



Interoffice Memorandum

October 30, 2023

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

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

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

SUBJECT: November 28, 2023 Board-Called Public Hearing
Applicant: Robert Haines
BZA Case # VA-23-07-046, October 5, 2023; District 1

Board of Zoning Adjustment (BZA) Case # VA-23-07-046, located at 9444 Lake Hickory Nut Drive, Winter Garden, Florida 34787, in District 1, is a Board-Called public hearing. The applicant is requesting variances in the A-1 zoning district as follows: 1) To allow a lot size of 0.25 acres (upland) in lieu of a minimum of 0.5 acres; 2) To allow an east front setback of 25 ft. in lieu of 35 ft. for a new single family residence; 3) To allow a north side setback of 7.5 ft. in lieu of 10 ft. for a new single family residence; 4) To allow a south side setback of 7.5 ft. in lieu of 10 ft. for a new single family residence; 5) To allow a pool and deck with a west rear setback of 25 ft. in lieu of 50 ft.; 6) To allow a pool and deck with a west setback of 25 ft. from the Normal High Water Elevation (NHWE) of Lake Hickory Nut in lieu of 50 ft.

At the October 5, 2023 BZA hearing, staff recommended approval of the variance requests. At the BZA public hearing, there were three in attendance to speak in opposition to the requests, stating concerns that the size of the house and the setbacks were not consistent with the area. There was no one in attendance to speak in favor of the requests. It was also noted that prior to the BZA hearing, one comment was received in support, and eight comments were received in opposition. The BZA recommended approval of the request.

At the October 24, 2023 Board meeting, this item was pulled for a separate public hearing at the request of Commissioner Nicole Wilson.

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Variance
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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 Jennifer Moreau at (407) 836-5856.

ACTION REQUESTED: Deny the applicant's request; or approve the applicant's request with conditions. District 1

AS/JM:js

Attachments

**PLANNING, ENVIRONMENTAL, AND DEVELOPMENT SERVICES DEPARTMENT
ZONING DIVISION PUBLIC HEARING REPORT
November 28, 2023**

The following is a public hearing before the Board of County Commissioners on November 28, 2023 at 2:00 p.m.

APPLICANT: ROBERT HAINES

REQUEST: Variances in the A-1 zoning district as follows:
1) To allow a lot size of 0.25 acres (upland) in lieu of a minimum of 0.5 acres
2) To allow an east front setback of 25 ft. in lieu of 35 ft. for a new single family residence
3) To allow a north side setback of 7.5 ft. in lieu of 10 ft. for a new single family residence
4) To allow a south side setback of 7.5 ft. in lieu of 10 ft. for a new single family residence
5) To allow a pool and deck with a west rear setback of 25 ft. in lieu of 50 ft.
6) To allow a pool and deck with a west setback of 25 ft. from the Normal High Water Elevation (NHWE) of Lake Hickory Nut in lieu of 50 ft.

LOCATION: 9444 Lake Hickory Nut Drive, Winter Garden, Florida 34787, west side of Lake Hickory Nut Dr., east side of Hickory Nut Lake, south of Old YMCA Rd., west of Avalon Rd.

TRACT SIZE: +/- 0.74 acres (0.25 acres upland)

ZONING: A-1

DISTRICT: #1

PROPERTIES NOTIFIED: 29

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

Staff described the proposal, including the location of the property, the site plan, and photos of the site. Staff provided an analysis of the six (6) criteria and the reasons for a recommendation for approval. Staff noted that one (1) comment was received in support, and eight (8) comments were received in opposition.

The applicant agreed with the staff presentation and stated that the proposal is consistent with the setbacks of other properties in the area.

There were three in attendance to speak in opposition to the requests, stating concerns that the size of the house and the setbacks were not consistent with the area. There was no one in attendance to speak in favor of the requests.

The BZA discussed property's grade, noted previous approved Variances in the area, that the site would not be buildable without approval of the requests, stated justification for the six (6) criteria and unanimously recommended approval of the Variances by a 6-0 vote, with one absent, subject to the four (4) conditions in the staff report.

