



Interoffice Memorandum

DATE: July 10, 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: August 11, 2020 – Board Called Public Hearing
Applicant: Rudy Callahan
BZA Case #VA-20-05-025, June 4, 2020; District 4

Board of Zoning Adjustment (BZA) Case # VA-20-05-025, located at 1501 Oberry Hoover Rd., Orlando, FL 32825, in District 4, is a Board called public hearing. The applicant is requesting variances to allow a cumulative total of 5,500 sq. ft. of accessory floor area in lieu of 3,000 sq. ft. and to allow an existing accessory structure (garage) greater than 14 ft. in height to remain 5 ft. from the side (south) property line in lieu of 10 ft.

The property has been under code enforcement since 2009, for operating a commercial business, storing construction equipment, and for the construction of three accessory structures without permits. A variance was granted in 2010 to allow for a cumulative total of 3,300 sq. ft. of accessory floor area (in lieu of the 5,930 sq. ft. originally requested) with a condition that the unpermitted structures obtain permits within 30 days.

The subject property is located on the east side of Oberry Hoover Rd., approximately 400 ft. south of Iroquois Trail.

At the June 4, 2020 BZA hearing, staff recommended denial of the variances. The proposed variances are requested in order to address compliance issues related to the construction of unpermitted structures, built prior to 2009. Therefore the requests are self-created and do not satisfy the criteria for the granting of the variances. The BZA recommended approval with a 7-0 vote of the requested side setback variance and a modified variance for the cumulative total accessory floor area by reducing the floor area from 5,500 sq. ft. to 4,250 sq. ft., with 6 conditions of approval.

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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 BCC. 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 4.

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

August 11, 2020

The following is a board called public hearing before the Board of County Commissioners on August 11, 2020 at 2:00 p.m.

APPLICANT: RUDY CALLAHAN

REQUEST: Variances in the A-2 zoning district as follows:
1) To allow a cumulative total of 5,500 sq. ft. of accessory floor area in lieu of 3,000 sq. ft. (BZA approved 4,250 sq. ft.).
2) To allow an existing accessory structure greater than 15 ft. in height to remain 5 ft. from the side (south) property line in lieu of 10 ft.

Note: This is the result of Code Enforcement Action.

LOCATION: 1501 Oberry Hoover Rd., Orlando, FL 32825, east side of Oberry Hoover Rd., approximately 400 ft. south of Iroquois Trail

TRACT SIZE: 306 ft. x 200 ft./ 1.4 acres

ZONING: A-2

DISTRICT: #4

PROPERTIES NOTIFIED: 69

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

Staff explained the history of the property, stating that when the current owner acquired the property in 2007, the building was already located in the southeast corner of the property. Staff added that the majority of the structures and code violations were the result of a prior tenant. A 2010 prior variance request, which was partially approved, was explained, including the fact that two (2) of the existing structures that were required to be demolished by the 2010 BZA decision had not been removed. The applicant is now attempting to retain the remaining structures. Staff concluded by noting that they had received three correspondence in favor of the request from neighboring property owners and no correspondence in opposition.

The owner's agent explained the history between the property owner and the tenant. After the code enforcement action, the tenant would tell the owner that they were working on the issue with Code Enforcement and Zoning, so the two buildings could stay which were to have been demolished after the 2010 variance. Meanwhile, fines kept accruing. There is

now a potential buyer, however, the accessory structure issue must be resolved first. There was no one else in attendance to speak in favor or in opposition to the request.

The BZA discussed how much less of a variance would be needed if the pole barn structure in front of the building in the southeast corner of the property was removed. Staff noted that it would reduce the request between 40 and 50%. The BZA unanimously recommended approval of the variance requests with the five conditions in the staff booklet and a new sixth condition capping the square footage of accessory structures at 4,250 sq. ft.

BZA HEARING DECISION:

A motion was made by Deborah Moskowitz, seconded by John Drago and unanimously carried to recommend APPROVAL of the Variance requests, modifying #1 to reflect 4,250 sq. ft. rather than 5,500 sq. ft. 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):

1. Development in accordance with the site plan stamp-dated March 11, 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. Permits to remove the "kitchen" in Accessory Building #1 shall be obtained with the permit for the structure itself, or the applicant shall obtain the required permits to allow this structure to be used as an Accessory Dwelling Unit. "Kitchen" shall include any 220 v outlets, overhead cabinets, full size refrigerator, stove, and full size sink.
5. The applicant shall obtain a permit for all unpermitted structures within 180 days of final action on this application by Orange County, or this approval becomes null and void.

