



Interoffice Memorandum

November 2, 2021

TO: Mayor Jerry L. Demings
-AND-
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 30, 2021 Board Called Hearing
Applicant: Guimer Bernal
BZA Case #VA-21-10-090, October 7, 2021; District 2

Board of Zoning Adjustment (BZA) Case # VA-21-10-090, located at 1104 E. 1st St., Apopka, Florida, 32703, in the R-2 Residential district, in District 2, is a Board called public hearing. The applicant is requesting variances to allow a 1,088 sq. ft. detached Accessory Dwelling Unit (ADU) in lieu of a maximum of 626 sq. ft., to allow an ADU with 3 bedrooms in lieu of a maximum of 2, and to allow an ADU that is not designed to be similar and compatible with the primary dwelling unit, with the same exterior finish material and similar architectural details. The subject property is located on the southeast corner of E. 1st St. and Illinois Ave.

At the October 7, 2021 BZA hearing, staff recommended denial of the variance requests. The BZA recommended approval of variance #1 for the total sq. ft., and denial of variances #2 and #3 related to the number of bedrooms and the design.

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: Deny the applicant's request; or approve the applicant's request with conditions. District 2.

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

November 30, 2021

The following is a public hearing before the Board of County Commissioners on November 30, 2021 at 2:00 p.m.

APPLICANT: GUIMER BERNAL

REQUEST: Variances in the R-2 zoning district as follows:
1) To allow a 1,088 sq. ft. detached Accessory Dwelling Unit (ADU) in lieu of a maximum of 626 sq. ft.
2) To allow an ADU with 3 bedrooms in lieu of a maximum of 2.
3) To allow an ADU that is not designed to be similar and compatible with the primary dwelling unit, with the same exterior finish material and similar architectural details.
This is the result of Code Enforcement action.

LOCATION: 1104 E. 1st St., Apopka, FL 32703, southeast corner of E. 1st St. and Illinois Ave.

TRACT SIZE: +/- 0.34 acres (15,006 sq. ft.)

ZONING: R-2

DISTRICT: #2

PROPERTIES NOTIFIED: 149

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 denial. Staff noted that one (1) comment was received in support and two (2) comments were received in opposition.

The owner discussed the need for the request, the sequence of construction and the omission of obtaining permits.

The BZA discussed life safety concerns of the unpermitted structure, the exterior materials of the ADU and the principal structure, and the excessive size of the ADU.

The applicant offered to remove the walk-in closet from the office to eliminate the need for Variance #2 and offered to stucco the entire structure and primary dwelling unit for exterior consistency to eliminate the need for Variance #3.

There was no one in attendance to speak in favor or in opposition to the request.

The BZA recommended approval of Variance #1 and recommended denial of Variances #2 and #3 by a 5-1 vote, subject to the five (5) conditions in the staff report and the addition of Condition #6, which states "The closet shall be removed from the office (bedroom) on the floor plan" and the addition of Condition #7, which states "The exterior of the ADU shall match the exterior of the principal structure with a stucco finish."

BZA HEARING DECISION:

A motion was made by Roberta Walton Johnson, seconded by Juan Velez and unanimously carried to recommend APPROVAL of the Variance request #1 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; and, DENIAL of the Variance requests #2 and #3, 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) (5 in favor, 1 opposed and 1 absent).

1. Development shall be in accordance with the site plan and elevations dated August 26, 2021, 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. A permit shall be obtained for the ADU and the addition to the building within 180 days of final action on this application by Orange County or this approval is null and void. The zoning manager may extend the time limit if proper justification is provided for such an extension.

5. Parking shall be on an improved surface in accordance with County Code 38-1479.
6. The closet shall be removed from the office (bedroom) on the floor plan.
7. The exterior of the ADU shall match the exterior of the principal structure with a stucco finish.

BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **OCT 07, 2021**

Case Planner:

Laekin O'Hara (407) 836-5943

Case #: **VA-21-10-090**

Commission District: **#2**

GENERAL INFORMATION

APPLICANT(s): **GUIMER BERNAL**

OWNER(s): **GARCIA YULIETT, GUIMER BERNAL**

REQUEST: **Variances in the R-2 zoning district as follows:**

- 1) To allow a 1,088 sq. ft. detached Accessory Dwelling Unit (ADU) in lieu of a maximum of 626 sq. ft.
- 2) To allow an ADU with 3 bedrooms in lieu of a maximum of 2.
- 3) To allow an ADU that is not designed to be similar and compatible with the primary dwelling unit, with the same exterior finish material and similar architectural details.

This is the result of Code Enforcement action.

PROPERTY LOCATION: **1104 E. 1st St., southeast corner of E. 1st St. and Illinois Ave. , north of E. Semoran Blvd. and west of S. Thompson Rd.**

PARCEL ID: **11-21-28-3800-01-430**

LOT SIZE: **+/- 0.34 acres (15,006 sq. ft.)**

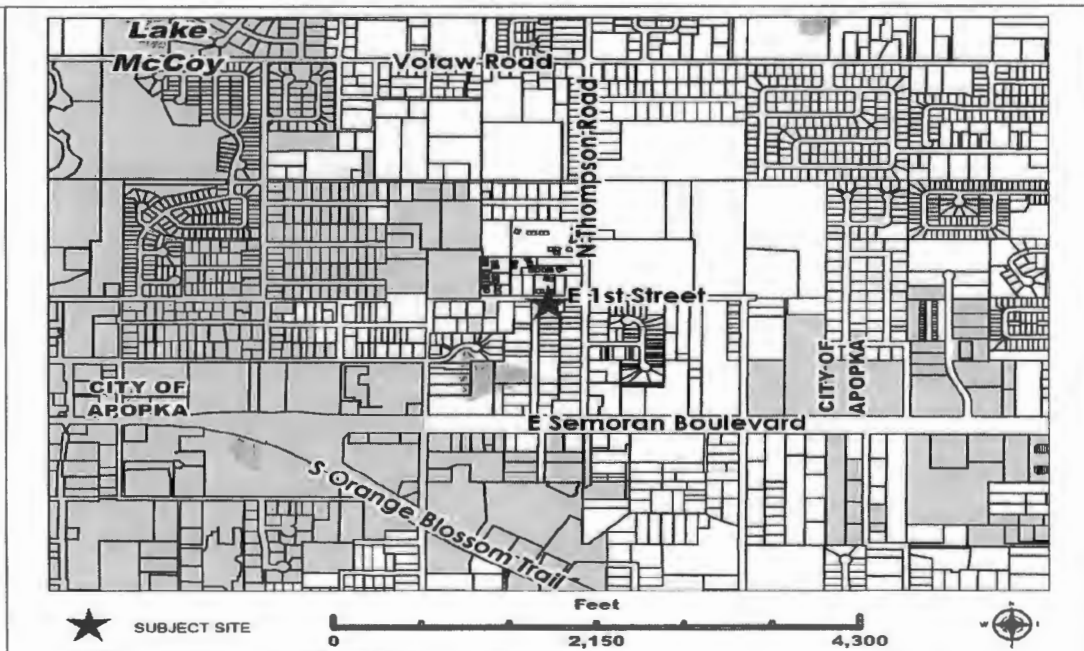
NOTICE AREA: **500 ft.**

NUMBER OF NOTICES: **149**

STAFF RECOMMENDATIONS

Denial. However if the BZA should find that the applicant has satisfied the criteria for the granting of a variance, staff recommend the approval be subject to the conditions in this report.

LOCATION MAP



SITE & SURROUNDING DATA

	Property	North	South	East	West
Current Zoning	R-2	R-2	R-2	R-2	R-2
Future Land Use	Low Medium Density Residential	Low Medium Density Residential	Low Medium Density Residential	Low Medium Density Residential	Low Medium Density Residential
Current Use	Single-Family	Vacant	Single-Family	Single-Family	Single-Family

BACKGROUND AND ANALYSIS

DESCRIPTION AND CONTEXT

The subject property is zoned R-2, Residential Dwelling district, which allows single-family detached and attached dwelling units and associated accessory structures.