BZA HEARING DECISION:

A motion was made by Thomas Moses, seconded by Juan Velez and carried to recommend APPROVAL of the Variance requests in that the Board finds they meet the requirements of Orange County Code, Section 30-43(3); further, said approval is subject to the following conditions: (6 in favor, none opposed, 1 absent).

1. Development shall be in accordance with the site plan and elevations received June 2, 2023, subject to the conditions of approval, and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviations, changes, or modifications will be subject to the Zoning Manager's review and approval. Any proposed substantial deviations, changes, or modifications will be subject to a public hearing before the Board of Zoning Adjustment (BZA) where the BZA makes a recommendation to the Board of County Commissioners (BCC).
2. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
3. Any deviation from a Code standard not specifically identified and reviewed/addressed by the Board of County Commissioners shall be resubmitted for the Board's review or the plans revised to comply with the standard.
4. Prior to the issuance of any building permit, the property owner shall record in the official records of Orange County, Florida an Indemnification/Hold Harmless Agreement, on a form provided by the County, which indemnifies Orange County, Florida from any damages and losses arising out of or related in any way to the activities or operations on or use of the Improvement resulting from the County's granting of the variance request and, which shall inform all interested parties that the pool and deck are located no closer than 25 feet from the Normal High Water Elevation (NHWE) of Lake Hickory Nut.

BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **OCT 05, 2023**

Commission District: **#1**

Case #: **VA-23-07-046**

Case Planner: **Nick Balevich (407) 836-0092**

Nick.Balevich@ocfl.net

GENERAL INFORMATION

APPLICANT(s): ROBERT HAINES

OWNER(s): WINDERMERE SPRINGS LLC

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

- 1) To allow a lot size of 0.25 acres (upland) in lieu of a minimum of 0.5 acres
- 2) To allow an east front setback of 25 ft. in lieu of 35 ft. for a new single family residence
- 3) To allow a north side setback of 7.5 ft. in lieu of 10 ft. for a new single family residence
- 4) To allow a south side setback of 7.5 ft. in lieu of 10 ft. for a new single family residence
- 5) To allow a pool and deck with a west rear setback of 25 ft. in lieu of 50 ft.
- 6) To allow a pool and deck with a west setback of 25 ft. from the Normal High Water Elevation (NHWE) of Lake Hickory Nut in lieu of 50 ft.

PROPERTY LOCATION: 9444 Lake Hickory Nut Drive, Winter Garden, Florida 34787, west side of Lake Hickory Nut Dr., east side of Hickory Nut Lake, south of Old YMCA Rd., west of Avalon Rd.

PARCEL ID: 06-24-27-3548-00-121

LOT SIZE: +/- 0.74 acres (0.25 acres upland)

NOTICE AREA: 500 ft.

NUMBER OF NOTICES: 29

STAFF RECOMMENDATIONS

Approval, subject to the conditions in this report.

LOCATION MAP



SITE & SURROUNDING DATA

	Property	North	South	East	West
Current Zoning	A-1	A-1	A-1	A-1	Lake Hickory Nut
Future Land Use	V	V	V	V	Lake Hickory Nut
Current Use	Vacant	Single-family residential	Single-family residential	Single-family residential	Lake Hickory Nut

BACKGROUND AND ANALYSIS

DESCRIPTION AND CONTEXT

The subject property is located in the A-1 Citrus Rural district, which allows agricultural uses, as well as mobile homes and single-family homes on larger lots. The Future Land Use is Village (V), which is consistent with the A-1 zoning district.

The area surrounding the subject site consists of lakefront single-family homes. The subject property is a vacant 0.74 acre lot (0.25 acres upland). It is a portion of lot 12 of the Hickory Lake Estates Plat, along with the adjacent four parcels, was recorded in 1956, and is a non-conforming lot, as it does not meet the minimum lot size. The property backs up to Lake Hickory Nut, with a Normal High Water Elevation (NHWE) on the west. The current owners acquired the property in 2021.