6. The variance shall be limited to a cumulative total of 4,250 sq. ft. of accessory floor area.

BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **JUN 04, 2020**

Case Planner: **David Nearing, AICP**

Case #: **VA-20-05-025**

Commission **#4**

District:

GENERAL INFORMATION

APPLICANT(s): RUDY CALLAHAN

OWNER(s): WILBUR STONE

REQUEST: Variances in the A-2 zoning district:

- 1) To allow a cumulative total of 5,500 sq. ft. of accessory floor area in lieu of 3,000 sq. ft.
- 2) To allow an existing accessory structure greater than 15 ft. in height to remain 5 ft. from the side (south) property line in lieu of 10 ft.

Note: This is the result of Code Enforcement Action.

PROPERTY 1501 Oberry Hoover Rd., Orlando, FL 32825, east side of Oberry Hoover Rd.,

LOCATION: approximately 400 ft. south of Iroquois Trail

PARCEL ID: 22-22-31-0000-00-044

LOT SIZE: 306 ft. x 200 ft./1.4 acres

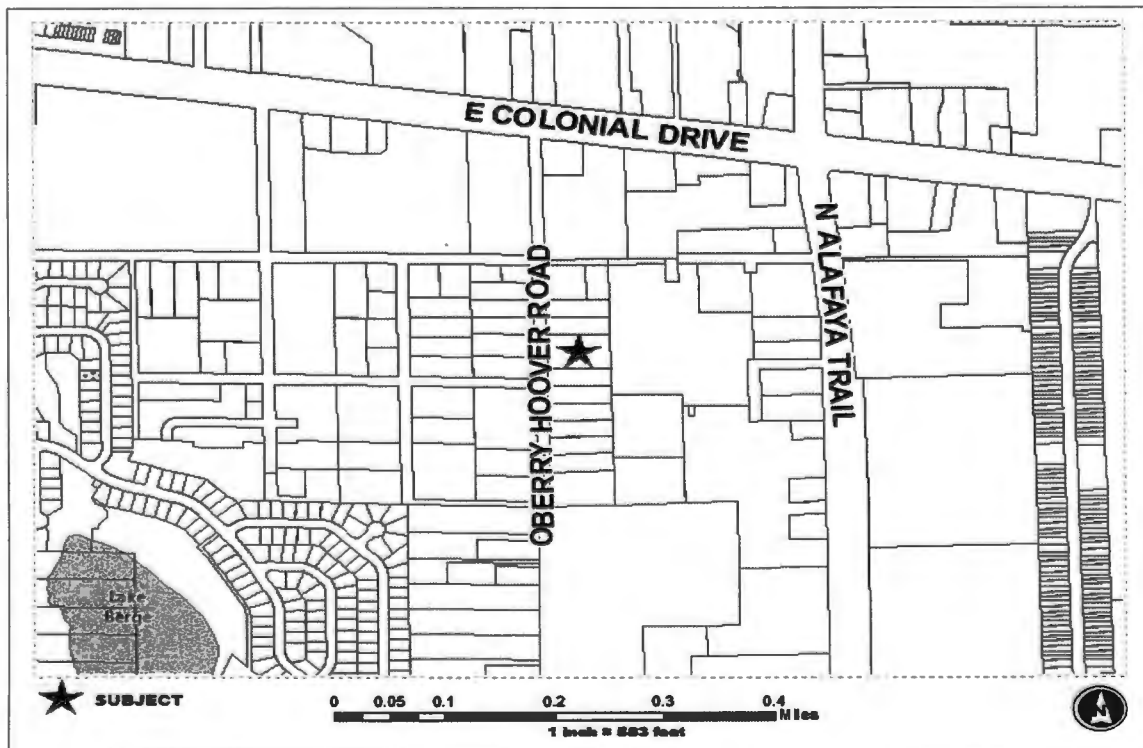
NOTICE AREA: 700 ft.

