



Interoffice Memorandum

September 1, 2022

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: September 27, 2022 –Appeal Public Hearing
Applicant: Daniel Wagner
Appellants: Munivenkatappa & Sumanth Padmanabh
BZA Case #VA-22-06-044, June 2, 2022; District 1

Board of Zoning Adjustment (BZA) Case # VA-22-06-044, located at 9470 Kilgore Rd., Orlando, Florida, 32836, in the R-CE Rural County Estate district, in District 1, is an appeal to the Board. The applicant is requesting a variance to allow a ground mounted solar system in the front yard in lieu of the side or rear yard.

The subject property is located on the west side of Kilgore Rd., east side of Lake Sheen, south of W. Sand Lake Rd., west of Apopka Vineland Rd.

At the June 2, 2022 BZA hearing, staff recommended approval of the variance. The BZA unanimously recommended approval of the variance with four conditions of approval.

The appellants, Munivenkatappa & Sumanth Padmanabh, object to the request due to the proposed location of the solar panels and the negative effects to their property.

At the August 9, 2022 Board meeting, the appeal Public Hearing was continued to the September 27, 2022 Board meeting at the request of the applicant.

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.

Page Two
September 27, 2022 – Board Called Public Hearing
Daniel Wagner
BZA Case #VA-22-06-044, June 2, 2022; District 1

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

PLANNING, ENVIRONMENTAL, AND DEVELOPMENT SERVICES DEPARTMENT
ZONING DIVISION PUBLIC HEARING REPORT
September 27, 2022

The following is a public hearing on an appeal before the Board of County Commissioners on September 27, 2022 at 2:00 p.m.

APPLICANT: DANIEL WAGNER

APPELLANTS: MUNIVENKATAPPA & SUMANTH PADMANABH

REQUEST: Variance in the R-CE zoning district to allow a ground mounted solar system in the front yard in lieu of the side or rear yard.

LOCATION: 9470 Kilgore Road, Orlando, Florida, 32836, west side of Kilgore Rd., east side of Lake Sheen, south of W. Sand Lake Rd., west of Apopka Vineland Rd.

TRACT SIZE: +/- 4.56 acres

ZONING: R-CE

DISTRICT: #1

PROPERTIES NOTIFIED: 53

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 no comments were received in favor or opposition.

The applicant described the proposal and stated that there is no other place to install the solar panels on the property due to the location of the residence at the rear of the property. There was no one in attendance to speak in favor or in opposition to the request.

The BZA discussed the variance, noted that there are no other options for installation of solar panels, including the inability to install roof-mounted equipment, described the consistency with the six (6) criteria and unanimously recommended approval of the variance by a 4-0 vote, with three absent, subject to the four (4) conditions in the staff report.

BZA HEARING DECISION:

A motion was made by Thomas Moses, seconded by John Drago 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, as amended (unanimous; 4 in favor, none opposed, and 3 absent):

1. Development shall be in accordance with the site plan and elevations received May 16, 2022, 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 solar panels shall be shielded by an opaque fence or wall between six (6) feet and eight (8) feet in height, equal to or greater than the height of the panels.



ORANGE COUNTY ZONING DIVISION
201 South Rosalind Avenue, 1st Floor, Orlando, Florida 32801
Phone: (407) 836-3111 Email: Zoning@ocfl.net
www.orangecountyfl.net

Board of Zoning Adjustment (BZA) Appeal Application

Appellant Information

Name: PADMANABH / SUMANTH PADMANABH

Address: 9460 KILPATRICK Road Orlando 32836

Email: PADGASTRO8081@yahoo.com Phone #: 352 455 0134

BZA Case # and Applicant: VA-22-06-044. Daniel Wagner

Date of BZA Hearing: JUNE 2

Reason for the Appeal (provide a brief summary or attach additional pages of necessary):

Needs side placement of solar panel

Effects value of my property

Not Happy with Landscaping plans

Signature of Appellant: [Signature] Date: June 17/22

STATE OF FL
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 17th day of June, 2022, by Munivarkappa Padmanabh who is personally known to me or who has produced FL DL as identification and who did/did not take an oath.

[Signature]
Notary Public Signature

Notary Stamp:



NOTICE: Per Orange County Code Section 30-45, this form must be submitted within 15 days after the Board of Zoning Adjustment meeting that the application decision was made.

