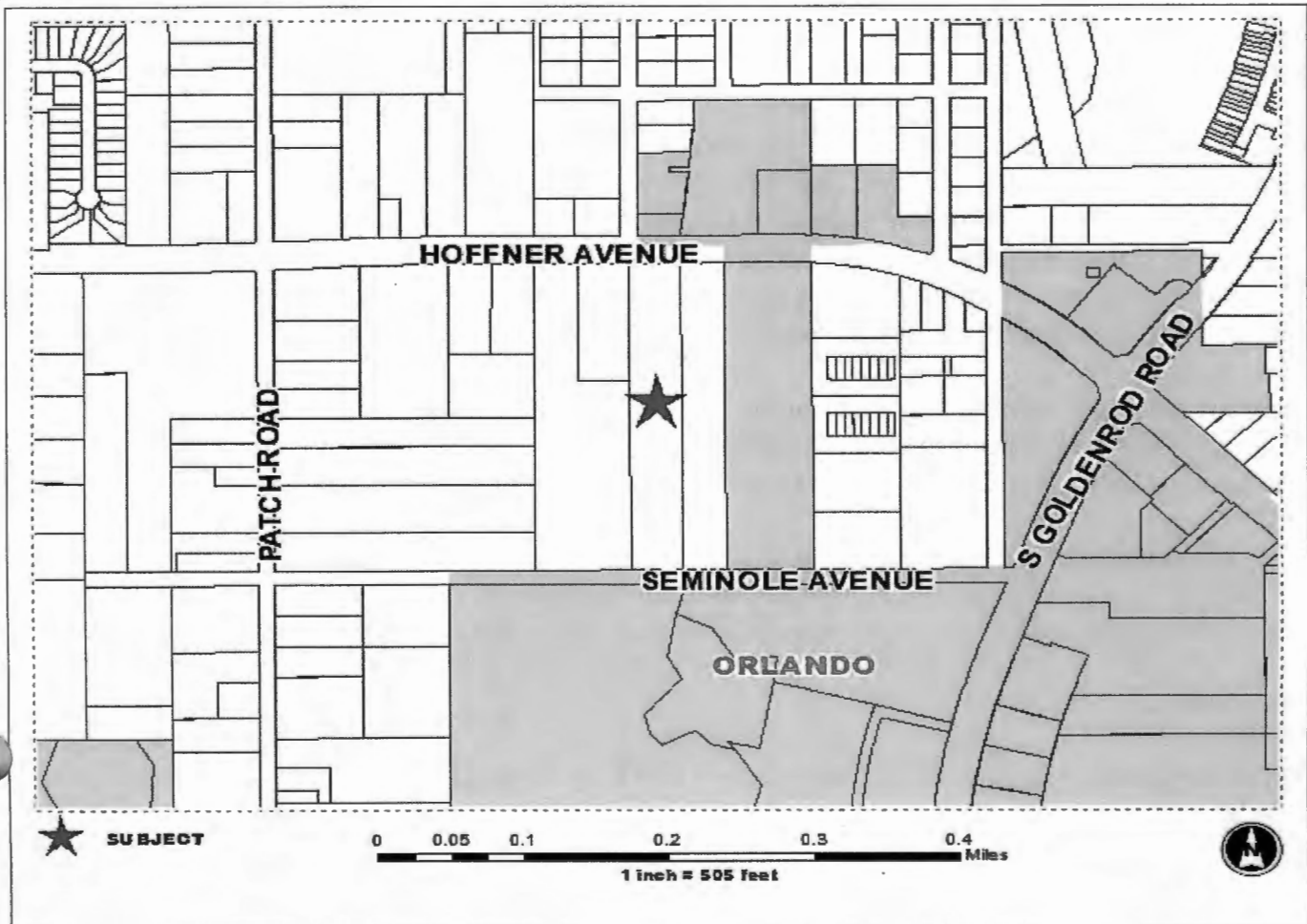
NOTICE AREA: 1,200 ft.