NUMBER OF NOTICES 69

STAFF RECOMMENDATIONS

Denial. However, should the BZA find that the request satisfies the criteria for the granting of 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	A-2	A-2	A-2	P-D	A-2
Future Land Use	LDR	LDR	LDR	P-D	LDR
Current Use	Single Family Residential	Single Family Residential	Single Family Residential	Commercial	Single Family Residential

BACKGROUND AND ANALYSIS

DESCRIPTION AND CONTEXT

The property is located in the A-2 Farmland Rural zoning district, which allows agricultural uses, mobile homes, and single-family homes with accessory structures on larger lots.

The subject property is 1.4 acres and is unplatted. It is developed with a 2,400 sq. ft. home built in 2011 (B11003423) located in the southern center of the property. In addition, there is a 2,984 sq. ft. garage and storage area that is 17 ft. tall (labeled as Accessory Structure #1 on the attached site plan), with a 1,256 sq. ft. attached pole barn (labeled as Accessory Structure #2) located in the southeastern corner of the property, and another 1,253 sq. ft. accessory structure (labeled as Accessory Structure #3) located in the northeast corner of the property. At the time it was constructed, the required rear and side setbacks for accessory structures were five (5) ft. In 2019, a code amendment changed the setbacks for accessory structures over 15 ft. in height to 10 ft.

According to the applicant, the garage portion of the southeast accessory structure was constructed with a building permit. However, as of the date of the preparation of this report, no permit has been located. Also according to the applicant, the addition to the west side of that structure was constructed by the tenant at the time, a contractor, as a place to live while he rebuilt the home. No permit was found for the addition which contains a kitchen. At the time, a Special Exception would have been needed for the addition, which would be considered an accessory dwelling unit (ADU). The applicant has indicated that the kitchen facilities will now be removed, and the entire structure will be used for storage.

The accessory structure in the northeast corner of the site was also constructed by the same tenant, for use as equipment repair, as well as personal vehicle storage. The owner of the property was cited by code enforcement in 2009 for operating several businesses, storing construction equipment, and for construction of accessory structures without permits.

In January 2010, the owner applied for a variance (VA-10-01-002) to allow for the retention of six (6) accessory structures, totaling 5,930 sq. ft. of total cumulative floor area. At that time, the property contained an approximate 1,200 sq. ft. house, which was later demolished in 2010 (B10008578). Three of the structures identified in the staff report were Accessory Structure #1, Accessory Structure #2, and Accessory Structure #3. At the hearing, the BZA agreed to allow Accessory Structure #1 and a carport located to the south of the existing house (labeled as Accessory Structure #6 on the attached 2010 Site Plan) to remain, totaling 1,577 sq.

ft. The 4 remaining structures were required to be removed (labeled as Accessory Structure #2, 3, 4, 5), including the pole barn addition to the garage (Accessory Structure #2). At this time three (3) of the six (6) existing structures have been removed including the carport, but only 2 of the 4 that were required to be removed have been removed.

The applicant's current request is to allow for the 17 foot high as-built Accessory structure #1 to remain in its current location in-lieu of a 10 foot side setback and to allow for a total of 5,493 sq. ft. of accessory building area to remain.

District Development Standards

	Code Requirement	Proposed
Max Height:	25 ft. (Accessory structure)	13 ft. (Accessory structure)
Min. Lot Width:	100 ft.	306 ft.
Min. Lot Size:	.5 ac.	1.4 ac.

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

	Code Requirement	Proposed
Front:	35 ft.	107 ft. (Residence)/220 ft. (Accessory structure #1 & 2)/265 ft. (Accessory structure #3)
Rear:	5 ft. (Accessory structure)	5 ft. (Accessory structure #3)/14 ft. (Accessory structure #1 & 2)
Side:	5 ft. (Accessory structure #1)/10 ft. (Accessory structure #2)	30 ft. (Accessory structure #3)/5 ft. (Accessory structure #1)

STAFF FINDINGS

VARIANCE CRITERIA

Special Conditions and Circumstances

Regarding the height of the structure as a function of its setback, the applicant asserts that there could be special circumstances pertaining to the timing of construction. While not properly permitted, when the original garage and the addition were constructed, the side and rear setbacks for any accessory structure were five (5) ft. It was not until 2019 that the setbacks were increased to 10 ft. for structures in excess of 15 ft.