Fee: \$691.00 (payable to the Orange County Board of County Commissioners)

Note: Orange County will notify you of the hearing date of the appeal. If you have any questions, please contact the Zoning Division at (407) 836-3111.

See Page 2 of application for the Appeal Submittal Process.

BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **JUN 02, 2022**

Commission District: **# 1**

Case #: **VA-22-06-044**

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

Nick.Balevich@ocfl.net

GENERAL INFORMATION

APPLICANT(s): **DANIEL WAGNER**

OWNER(s): **9470 KILGORE TRUST**

REQUEST: Variance in the R-CE zoning district to allow a ground mounted solar system in the front yard in lieu of the side or rear yard.

PROPERTY LOCATION: 9470 Kilgore Rd., Orlando, FL 32836, west side of Kilgore Rd., east side of Lake Sheen, south of W. Sand Lake Rd., west of S. Apopka Vineland Rd.

PARCEL ID: 04-24-28-0000-00-027

LOT SIZE: +/- 4.56 acres

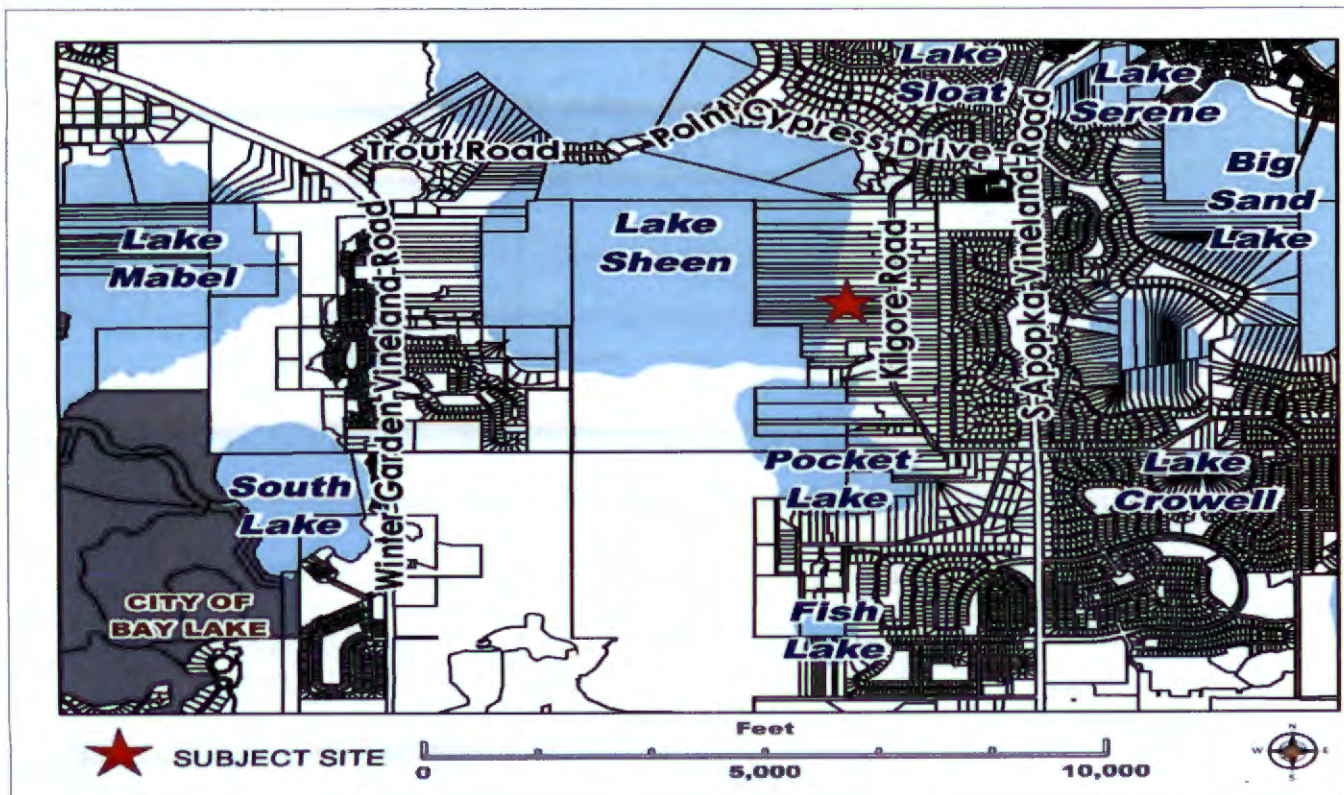
NOTICE AREA: 500 ft.