The area around the subject site consists of single-family homes and vacant lots. The subject property was platted in 1946 as lots 43 and 44 of the Hunts Park subdivision, and is +/- 0.34 acres. The subject property is a corner lot, with frontage on Illinois Avenue. The code determines that for residential properties, the narrow width of a lot abutting a street right-of-way shall be the front. The site is developed with a 1,253 sq. ft. single-family home, which was constructed in 1964, and a detached garage, which has been converted into an accessory dwelling unit (ADU). The owner purchased the property in 2007.

The applicant is requesting approval of the conversion from a detached garage to ADU after the fact. The ADU contains 1,088 sq. ft. of living area where a maximum of 626 sq. ft. is allowed (variance # 1). The code bases the allowable size of an ADU on the size of the primary dwelling unit, and allows for the ADU to be a maximum of 50% of the primary dwelling unit living area, or 1,000 sq. ft., whichever is less. The applicant also requests the ADU be permitted to have 3 bedrooms in lieu of 2 (variance #2); and a design that is not similar and compatible with the primary dwelling unit with the same exterior finish (variance # 3). The primary structure is finished with wood siding, whereas the ADU is stucco. A 2003 survey shows that the existing building previously had a dimension of 25 ft by 32.1 ft., for a total of 802 sq. ft. Based on aerials, it appears an addition was constructed in 2020 without a permit, which increased the size of the detached structure to 1,088 sq. ft. The property was issued a code violation on March 2, 2020, (CE 583261) for the ADU, and improvements without a permit.

The intent and purpose of the ADU code is to allow for the development of ADUs to support greater infill development and affordable housing opportunities, while maintaining the character of existing neighborhoods. As such, accessory dwelling units do not count towards the maximum density and are charged impact fees at a lower rate than 2 single-family homes, and are therefore intentionally meant to be subordinate in relation to the primary home and property, thus the limitation on maximum square footage and number of bedrooms.

The applicant submitted letters of no objection from three (3) neighbors located to the west, south, and northeast.

DISTRICT DEVELOPMENT STANDARDS

	Code Requirement	Proposed
Max Height:	35 ft.	12 ft.
Min. Lot Width:	45 ft.	150 ft.
Min. Lot Size:	4,500 sq. ft	0.34 acres (15,006 sq. ft.)

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

	Code Requirement	Proposed
Front:	25 ft. (Illinois Ave)	35.3 ft. (west)
Rear:	25 ft. Residence / 5 ft. ADU	60.3 ft. (east)
Side:	6 ft.	6.1 ft. (south)
Side Street:	15 ft. (E. 1 st St)	61.65 ft. (north)

STAFF FINDINGS

VARIANCE CRITERIA

Special Conditions and Circumstances

There are no special conditions or circumstances, as an ADU could have been constructed in a conforming size, interior configuration, and materials if a permit was obtained prior to the conversion of the garage.

Not Self-Created

The request for the variances is self-created, as the requested variances could be reduced or eliminated. Further, the ADU could have been designed in a way that would be compatible with the primary structure, including exterior finishes.

No Special Privilege Conferred

Granting the variances as requested will confer special privilege that is denied to other properties in the area.

Deprivation of Rights

The owners are not being deprived of the right to have an ADU on the property, as they could build a size and in materials that meets code requirements.

Minimum Possible Variance

The request is not the minimum, since there are other alternatives, including the reduction of the size.

Purpose and Intent

Approval of these requests will not be in harmony with the purpose and intent of the Code, which is to allow an ADU to be secondary and accessory to the house, in size, scale, and materials.

CONDITIONS OF APPROVAL

1. Development shall be in accordance with the site plan and elevations dated August 26, 2021, 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. A permit shall be obtained for the ADU and the addition to the building within 180 days of final action on this application by Orange County or this approval is null and void. The zoning manager may extend the time limit if proper justification is provided for such an extension.
5. Parking shall be an improved surface in accordance with County Code 38-1479.