The property is 0.25 acres (upland) in lieu of a minimum of 0.5 acres, requiring Variance #1. The proposal is to construct a 2 story, 4,960 gross sq. ft. single-family home with a swimming pool on the property. The house will have: an east front setback of 25 ft. in lieu of 35 ft. requiring Variance #2; a north side setback of 7.5 ft. in lieu of 10 ft. requiring Variance #3; and, a south side setback of 7.5 ft. in lieu of 10 ft. requiring

Variance #4. The pool and deck will have: a west rear setback of 25 ft. in lieu of 50 ft. requiring Variance #5; and a west setback of 25 ft. from the Normal High Water Elevation (NHWE) of Lake Hickory Nut in lieu of 50 ft. requiring Variance #6.

Staff has reviewed the requests and is recommending approval. The current requests are in harmony and consistent with the size of lots in the surrounding neighborhood, several of which required Variances for lot size and setbacks. The adjacent lots are both already developed, so the options are limited for this vacant lot. Furthermore, the property is constrained due to the size, the A-1 setbacks, and the NHWE setback.

The owner submitted a Conservation Area Determination (CAD-23-06-094), which was reviewed by the Environmental Protection Division and approved subject to the applicant providing the following at the time of the building permit review: A building plan that includes the Normal High Water Elevation and approved wetland line per CAD-23-06-094; the setback distance/upland buffer between all development/grading and the approved wetland line; and (assuming the available upland buffer is less than 25' [Orange County Comprehensive Plan Policy C1.4.9]), the applicant should provide the greatest amount of buffer attainable on the site, and should include additional measures to protect the shoreline and prevent further encroachment into the upland buffer space, such as permanent environmentally friendly fencing and/or native plantings. As of the date of this report, no comments have been received in favor of this request, and 6 (six) comments have been received in opposition.

District Development Standards

	Code Requirement	Proposed
Max Height:	35 ft.	30 ft.
Min. Lot Width:	100 ft.	100 ft.
Min. Lot Size:	0.5 acres	0.25 acres (upland) Variance #1

Building Setbacks

	Code Requirement	Proposed
Front:	35 ft.	25 ft. (East-house) Variance #2
Side:	10 ft.	7.5 ft. (North-house) Variance #3 7.5 ft. (South-house) Variance #4
Rear:	50 ft.	25 ft. (West-pool/deck) Variance #5
NHWE:	50 ft.	25 ft. (West-pool/deck) Variance #6

STAFF FINDINGS

VARIANCE CRITERIA

Special Conditions and Circumstances

The special conditions and circumstances particular to the subject property are the size of the lot and the zoning district standards, making it difficult to construct a single-family home without the need for Variances.

Not Self-Created

The owner is not responsible for the existing lot size and zoning.

No Special Privilege Conferred

Granting the Variances will not establish special privilege since there are other properties in the area developed with single-family homes with similar lot sizes and setbacks.

Deprivation of Rights

Without approval of the requested Variance for lot size, the owner will be deprived of the ability to construct a residence, as the adjacent parcels to the north and south are developed.

Minimum Possible Variance

The requested Variances are the minimum necessary to construct the proposed improvements on the property. The lots to the north and south are already developed with a single-family home, so there is no possibility of acquiring additional land to meet the code requirements.

Purpose and Intent

Approval of the requests will be in harmony with the purpose and intent of the Code, which is to allow infill development of lawfully constructed residences. The lot size and setbacks as proposed will not be detrimental to the neighborhood as the proposed residence will be consistent with the lots in the area.

CONDITIONS OF APPROVAL

1. Development shall be in accordance with the site plan and elevations received June 2, 2023, subject to the conditions of approval, and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviations, changes, or modifications will be subject to the Zoning Manager's review and approval. Any proposed substantial deviations, changes, or modifications will be subject to a public hearing before the Board of Zoning Adjustment (BZA) where the BZA makes a recommendation to the Board of County Commissioners (BCC).
2. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
3. Any deviation from a Code standard not specifically identified and reviewed/addressed by the Board of County Commissioners shall be resubmitted for the Board's review or the plans revised to comply with the standard.
4. Prior to the issuance of any building permit, the property owner shall record in the official records of Orange County, Florida an Indemnification/Hold Harmless Agreement, on a form provided by the County, which indemnifies Orange County, Florida from any damages and losses arising out of or related in any way to the activities or operations on or use of the Improvement resulting from the County's granting of the variance request and, which shall inform all interested parties that the pool and deck are located no closer than 25 feet from the Normal High Water Elevation (NHWE) of Lake Hickory Nut.