NUMBER OF NOTICES: 53

STAFF RECOMMENDATIONS

Approval, subject to the conditions in this report.

LOCATION MAP



SITE & SURROUNDING DATA

	Property	North	South	East	West
Current Zoning	R-CE	R-CE	R-CE	R-CE	R-CE
Future Land Use	LDR, R	LDR, R	LDR, R	LDR, R	LDR, R
Current Use	Single-family residence	Single-family residence	Single-family residence	Single-family residence	Lake Sheen

BACKGROUND AND ANALYSIS

DESCRIPTION AND CONTEXT

The subject property is located in the R-CE, Rural Country Estate district, which allows for single-family development on one (1) acre lots and certain rural uses. The Future Land Use is Rural (R) which is consistent with the R-CE zoning district, and Low Density Residential (LDR) which is inconsistent with the zoning district. However, per FLU 8.2.5.1, a rezoning was not required since single-family residential uses are permitted within all zoning districts consistent with the LDR district.

The area around the subject site consists of single-family homes, many of which are lakefront. The subject property is a 4.56 acre unplatted parcel that has existed prior to 1955, and is considered to be a non-conforming lot of record, as it does not meet the minimum lot width. It is a lakefront lot located on Lake Sheen. A 13,156 gross sq. ft. single family home is currently being constructed on the property (permit #B20001365). The owner purchased the property in 2015.

The applicant is seeking approval to install an array of 24 solar panels totaling 524 sq. ft. on the property. Although solar panels are permitted in the side and rear yards, the proposal is to install the panels in front of the house, which requires a variance. The house is being constructed at the rear of the lot, leaving no other location to place the panels. The Orange County Code allows a detached accessory structure to be located in front of the principal structure if the principal structure is located in the rear half (½) of the lot/parcel, however this allowance does not apply to solar panels. The proposal will comply with all of the performance standards pertaining to solar panels, as outlined in Orange County Code Sec. 38-79(83) including:

- The maximum height of solar panels shall be 8 feet. The height of the solar panels will be 7.4 feet
- Solar panels shall be shielded by an opaque fence or wall between six (6) feet and eight (8) feet in height. The property has an opaque wall along the front (east side). An opaque fence or wall is required on the other 3 sides, to either connect to the front wall, or a separate opaque fence or wall shall be installed to shield the solar panels in all directions.
- Minimum setback shall be 5 feet from side and rear property lines. The solar panels will be: 621 feet from the rear (west) property line; 5 feet from the side (north) property line; 84 feet from the side (south) property line. While the variance is for location in the front yard, the proposal will meet the front building setback requirement of 35 feet.
- In a residential area, the square footage of solar panels shall not exceed 25 percent of the living area of the principal structure. The home under construction will be 7,424 sq. ft. of living area, and the array of solar panels will total 524 sq. ft., which is 7 percent.

As of the date of this report, no comments have been received in favor or in opposition to this request.

STAFF FINDINGS

VARIANCE CRITERIA

Special Conditions and Circumstances

The special conditions and circumstances particular to this application are the location of the house that is under construction at the rear of the property, leaving no alternative for installation of ground mounted panels, except as proposed in front of the house.

Not Self-Created

The need for the variance is not self-created, as there is no other option for placement of the solar panels.

No Special Privilege Conferred

Granting the variance as requested will not confer special privilege due to the orientation of the residence under construction on the lot.

Deprivation of Rights

Literal interpretation of the code would deprive the applicant of the ability to have ground mounted solar panels on the property.

Minimum Possible Variance

The variance requested is the minimum possible to allow the ground mounted solar panels to be placed in the only location available in this situation.

Purpose and Intent

Approval of this variance will be in harmony with the purpose and intent of the Code. The solar panels will not be detrimental to the neighborhood as they will be shielded from view by an opaque fence/wall per code.

CONDITIONS OF APPROVAL

1. Development shall be in accordance with the site plan and elevations received May 16, 2022, 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 solar panels shall be shielded by an opaque fence or wall between six (6) feet and eight (8) feet in height, equal to or greater than the height of the panels.