C: Guimer Bernal
1104 1st St.
Orlando, FL 32703

COVER LETTER

Guimer Bernal
1104 East 1st St
Apopka, FL 32703
(407)520-7613

August 11, 2021

Re: Parcel ID# 11-21-28-3800-01-430

To whom it may concern:

This letter is to state that I, Guimer Bernal, am submitting a variance application on the above referenced Parcel ID#, 11-21-28-3800-01-430. In accordance with the application variance request, I am submitting the special expectation variance application. On page 11, there are items that are requested to meet the requirements for this type of request. Please see below for the details requested:

-1. (A) This request is for an existing structure that was purchased in 2007, for an ADU. This structure is made from concrete, wood, and steel.

Variance Criteria:

-1. Special Conditions and Circumstances: The house was sold to me back in 2007 including the detached garage addition, which was already established as a living area. I have submitted the property survey back from 2007 of the housing structure that includes this already in the property. I have researched through the Orange County Property Appraisers website, that back in 2006, the photo on that site showed the additional living space. This is prior to my purchase in 2007.

-2. Not Self -Created: As mentioned in item 1, according to the Orange County Property Appraisers website, back in 2006, the property shows the additional living space. I am submitting proof of this research, for your convenience, in this special variance request. This is prior to my purchase in 2007.

-3. No Special Privilege Conferred: I am not requesting additional privileges on this property, as it was a structure that was sold to me.

-4. Deprivation of Rights: Neither my neighbors or myself will be impacted in any way from this special variance request. I am enclosing 3 neighbor letters to provide as proof that the structure is not having a negative impact on the neighbors, any public access points, any public lands, or impacting any privately owned territory.

-5. Minimum Possible Variance: The structure has the following footage, as disclosed on the property survey: On the south side of the property line, there is 6.1 foot distance from the neighboring property. On the North side of the property line, there is 2.7 foot distance from the

COVER LETTER

main residential structure. As well as an additional 54 feet from the property line on the north side. On the east side, 60.3 feet of distance from the property line. On the west, 35.3 feet distance from the property line. The entire property coordinates are: 100 feet by 150 feet. This translates that the property structure is within the property coordinates and is 15,000 square feet.

-6. Purpose and Intent: The intent of this special variance application is to continue maintain the initial purchase agreement back in 2007. This agreement for me came with the intention of having my elderly parents reside close to me for their care, which will accommodate my lifestyle. This intent and purpose will not impact the neighboring properties, as this is a residential neighborhood and zone. Additionally, this property is coded for a duplex.

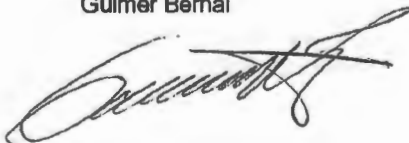
As mentioned on page 12:

2. (A) The property will not have any signage as this is a residential structure.
2. (B) Property survey has been submitted on the Orange County Fast Track under the permission # B21010632. Also, the engineering plans and surveys have been submitted.
2. (C) This property will not have any signage. It is residential, not commercial.
3. Appeal of the zoning manager's determination:
 - (A) Zoning Manager's letter enclosed.
 - (B) This special variance request cover letter is disputing the Zoning Manager's letter.
 - (C) Submitted on the Orange County Fast Track permission # B21010632. This will also be included in this request for your convenience.
 - (D) Original survey will be provided in this request to show the dimensions on all sides of the property.