C: Robert Haines
12572 S Lake Sawyer Lane
Windermere, FL 34786



WINDERMERE SPRINGS

Providing working-class families
with safe, desirable, family-
oriented housing since 2002.



12752 S Lake Sawyer Ln
Windermere, FL 34786



(407) 476-3651
WindermereSprings@gmail.com



WindermereSprings.com

To Whom It May Concern,

The property shall consist of 1 (one) Single Family residence with an attached 2-car garage, driveway, rear porch, rear pool, and a simple, standard-style boat dock. Building construction will consist of cement block and steel-frame shell with a metal or composition roof, in a traditional "coastal home" style congruent with the area. The home will be 2 stories and a maximum of 4,960 square feet under roof. Conditioned living space is expected to be 3,365 square feet, consisting of 4 bedrooms and 3.5 bathrooms.

In support of our variance application, this cover letter requests property 9444 Lake Hickory Nut Dr. We are applying for a variance on the house as well as the deck and swimming pool.

1. Lot size is 32,607 Sq. Ft.
2. Front setback we would like 25' in lieu of 35'.
3. For Both side setbacks we would like 7.5' in lieu of 10'
4. For the pool and deck we would like 25' NHWE in lieu of the 50' NHWE.
5. The house will be 50' NHWE setback

The home will be consistent with single-family home variances already provided for many homes in the area, and, will conform with the design of the Lake Hickory Nut community home styles, and will abide by Orange County building and development standards.

The building dimensions shall be approximately 85' Long X 30' Deep and 35' Tall. Building dimensions are consistent with homes directly adjacent to and in the property's immediate vicinity and will conform to all applicable building codes.

Thank you for your kind consideration of this request. We look forward to providing a new, great-quality home in Orange County.

Sincerely,

Rob Haines
Managing Member, Windermere Springs LLC

COVER LETTER

- 1. Special Conditions and Circumstances - Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same zoning district. Zoning violations or nonconformities on neighboring properties shall not constitute grounds for approval of a proposed zoning variance.

The lot is unbuildable due to the original plat. We are proposing a front setback of 25' in lieu of 35', both side setbacks of 7.5' in lieu of 10', rear setback

we would like 25' in lieu of the 50' from the NHWE for the pool and 50' for the house

- 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.

The original zoning makes the lot unbuildable. Based on the required setbacks.

- 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.

We are asking for you to provide us a variance so we can build the house.

The original zoning makes this lot unbuildable. This follows similar Variances utilized within the community

- 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.

We know that other property owners have received variances to build on their lots when the original plat made them unbuildable.

In this neighborhood This follows similar Variances utilized in the community

- 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.