Regarding the variance for total accessory square footage, a potential special condition could be the size of the property. At 1.4 acres, the site falls 0.6 acres short of qualifying for a Special Exception instead. Another consideration to the size of the site could be its location since the site is adjacent to a developed commercial property to the east.

However, considering the fact the site is fairly large, it is possible to meet the setback requirements of Code. Further, this limitation is similar to other properties in the general area and the owner has had many opportunities over the past ten years to correct not only the past setback

deficiencies and the aggregate area of accessory structures through the acquisition of permits. In fact, the 2010 BZA decision required the removal of four of the accessory structures, of which two of the structures continue to remain.

Not Self-Created

While the applicant states that most of the improvements over time were made by a tenant, apparently without the owner's knowledge, the owner is ultimately responsible. Since the two remaining structures were required to be removed by the 2010 BZA decision, the owner has been aware of the presence of the unpermitted installation of structures for at least the past 10 years. For the size of the property, the site appears to be overbuilt, and the proposal, albeit with the past removal of unpermitted structures, does not meet minimum Code requirements.

No Special Privilege Conferred

Approval of the as-built setback and accessory floor area requests could confer the owner special privilege that is denied by the Code to other lands, buildings, or structures in the same land use district. While the site is large, it is ultimately capped at 3,000 sq. ft. of accessory square footage, and according to the Code it does not qualify for a Special Exception due to the smaller size of property for the current request for a total of 5,493 sq. ft. The recognition of the location and area of as-built structures is not required to reasonably enjoy use of the property. The location of Accessory structure #1 is closer to the south property line than the Code allows. Had the owner obtained the required permits prior to the 2019 code change, a variance would not be required to allow the structure to remain at the 5 ft. setback. Allowing for the as-built improvements as proposed could establish special privilege.

Deprivation of Rights

Without the variance for the square footage, the applicant will be required to demolish the structure in the northeast corner of the site, which is relatively new, and appears to be in good condition. They will also need to remove the pole barn addition to the garage and addition, as well as five (5) ft. or the rear of the structure. While it is understandable that the owner wishes to keep the existing structures as constructed, the existing location and total area of the 3 after-the-fact structures does not grant vesting rights since no permits were sought at the time of construction. Furthermore, the owner has had opportunities to rectify deficiencies over the past ten years.

Minimum Possible Variance

This request does not appear to be a minimum request. The owner currently is able to reasonably use the property without the need of variances. As discussed above, the owner has been cited over the past ten years for the construction of structures without permits. Since compliance is possible to comply with the code regarding square footage without the need for a variance, the request is not the least possible variance. Granting the variance for the garage and addition to remain as-is would be considered as a convenience, not a necessity.

Purpose and Intent

Although it could appear that the property has room on the property for the existing structures, granting the variance would not meet the purpose and intent of the code since the after-the-fact improvements pertaining to the height and accumulated area of accessory structures are generally over ten years old and have been subject of a prior BZA decision requiring removal.

CONDITIONS OF APPROVAL

1. Development in accordance with the site plan dated March 11, 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).
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5. The applicant shall obtain a permit for all unpermitted structures within 180 days of final action on this application by Orange County, or this approval becomes null and void.

C: Rudy Callahan
935 Oasis Ct.
Apopka, FL 32712

COVER LETTER (PAGE 2)

Re: Request for Variance
1501 O'berry Hoover Rd.
Orlando, Fl. 32825

March 11, 2020

I am requesting a variance for the square footage of the out buildings at 1501 O'berry Hoover Rd. Orlando Fl. 32825. There are 3 structures on the property with a total square footage of 5503.2. An existing structure at time of purchase which is part of the 5503.2 is 2720 square feet. This lot is 1.44 acres which is larger than surrounding lots that have more sq. footage of out buildings.

I am asking for a variance to allow me to pay permit cost for the additional 2783.2 sq. ft to bring the property in compliance with Orange County. I have removed all commercial equipment and material from the property as requested by code enforcement. All commercial activities and business operations have ceased as requested by code enforcement. The setback requirements have been met and a new survey has been submitted to Orange County zoning. All buildings are for personal use to include storage of personal items and garage for personal vehicles since the residence does not have an attached garage.

I have expressed with code enforcement my intention to correct this situation and get back in the guide lines asked for. I have submitted the application for a variance to the Board of zoning adjustments for Orange County.