NUMBER OF NOTICES: 142

STAFF RECOMMENDATIONS

Denial. However, should the BZA conclude that the applicant has satisfied the criteria necessary to approve the requested variance, it is recommended that the approval be subject to the conditions in this report.

LOCATION MAP



SITE & SURROUNDING DATA

| | Property | North | South | East | West |
|-----------------|---------------|----------------------------|---------------------------------|--|--------------------------|
| Current Zoning | IND-2/IND-3 | City of Orlando MU-1/AN | City of Orlando PD/AN | A-2 | IND-2/IND-3 |
| Future Land Use | IND | City of Orlando MUC-MCE | City of Orlando Conservation | IND | IND |
| Current Use | Plant Nursery | Mobile Home | Vacant | Single Family Residence, Mobile Home & Cell Tower | Industrial and Vacant |

BACKGROUND AND ANALYSIS

Description and Context

The property is zoned IND-2/IND-3, Industrial Park District which allows for warehousing, manufacturing, and certain retail uses.

The subject property consists of 5.45 acres of land composed of the west half of two (2) lots and the eastern half of an abandoned right-of-way. The property is part of the Los Terranos plat, which was recorded in January 1928. Because the property has frontage on two (2) rights-of-way the property is considered a double frontage lot. However, while Seminole Ave. is a dedicated right-of-way, it remains unopen and is not maintained by the County. In 2006, the subject property was rezoned from A-2 to IND-2/IND-3 with the condition that pole signs and billboards were prohibited.

The subject property is developed with a 902 sq. ft. structure constructed in 1961, which was originally constructed as a single family residence and then converted to an office for a commercial nursery. The applicant intends to develop the property with seven (7) industrial buildings, each containing 9,940 sq. ft. of floor area for a cumulative total of 69,580 sq. ft. of floor area. The first building nearest Hoffner Ave. (Building 1) will have four (4) bays facing Hoffner Ave., and three (3) bays on the rear elevation of the Building, and six (6) six other buildings will each have (6) bays, three (3) on front and three (3) on the rear.

The adjacent property to the east is developed with a 3,006 sq. ft. single family residence constructed in 1940, and a 756 sq. ft. mobile home which, according the Property Appraiser's data, was installed in 1969. In addition, there is a 120 ft. tall cell tower installed in late 2006.

While the required side yard setback in the IND-2/IND-3 zoning district is 15 ft., the code requires an increased setback of 60 ft. when it abuts a residential zoning district. The property to the east is zoned A-2 which is considered a residential zoning district, as residential is allowed. The only improvements permitted in the increased buffer are fences and walls, and parking. There are to be no buildings or activity areas in the increased setback area.

In addition to the increased setback, the subject property is to have a "Type B" buffer where it abuts a

property with a residential use. A "Type B" buffer requires a buffer yard of 25 ft. and a completely opaque screen six (6) ft. in height which can consist of any combination of masonry walls, berms, and planted and screening vegetation. The buffer yard cannot be used for vehicular use areas, such as parking, storage or buildings.

Landscape requirements of Chapter 24 allow the Zoning Manager to grant decreases where the application to a specific site would result in practical difficulty or physical hardship. The applicant intends to obtain the variance to the 60 ft. increased setback from the property to the east, and request that the Zoning Manager waive the buffer yard width. The Zoning Manager has already indicated that there is not sufficient justification to waive the buffer yard width for the redevelopment of this site. For this reason, if the BZA finds sufficient justification to grant the variance to the increased setback, the applicant will still need to redesign the site to comply with the buffer yard requirements. They will need to reduce the building size, reconfigure the buildings, or use multiple story buildings in order to comply with the buffering requirements.

The applicant did obtain a letter of no objection to the variance request from the owner of the property to the east. That property has a Future Land Use of IND, Industrial, and is expected to ultimately be developed for some industrial use. However, until the property's zoning is changed, the required setback of 60 ft. is required.