C: Daniel Wagner
350 S. Ronald Reagan Boulevard
Longwood, Florida, 32750

COVER LETTER

15 lightyears

April 11, 2022

Orange County Building Department
201 Rosiland Avenue
Orlando, FL 32801

Re: Permit B22001566

To The Board of Zoning Adjustment:

We are requesting a variance for permit B22001566, property address 9470 Kilgore Road, Orlando, FL 32836.

A ground mounted solar system has been installed on the northeast corner of the property alongside the driveway. The zoning reviewer's comment is, "If solar panels cannot be located on the side or rear yard of the primary structure or cannot meet required side and NHWE setbacks then a variance may be required to be submitted to the Board of Zoning Adjustment."


To address the 6 criteria, the ground mounted solar system measures 43'5" x 10'10" x 5' tall. It is 5' from the side property line and 35.1' from the front property line. The system is more than 50' from the high-water elevation contour line and there is a 6' opaque barrier around the property which blocks the view of the solar system from the road. The square footage of the solar panels is less than 25% of the living area of the principal structure, as the total square footage of the home is 7,424sq.ft. and the square footage of the solar system is 524sq.ft.

Our rebuttal to the zoning reviewer's comment is that the property is waterfront, and the high-water elevation line extends all the way down to Lake Sheen, which would make the "back yard" the "front yard". If this statement is true, then the ground mounted solar system is in the rear of the property. Please reference page PV2.1 from the submitted engineering plans.

We are requesting approval for the ground mounted solar location as it stands.

Please feel free to reach out to Daniel Wagner with any further questions or concerns, 855-438-1515 or

Thank you,



Daniel Wagner

License Holder/ Chief Electrician

15 Lightyears

350 S Ronald Reagan Blvd., Longwood, FL 32750

855-435-1515

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.

We are asking that you reference the waterfront as the "front" of the property instead of the entrance from the road way.

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 location of the ground mounted solar system was submitted in the engineering plans for the main building permit B20001365, which was approved.

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 not asking for any special privileges. This home was built to be energy efficient. We are asking that you look at this property as a whole and to see that the ground mounted solar system is located at the best viable spot on the property.

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. There is no financial loss or business competition. This property was not purchased with intent to develop in violation of the restriction of this Chapter. This property was purchased and home was built to be an energy efficient home.
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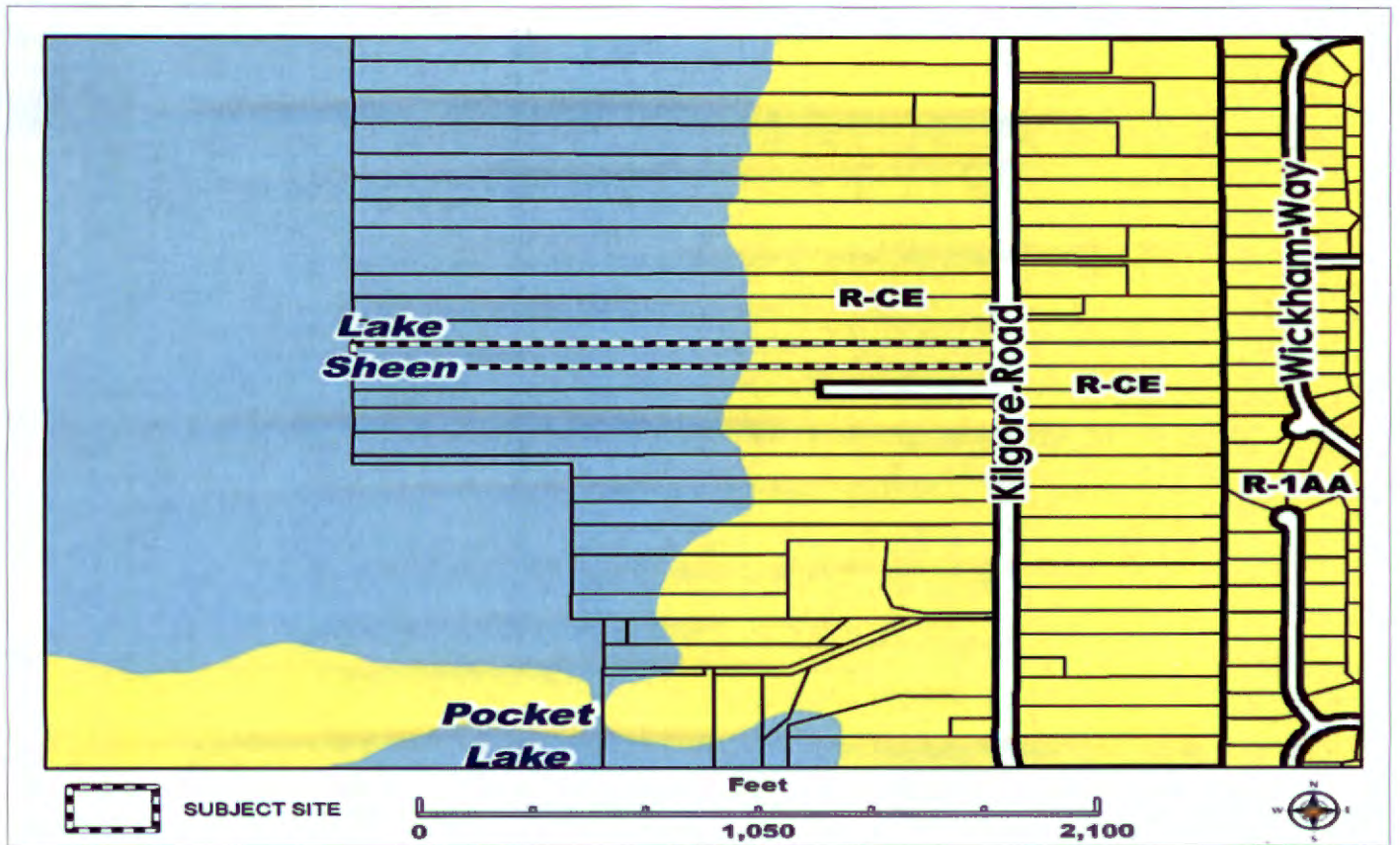
5. **Minimum Possible Variance** - The zoning variance approved is the minimum variance that will make possible the reasonable use of the land, building, or structure.