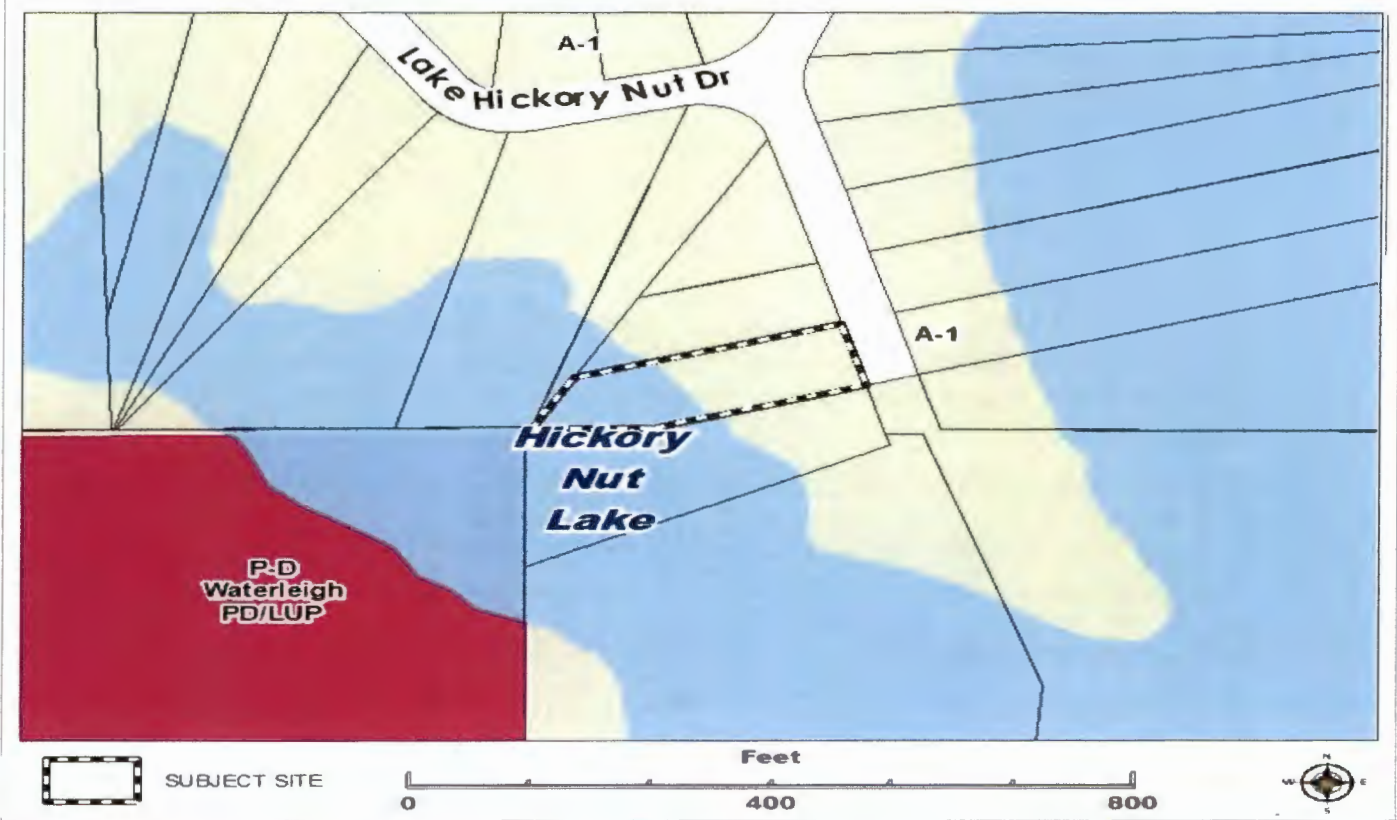
We are asking for the minimum variance to be able to build our house on the lot, due to the original plat make this lot unbuildable.

Front setback 25' in lieu of 35', both side setbacks 7.5' in lieu of 10', pool setback of 25' in lieu of 50', rear of house to be 50' NHWE

- 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.

This house will be built consistent with the single-family home variances already provided for many homes in the area and will conform with the design of the Lake Hickory Nut community home and pool styles