District Development Standards

| | Code Requirement | Proposed |
|-----------------|------------------|----------|
| Max Height: | 35 ft. | 26 ft. |
| Min. Lot Width: | N/A | 187 ft. |
| Min. Lot Size: | N/A | 5.46 ac. |

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

| | Code Requirement | Proposed |
|------------------------|---|----------------------------|
| Front (Hoffner Ave.): | 60 ft. (Major Road Setback) | 81 ft. |
| Front (Seminole Ave.): | 25 ft. | 261 ft. |
| Side: | 15 ft. (60 ft. if adjacent to residential zoning) | 15 ft.(East)/28 ft. (West) |

STAFF FINDINGS

VARIANCE CRITERIA

Special Conditions and Circumstances

Because this is new construction, the applicant has the ability to design the site using alternatives, such as differently configured building layouts, or using multistory buildings, or a reduced development program to comply with the performance standards of the district, such as setbacks.

Not Self-Created

This is a self-created hardship, as the proposal is for a complete redevelopment of the site. There is no reason why a proposed industrial use could not be designed to meet code.

No Special Privilege Conferred

Granting the variance will allow the applicant to forgo the same performance standards required of other industrially zoned property adjacent to residential zoning in similar situations. This would confer a special privilege.

Deprivation of Rights

Denying the variance will not deny the applicant of all viable use of the site. They may not be able to obtain the same floor area as the current design provides, however, they will still have a developable site.

Minimum Possible Variance

The applicant has not submitted any alternative design scenarios to attempt to meet or reduce the amount of variance needed. A variance to forgo 75% of the required setback is considered excessive.

Purpose and Intent

The purpose for increased setbacks is to protect uses from the effects of more intensely used property. While the applicant is currently planning on having all activity on the property located indoors, there are uses permitted in the IND-2/IND-3 zoning district which generate negative effects such as noise, dust, and odor which would negatively impact the residential to the east.

CONDITIONS OF APPROVAL

1. Development in accordance with the architecture and site plan dated April 16, 2020, and all other applicable regulations. Any deviations, changes, or modifications to the plan are subject to the Zoning Manager's approval. The Zoning Manager may require the changes be reviewed by the Board of Zoning Adjustment (BZA) for administrative approval or to determine if the applicant's changes require another BZA public hearing.
2. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
3. Any deviation from a Code standard not specifically identified and reviewed/addressed by the Board of County Commissioners shall be resubmitted for the Board's review or the plans revised to comply with the standard.
4. The project shall comply with Article XVI of Chapter 9 of the Orange County Code, "Exterior Lighting Standards."

5. Noise shall be regulated by Chapter 15, Orange County Code "Environmental Control", specifically Article V "Noise Pollution."

b. The applicant shall provide a "Type B" buffer along the east property line.

C: Solange Dao
1110 E Marks St.
Orlando, FL 32803



1110 East Marks Street
Orlando, FL 32803-4018
USA

PH: 407.898.6872
FX: 407.898.3778
www.daoconsultants.com

February 11, 2020

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

Reference: Narrative Letter to Submit Variance Request on
Section 39-981(12)

Dear BZA:

Thank you for giving us the platform to request this variance. My client's parcel is zoned I-2/I-3. He currently runs a landscape business from this location. This business has occupied this site for over 30 years.

The adjacent east parcel is zoned A-2, classified as a residential use. Per Section 39-981 (12): *An increased setback not less than sixty (60) feet in width shall be provided along each I-2/I-3 industrial district boundary line which abuts any residential zoning district*

Since we are redeveloping the lot for better use of the land, Section 39-981(12) is being enforced on this new development.

We are asking for a variance to reduce 60-ft setback to be reduced 15-ft per the criteria below:

- 1) Special Condition and Circumstances
My client's parcel is 187-ft wide. With Section 39-981(12) 60-ft setback from a residential use, the setback requirement renders 32% of his lot as undevelopable. The narrow lot width makes a providing 60-ft setback a large hardship. Another constraint on this lot is the FDOT improvements of Hoffner Ave (SR-15) have established the driveway aprons. The west apron aligns with the FDOT median opening. We have laid out the new development to allow truck access from Hoffner Ave. via the driveway aligned with the median opening. This forced our buildings to have a layout towards the east line to allow the best maneuvering of vehicles.
- 2) Not Self-Created
The lot size is an existing condition. FDOT established the median access into this parcel aligned with the west entrance. These are the conditions we are working with to make the best possible use of the land.
- 3) No Special Privilege Conferred
The FLU for our neighboring parcel is I-2/I-3. Parcels with Industrial zoning are allowed 15-ft setbacks, and 15% open space. We are proposing 15-ft setback with 30% open space.