The ground mount solar system is in the best location the property has to offer.

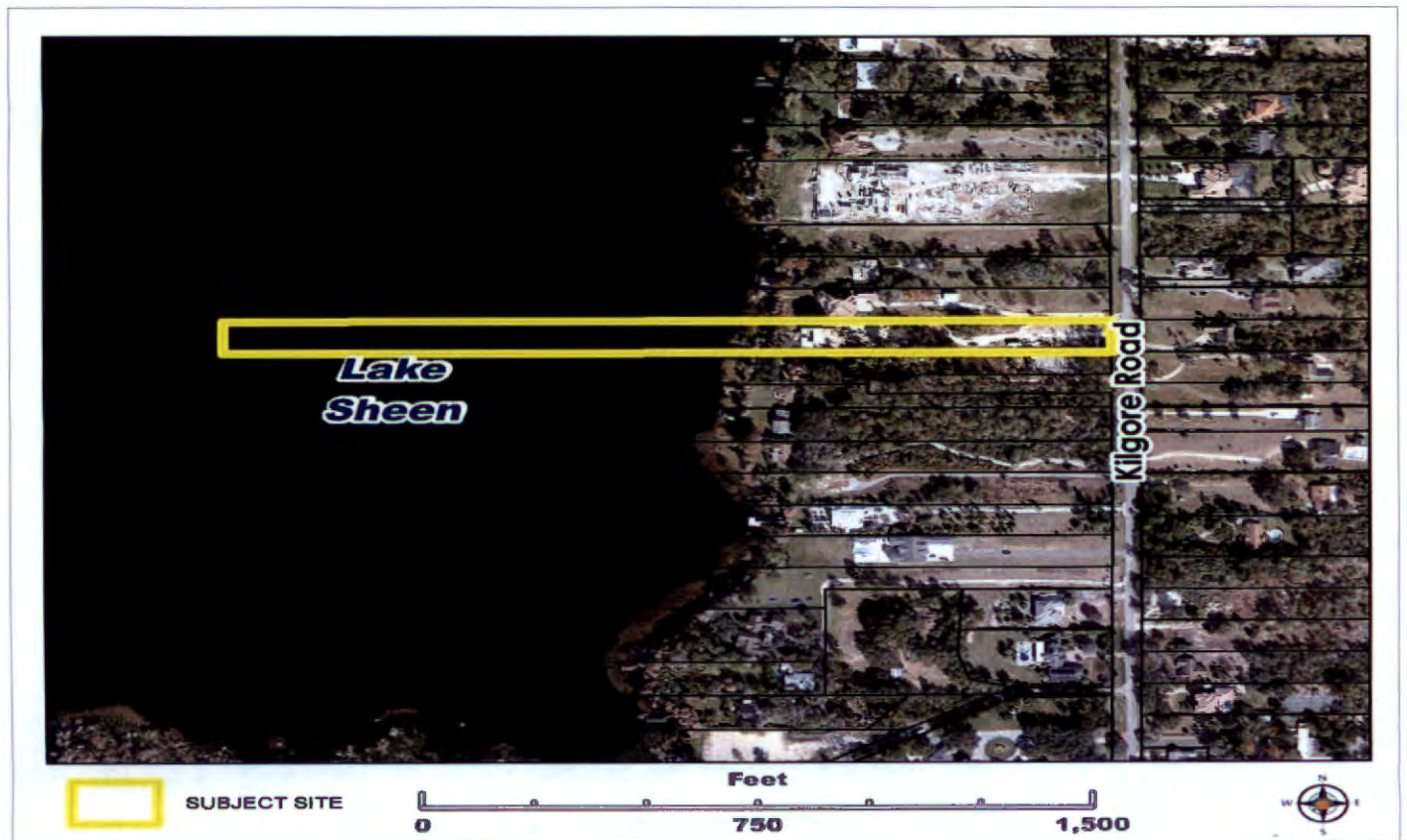
6. **Purpose and Intent** - Approval of the zoning variance will be in harmony with the purpose and intent of the Zoning Regulations and such zoning variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