1. Special conditions and circumstances: If my request is granted this property will be without any special conditions and will be escalated in value to benefit neighboring properties and property taxes for Orange County.

2. Not self created: 1. On or about August 2007, I agreed to pursue a mortgage in my name, Wilbur C. Stone, on the above property, this was understood and agreed to be a short term venture on my behalf. I was told by Mr. Ellingwood, that he would search his relationships and partners to pay in full the mortgage that I acquired within 2 years. At this time Mr. Ellingwood had credit issues and could not qualify for a mortgage. Being a long time friend and knowing Mr. Ellingwoods abilities both in construction and auto body repair, I felt he would be able to fulfill his promise to pay me with a new source of financing. **It has been 12 years with consistent issues collecting the funds and continued code violations with Orange County.**

Mr. Ellingwood being very familiar with the codes and permits required took advantage of his construction abilities, without permitting he built structures that required permits and code inspections. Today the code lien on the property is over \$ 500,000.00 due to his negligence and attitude toward rules and regulations in Orange County; Code violation personnel have visited the property many times only to be promised corrections by Mr. Ellingwood and of course this is all in my name and my property and my credit since I made the purchase. I have lived in family turmoil for making this dumb decision.

The original structure on the above property at time of purchase burned down, shortly after Mr. Ellingwood took occupancy, the insurance paid for the new structure to be built with some excess funds, Mr. Ellingwood used these funds to build a mother- in- law suite which is part of the code violation. Mr. Ellingwood used the insurance money to his discretion without my knowledge of any violations.

COVER LETTER

These violations were created by another person without my knowledge or permission. I have spent the last 10 years suffering the financial burden, health issues and stress he has caused. I am 88 years old with numerous medical issues. Please approve this request so I can enjoy the property and try to enjoy the last years of my life without this burden.

3. No Special Privilege Conferred: None expected.

4. Deprivation of Rights: Agreed and understood.

5. Minimum Possible Variance: If approved this property will be a single family residence.

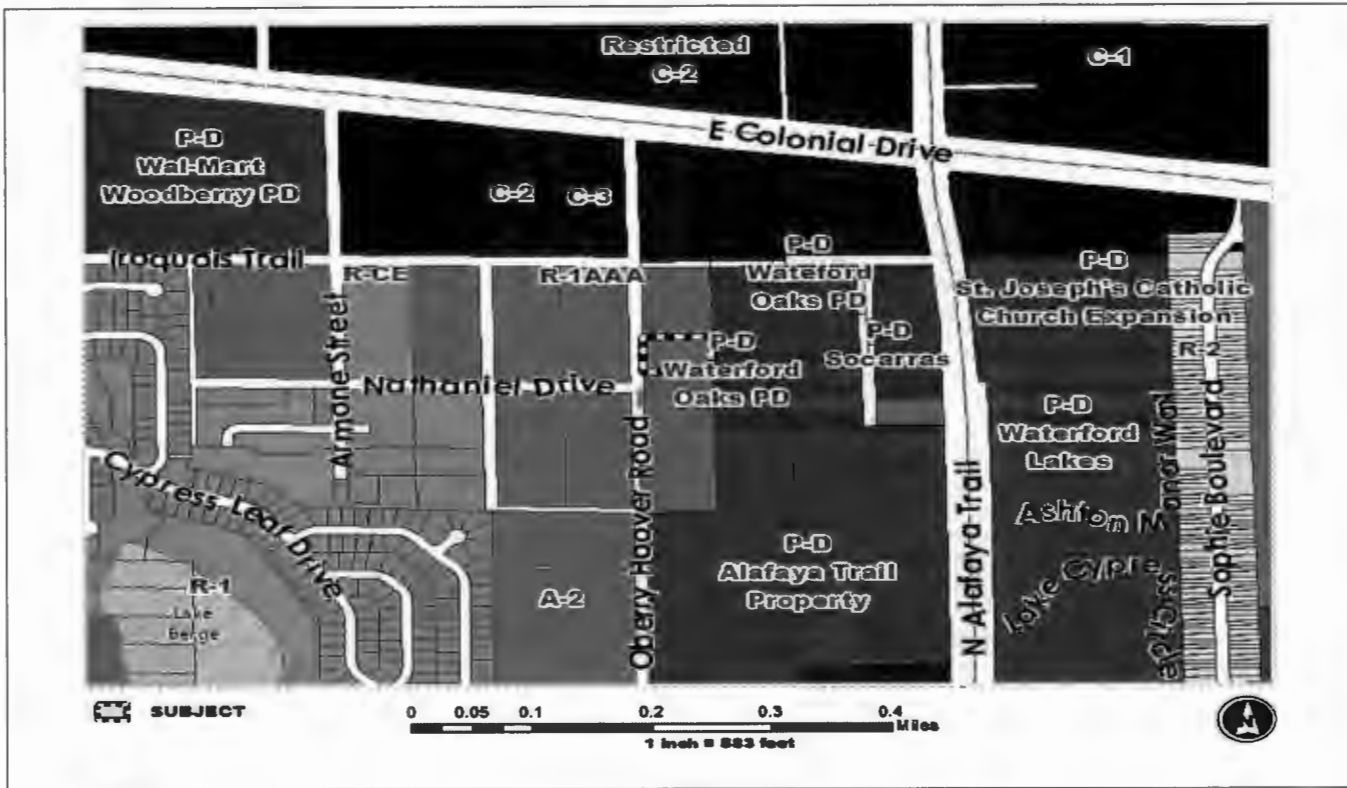
6. Purpose and Intent: Approval will improve all neighborhood standards and welcome a positive public welfare.