4) Deprivation of Rights

Losing 30% of this parcel is a large hardship and severely limits this owners right to development in I-2/I-3 zoning. The demand for warehouse business units in close proximity to the airport, downtown Orlando, and tollways is being met minimally. My client's ability to fill the demand is severely diminished with the 60-ft setback.

5) Minimum Possible Variance

As we stated the access roadway was determined by FDOT with the median cut. The access driveway to the west side of the lot makes 45-ft of the lot reserved for pavement and landscape buffer. We are asking the same setback distance allowed at I-2/I-3 parcels adjacent to A-2 lots. We also propose to plant a dense bamboo hedge to create a fast growing opaque screen at this lot line.

6) Purpose and Intent

The intent of the FLU is to develop clusters of similar uses, and evolve the development of the County. The A-2 zoning is being replaced in this area by I-2/I-3 per the FLU. The adjacent east lot has begun to convert to an Industrial Use with the leasing of a portion of their land for a cellular tower.

We thank the Board of Zoning Adjustment for their time and consideration of our case for this code variance.

Sincerely,

DAO CONSULTANTS, INC.



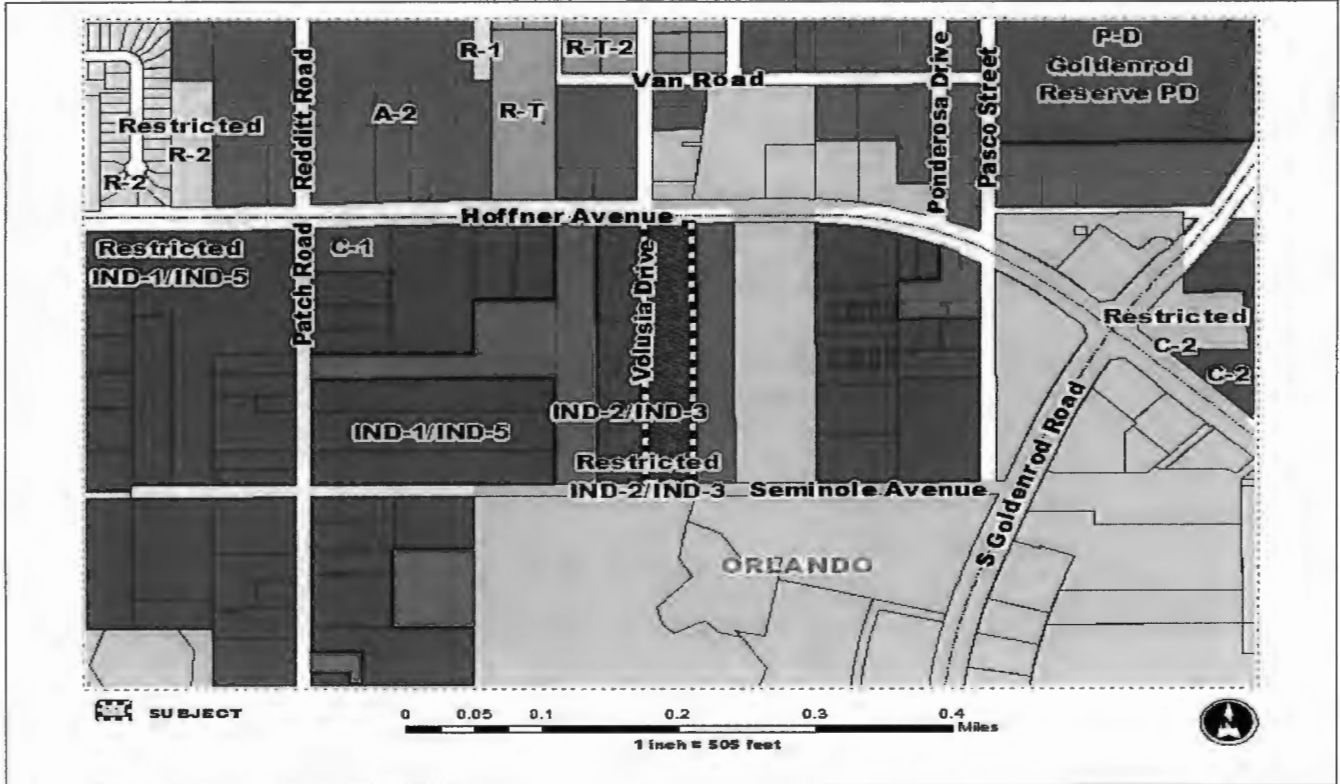
Solange C. Dao, P.E.