We feel that the location of the ground mount solar system is not injurious to the neighborhood or detrimental to the public welfare. There is landscape and a 6ft wall around the perimeter of the property which blocks the view from the road and neighboring properties. The ground mounted system is to help with the energy efficiency of the home and the environment.

ZONING MAP



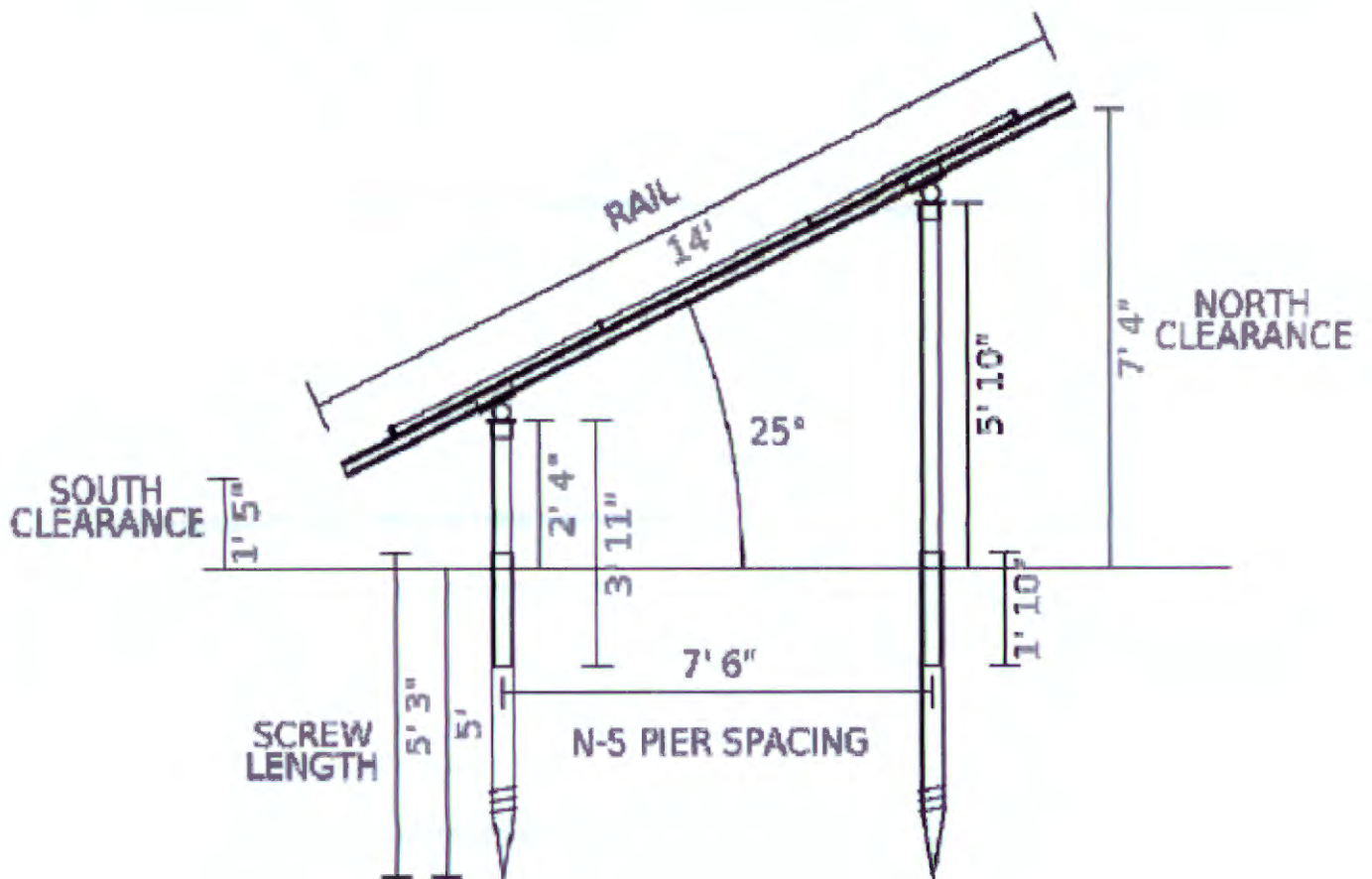
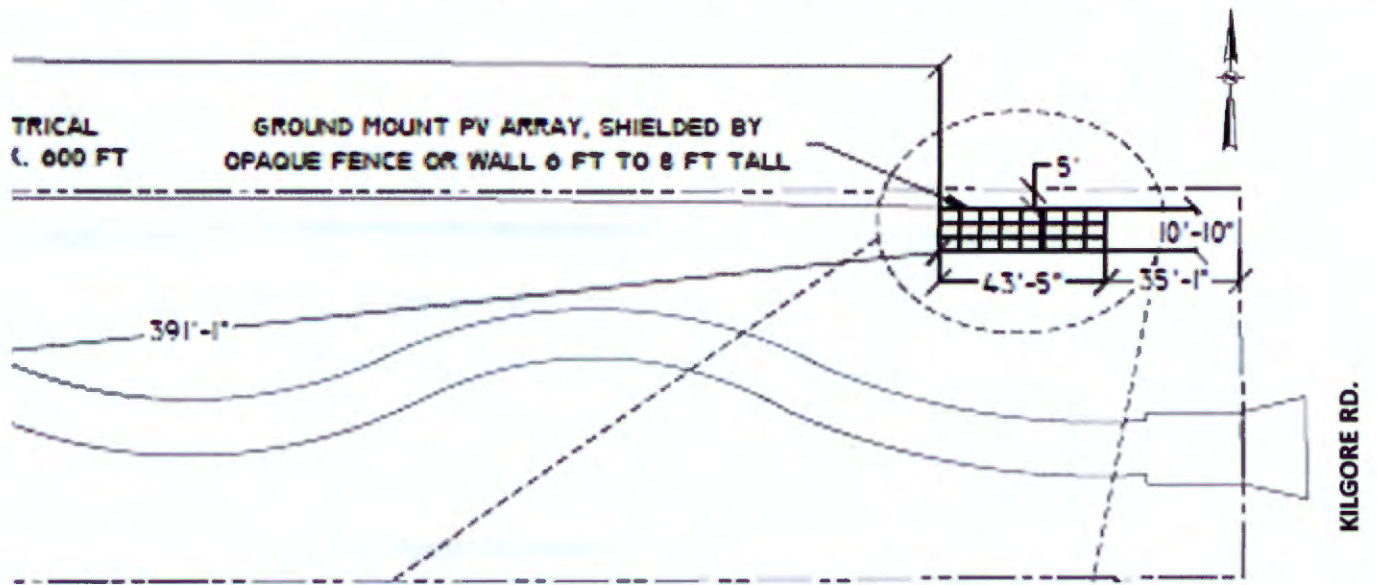
AERIAL MAP



KILGORE RD.