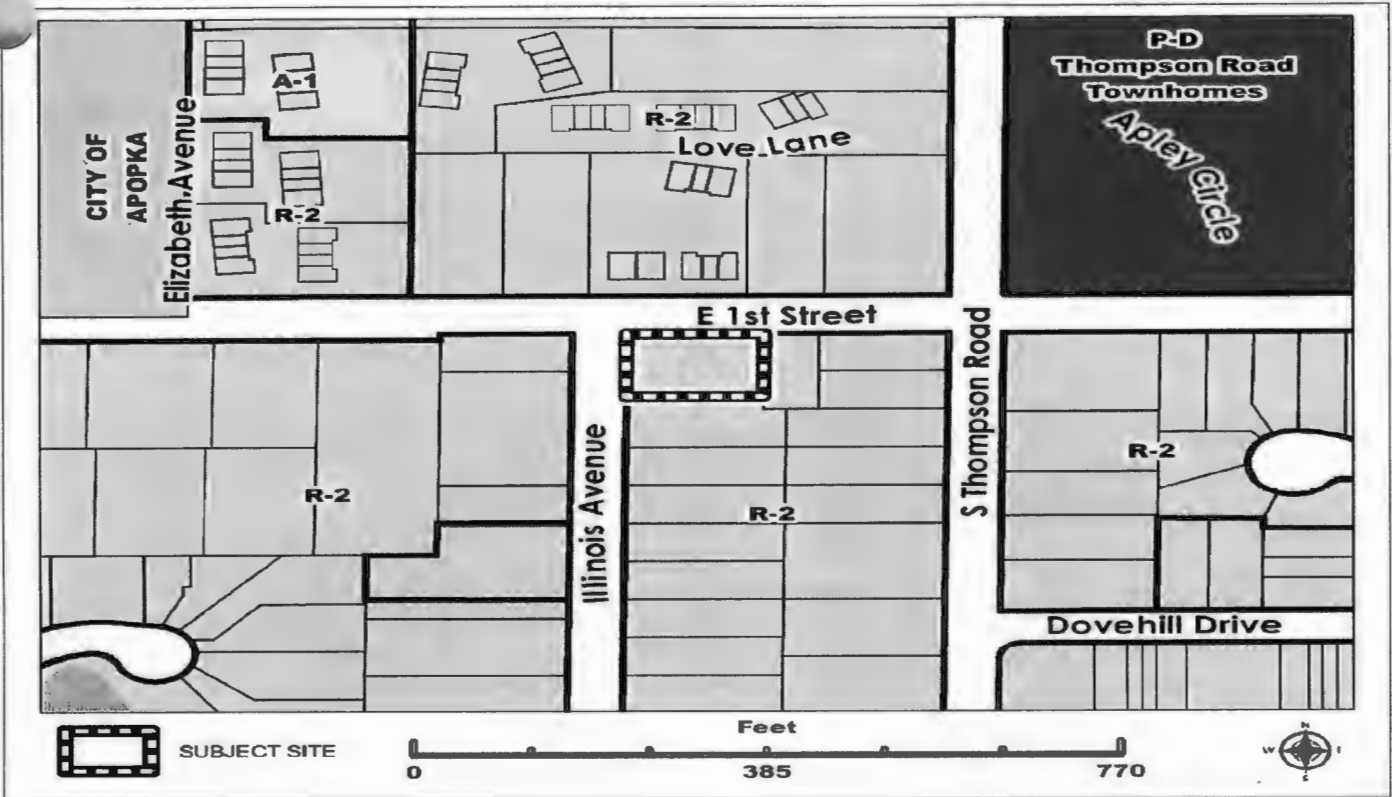
If you have any questions or concerns, please contact me directly at phone number (407)520-7613. I appreciate your assistance regarding this matter.