OFFICIAL

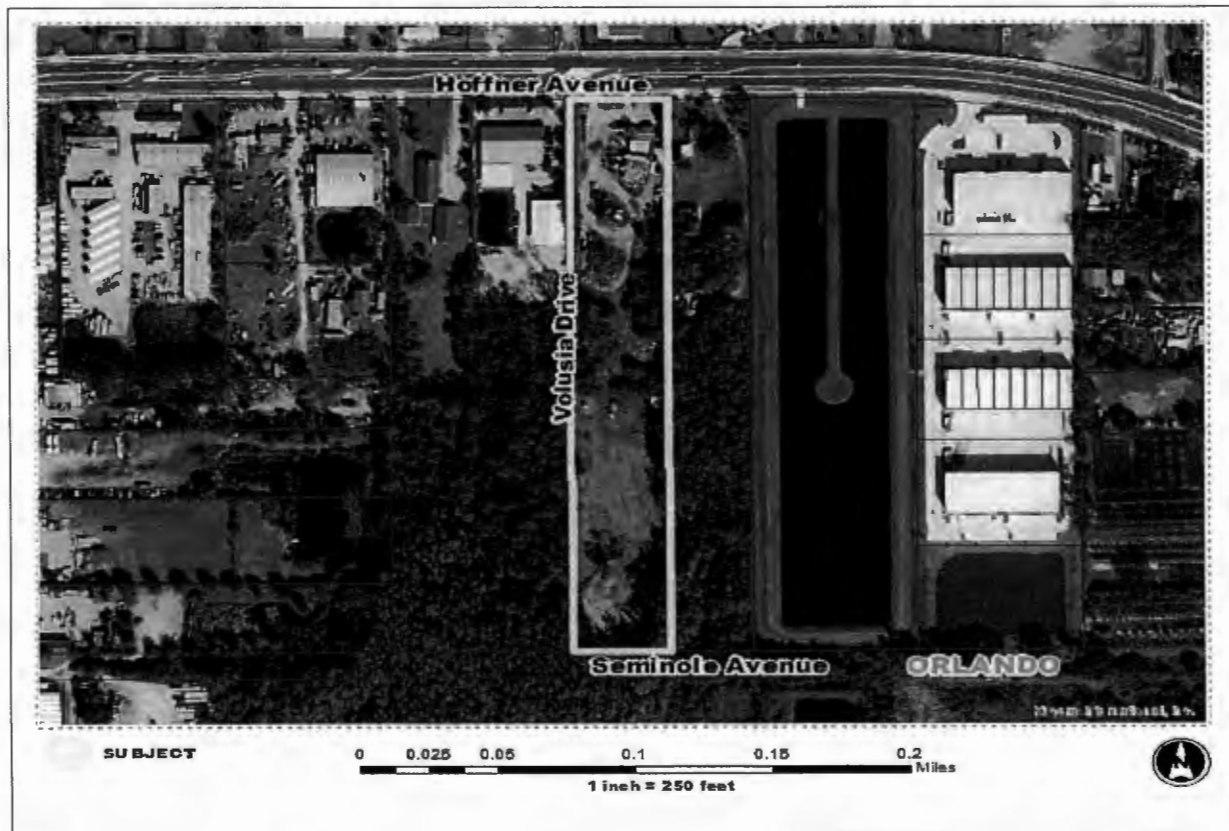


ENGINEERING FIRM
1996-2004

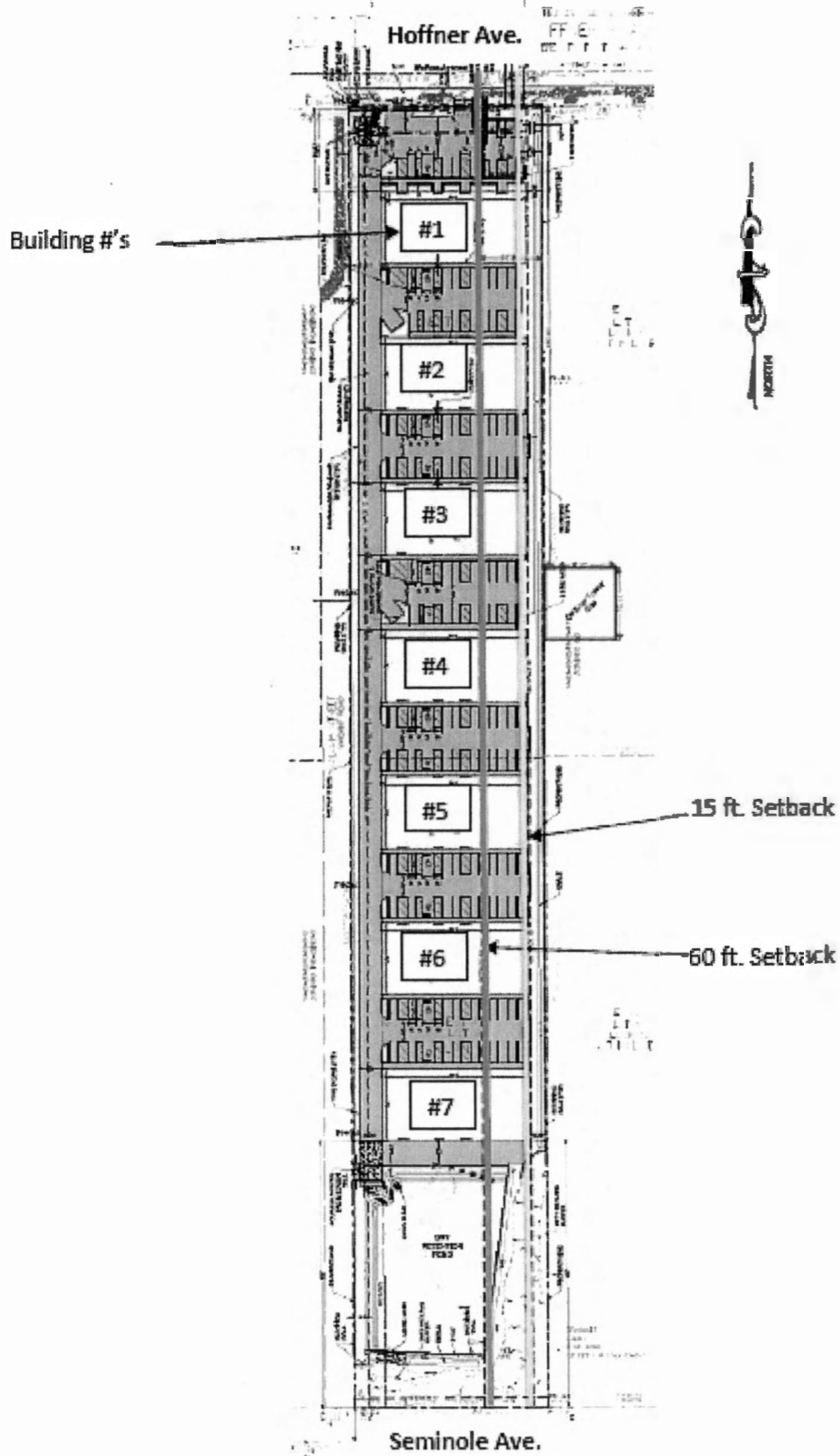
ZONING MAP



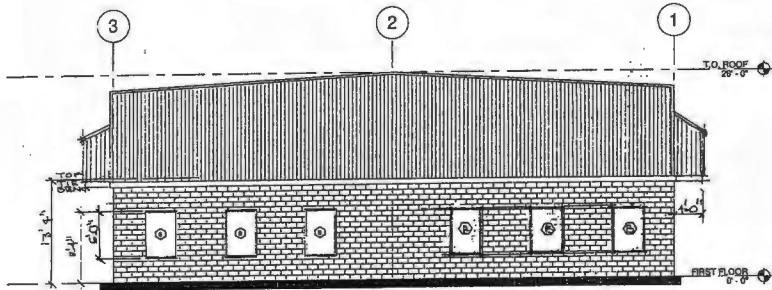
AERIAL MAP



SITE PLAN

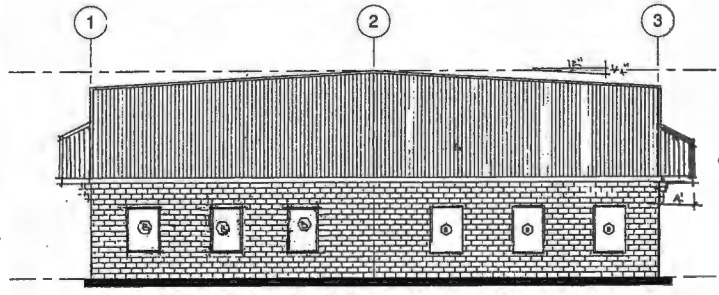