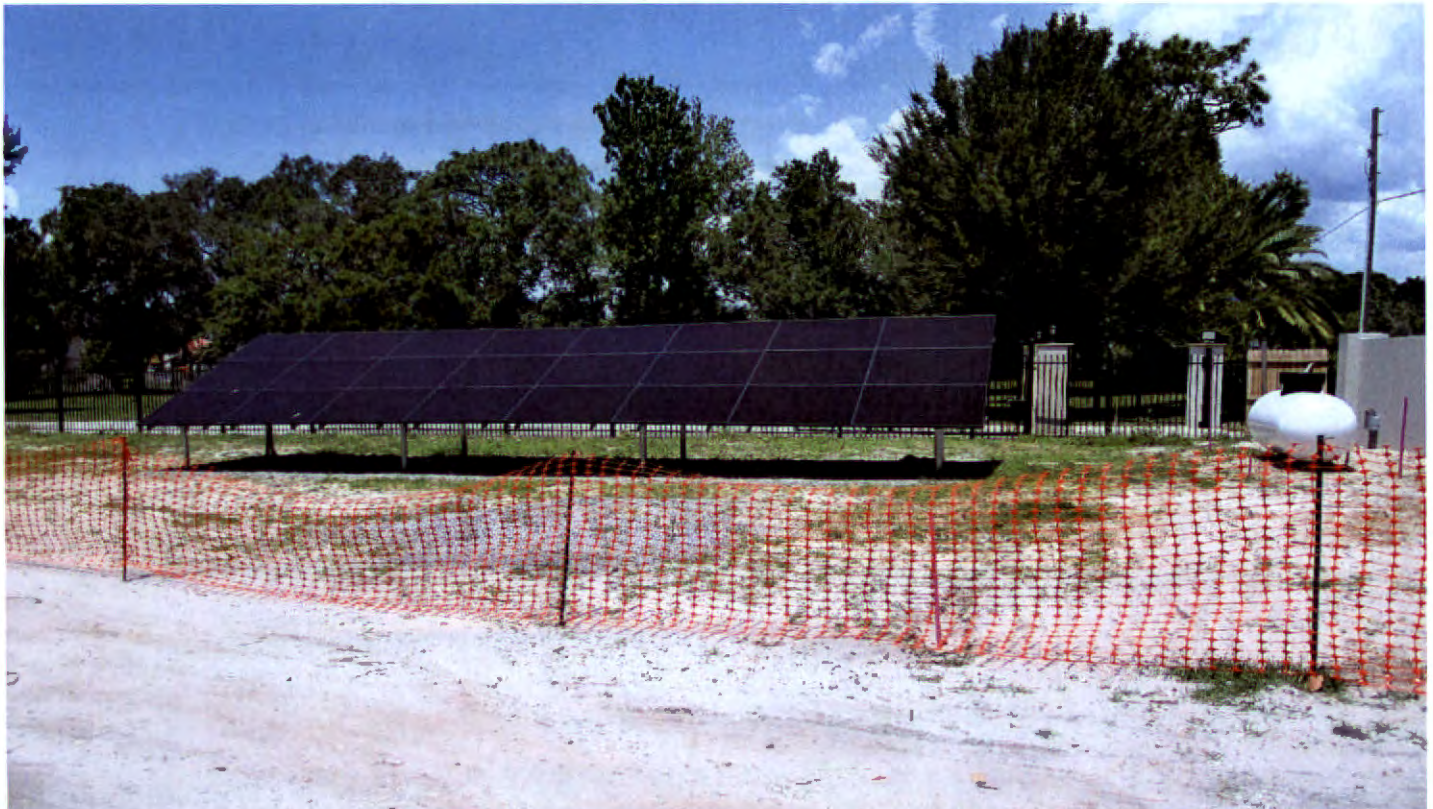
ARRAY PLAN DETAIL AND SOLAR PANEL TYPICAL ELEVATION



SITE PHOTOS



Front from Kilgore Rd. facing east



Solar panels facing north (opaque fence or wall to be installed)

SITE PHOTOS



Solar panels facing east (opaque fence or wall to be installed)