Sincerely,

Guilmer Bernal

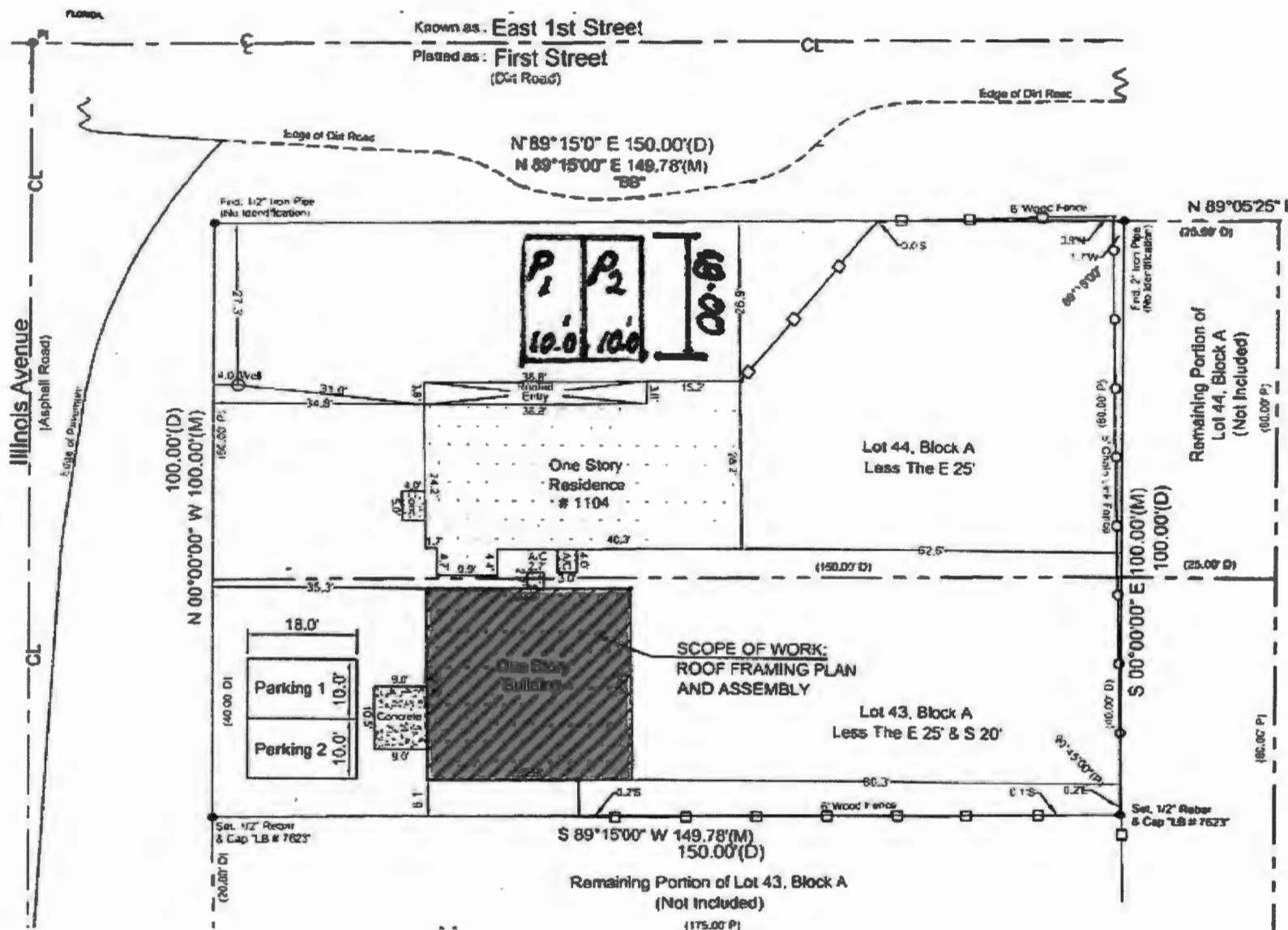


ZONING MAP



AERIAL MAP

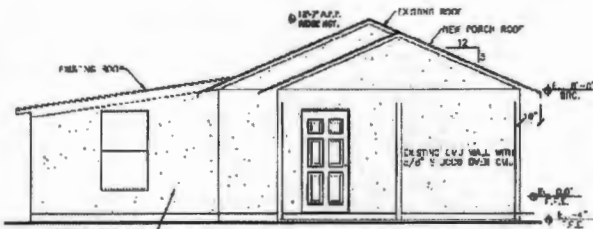




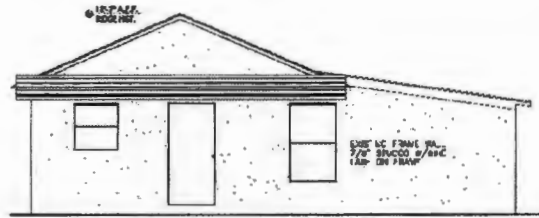
SITE PLAN



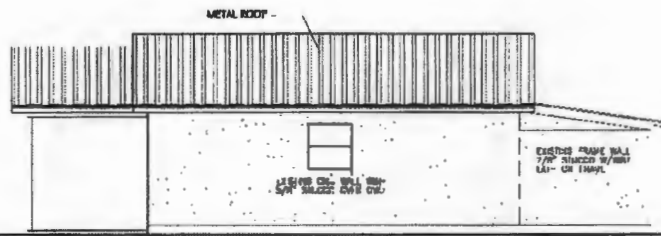
ELEVATIONS & FLOOR PLAN



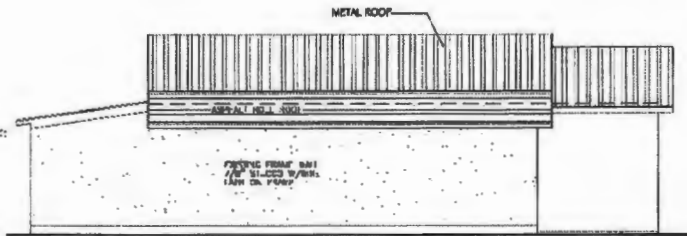
WEST ELEVATION
21'-0" x 14'-0"