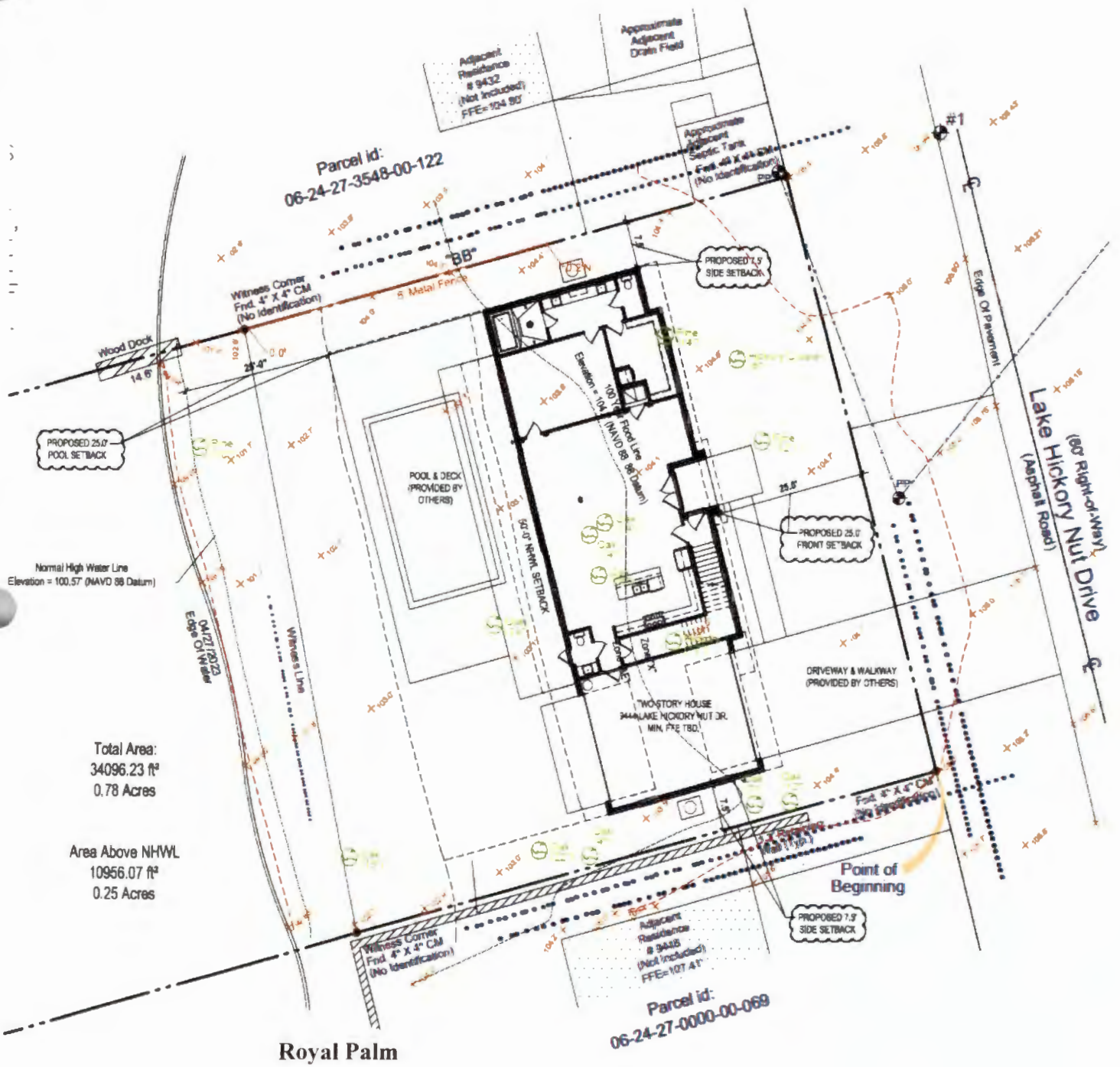
ZONING MAP



AERIAL MAP



SITE PLAN

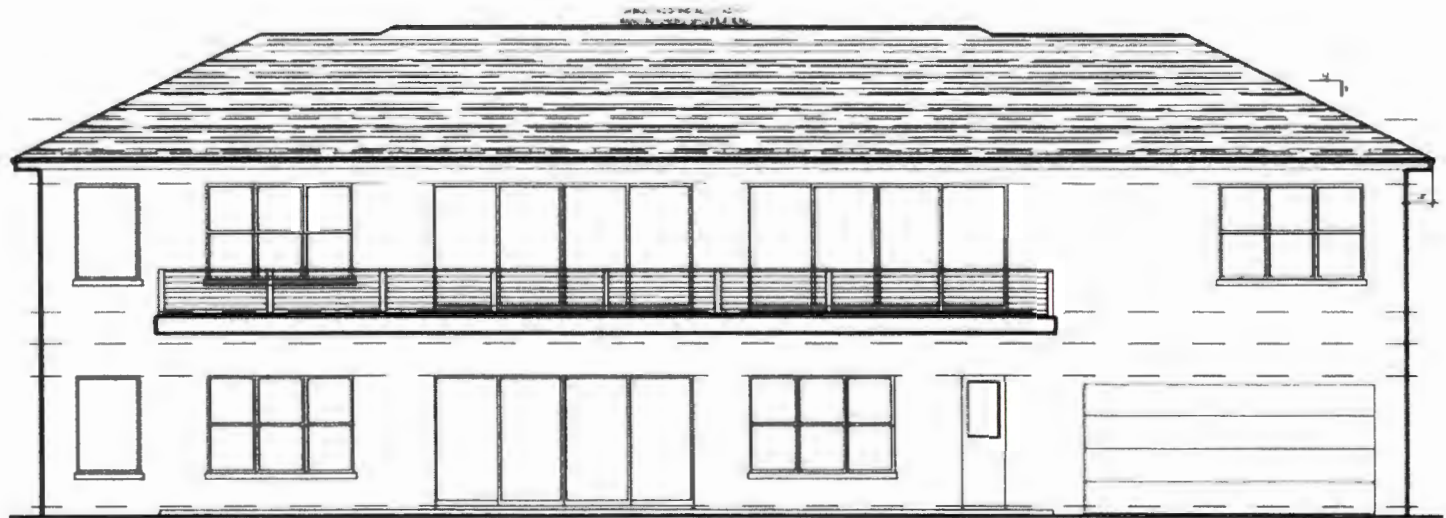


Total Area:
34096.23 ft²
0.78 Acres

Area Above NHWL
10956.07 ft²
0.25 Acres



FRONT ELEVATION (EAST)

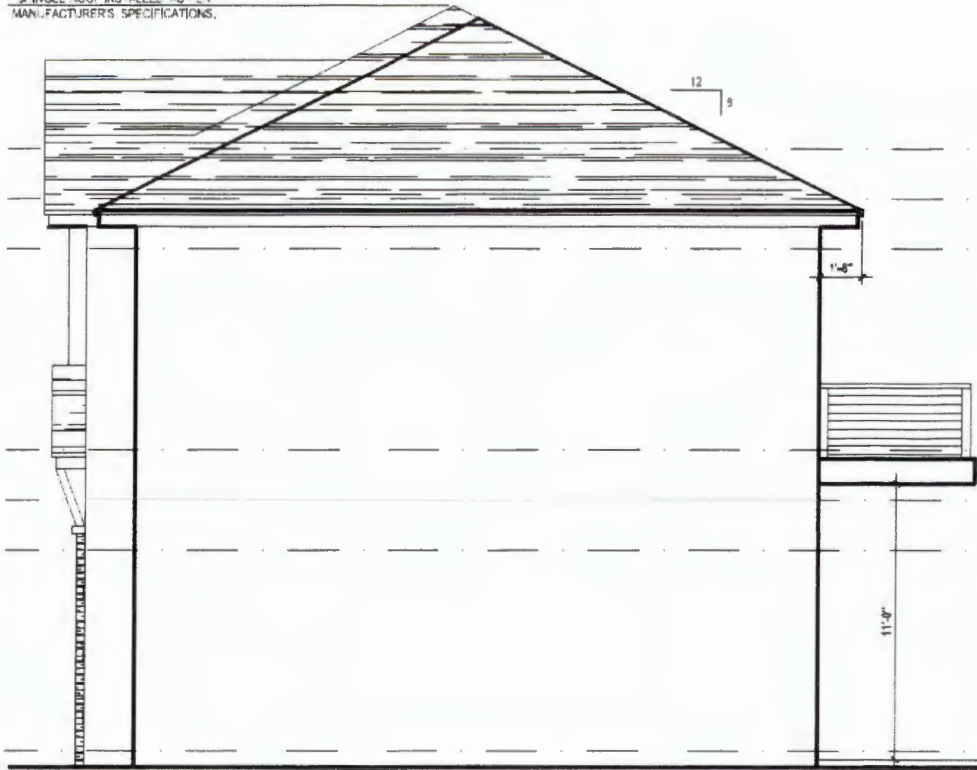


REAR ELEVATION (WEST)

FRONT ELEVATION (EAST) AND REAR ELEVATION (WEST)

SIDE ELEVATION (NORTH)

SHINGLE ROOF INSTALLED AS PER
MANUFACTURERS SPECIFICATIONS.



SIDE ELEVATION (SOUTH)

SHINGLE ROOF INSTALLED AS PER
MANUFACTURERS SPECIFICATIONS.



SITE PHOTOS



Property from Lake Hickory Nut Dr. facing west