Regards,

Wilbur Stone



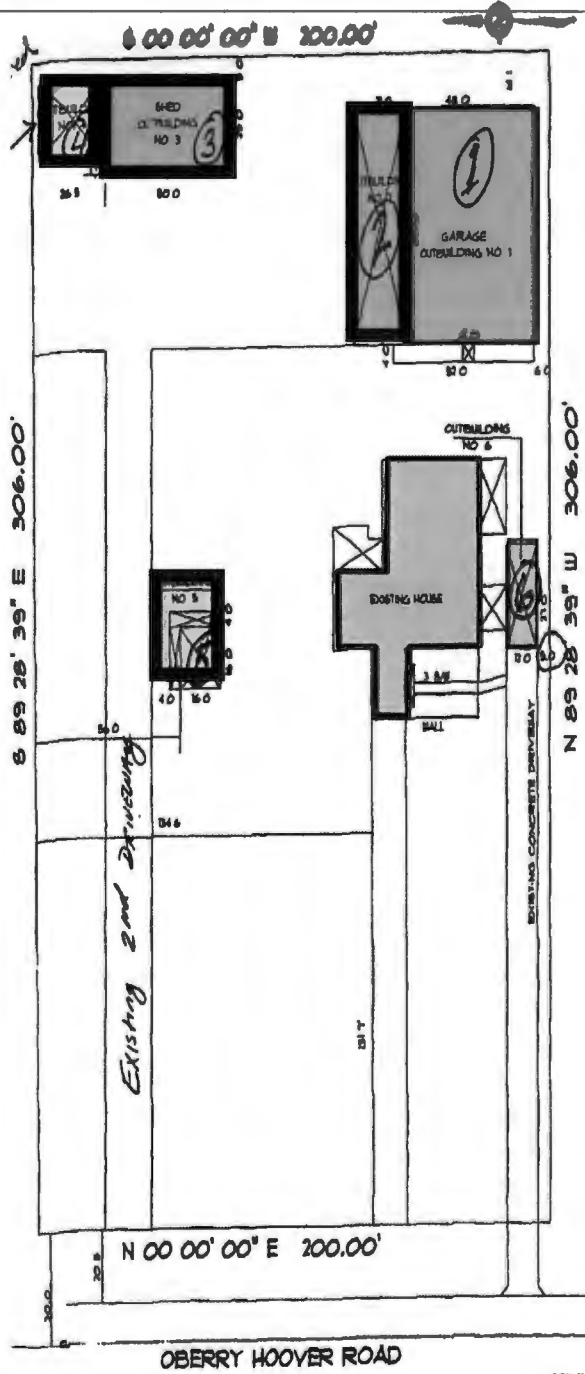
ZONING MAP



AERIAL MAP



2010 SURVEY/ SITE PLAN SUBMITTED WITH VA-10-01-002



Existing in 2010, required to be removed, now removed



Existing in 2010, required to be removed, still existing

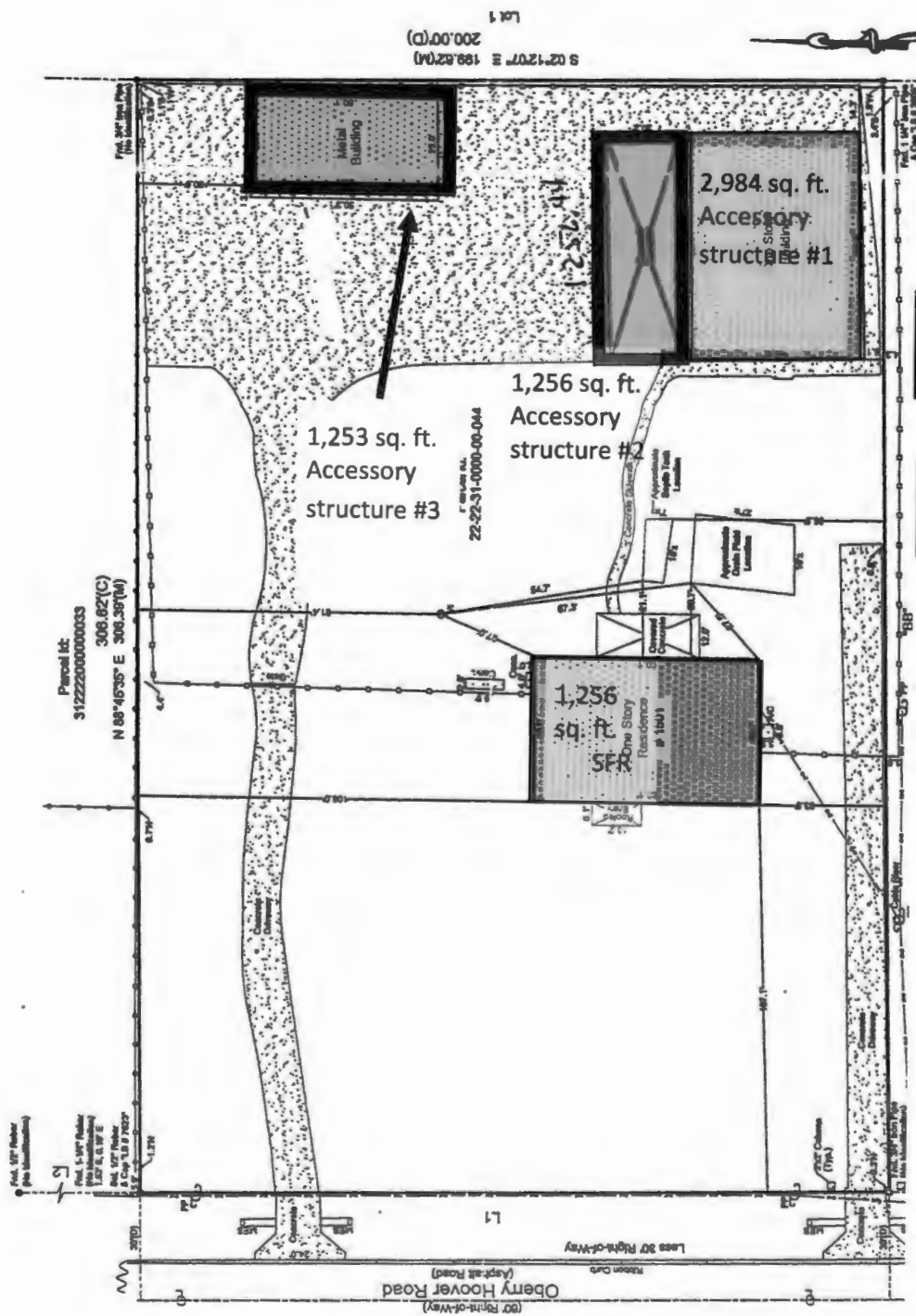