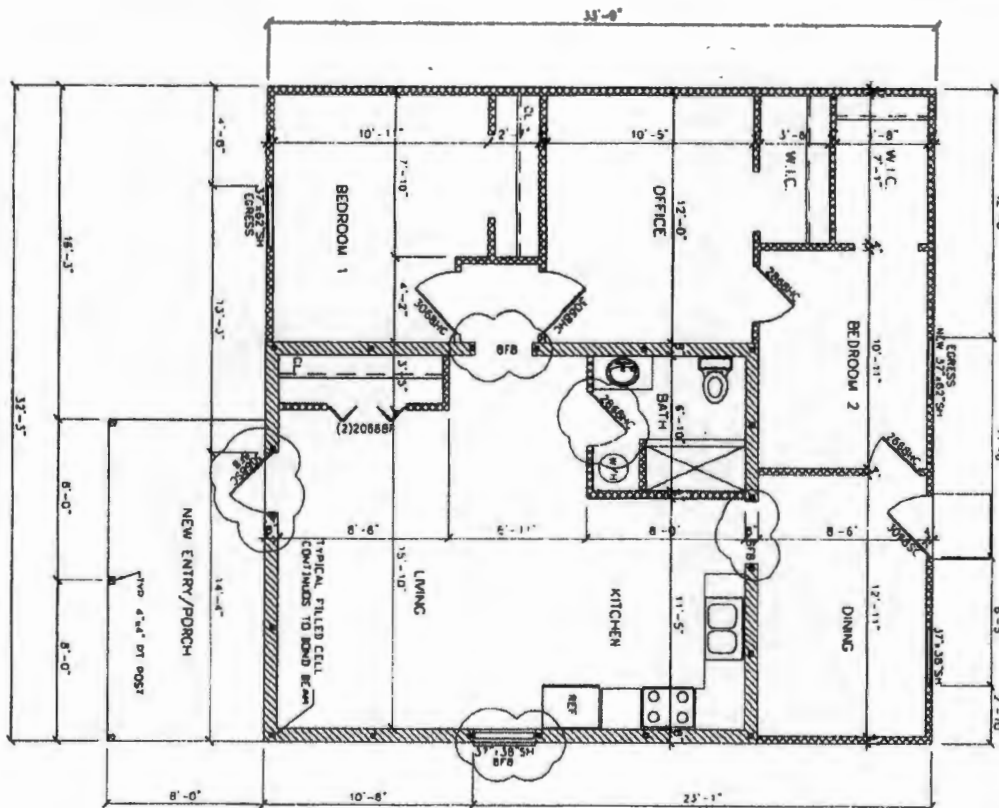
EAST ELEVATION
21'-0" x 14'-0"



SOUTH ELEVATION
21'-0" x 14'-0"



NORTH ELEVATION
21'-0" x 14'-0"



SITE PHOTOS



Front facing property from Illinois Ave, ADU is to the right



View from on the property facing south

SITE PHOTOS



View from the intersection of Illinois Ave and 1st Street



Rear of the ADU facing east