12



4 WEST ELEVATION
1/8" = 1'-0"

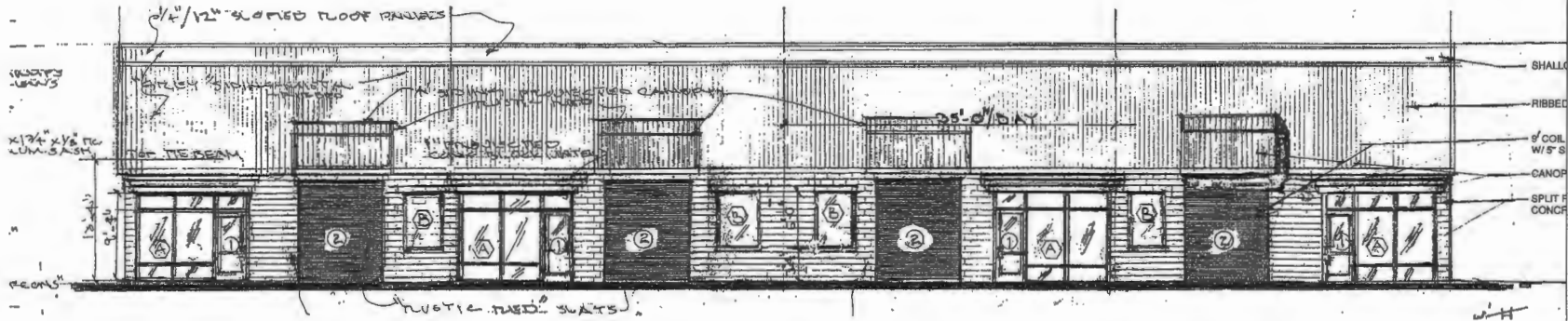
1/8" = 1'-0"



3 EAST ELEVATION
1/8" = 1'-0"

END ELEVATIONS (ALL BUILDINGS)

13



FRONT ELEVATION (BUILDING #1)

SITE PHOTOS



Existing office building for nursery, looking southeast



Site work yard with adjacent cell tower in background, looking southeast

SITE PHOTOS



Adjacent business abutting west side of site, looking southwest



Adjacent residentially zoned property to east, looking south