Existing in 2010, approved to remain, now removed



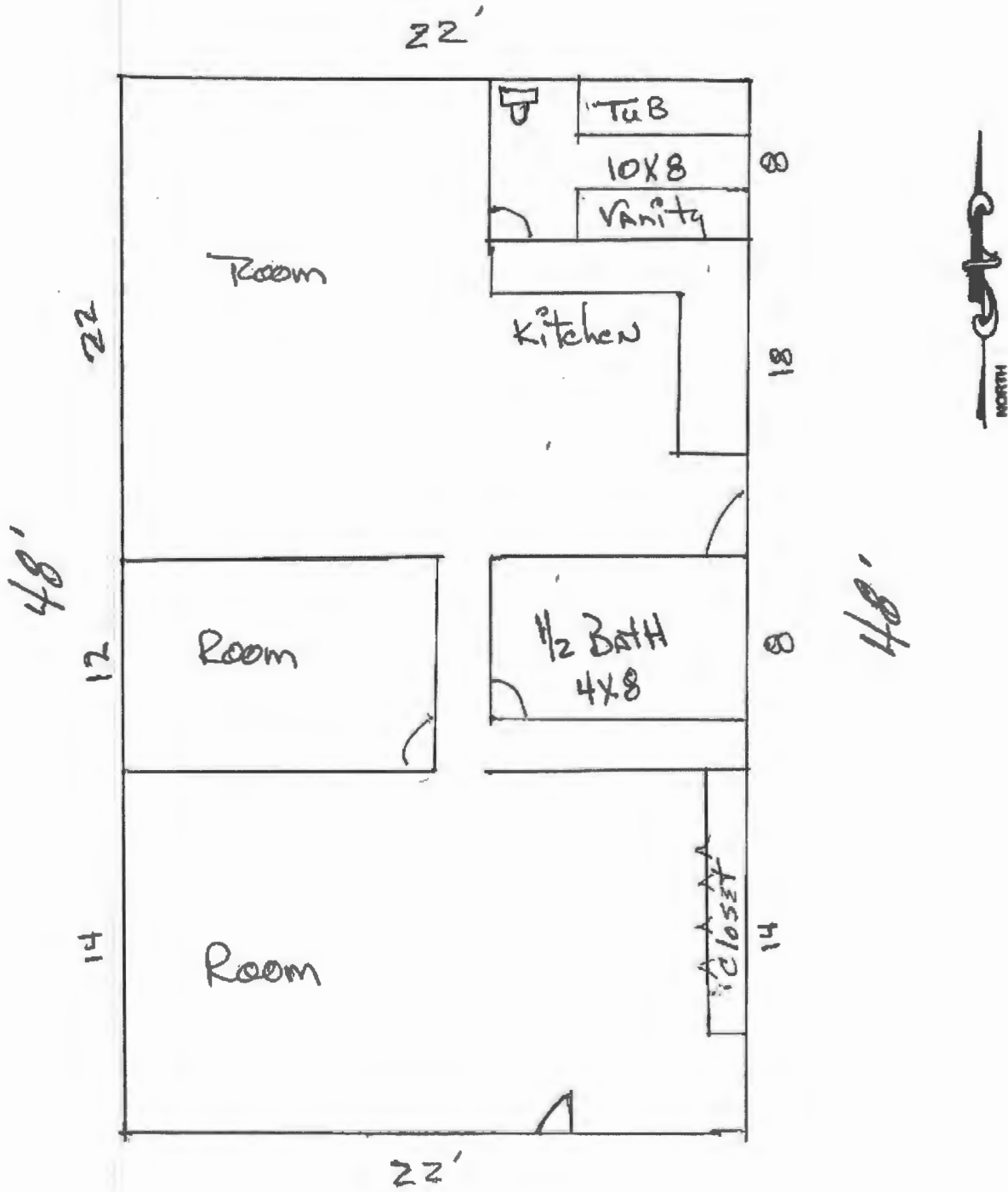
Existing in 2010, approved to remain, still existing

SURVEY



-  Existing in 2010, approved to remain, still existing
-  Existing in 2010, required to be removed, still existing
-  Single-Family home, not existing in 2010

FLOOR PLAN FOR SOUTH PORTION OF ACCESSORY STRUCTURE #1 - ADU



SITE PHOTOS



Subject property, looking east



View into site from Oberry-Hoover Rd. looking east

SITE PHOTOS



04/27/2020 10:22

Structure in northeast corner of site looking east



04/27/2020 10:23

Structure in southeast corner of site looking south