

Orange County Zoning Division

**VA-23-12-119
APPEAL PUBLIC HEARING
APPLICANT/ APPELLANT:
HERBERT BETANCOURT**

March 5, 2024



Background

APPLICANT:	Herbert Betancourt
CASE:	VA-23-12-119
ZONING:	R-1AA (Single-Family) District
FUTURE LAND USE:	LDR (Low Density Residential)
ADDRESS:	4715 Shorecrest Dr., Orlando, FL 32817
LOCATION:	East side of Shorecrest Dr., west side of Lake Martha, north of University Blvd., west of S.R. 417.
TRACT SIZE:	+/-1.92 acres (+/- 0.90 acres upland)
DISTRICT:	5



Background

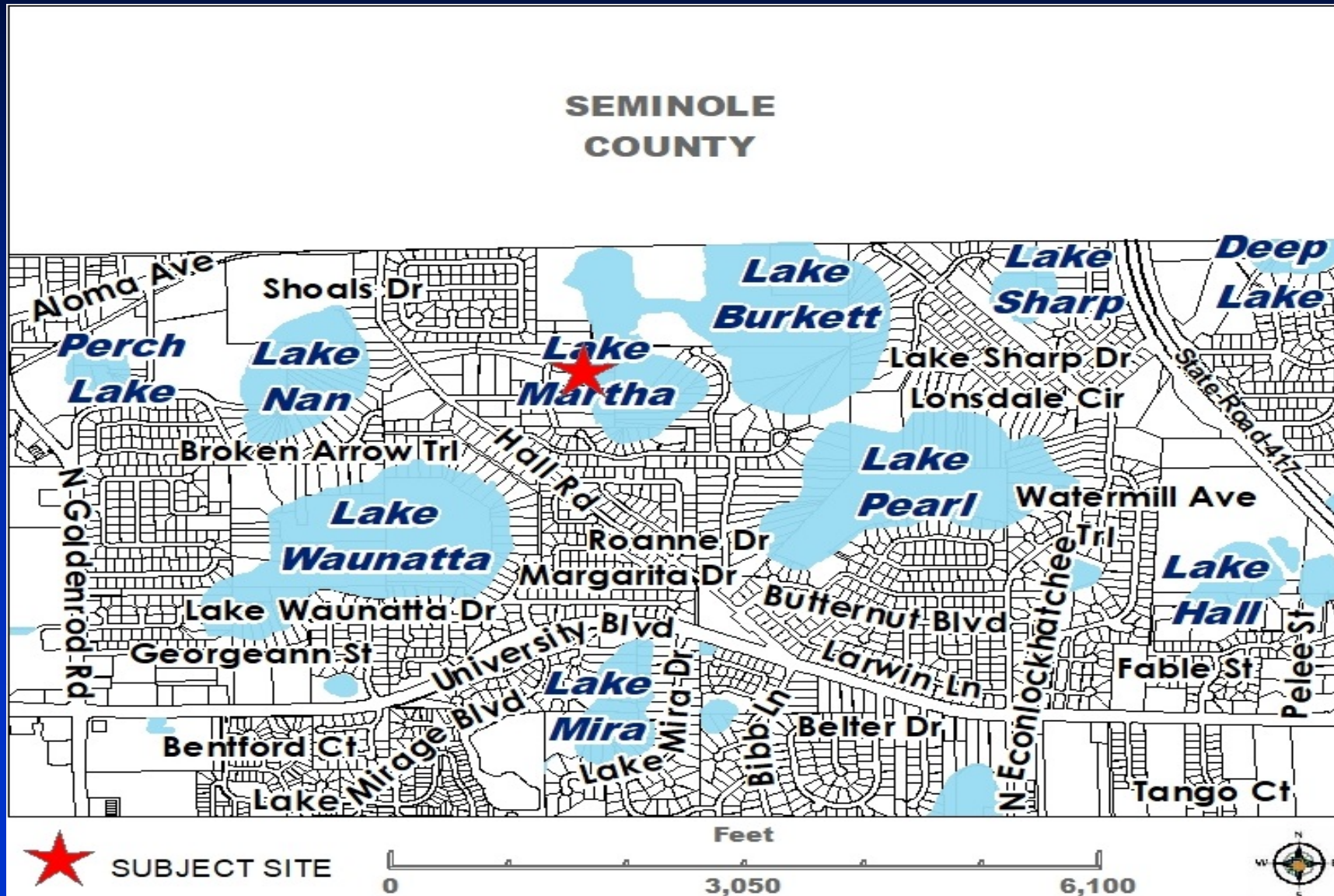
REQUESTS: Variances in the R-1AA zoning district as follows:

- 1) To allow for an existing detached accessory structure (treehouse) 11 ft. from the Normal High Water Elevation (NHWE) in lieu of 35 ft.**
- 2) To allow an existing detached accessory structure (gazebo) 3.8 ft. from the Normal High Water Elevation (NHWE) in lieu of 35 ft.**
- 3) To allow an existing detached accessory structure (outdoor shower) 12.9 ft. from the Normal High Water Elevation (NHWE) in lieu of 35 ft.**
- 4) To allow an existing detached accessory structure (pergola) 15.1 ft. from the Normal High Water Elevation (NHWE) in lieu of 35 ft.**
- 5) To allow an existing pool/deck with a south side setback of 3.5 ft. in lieu of 5 ft.**

Note: This is a result of Code Enforcement

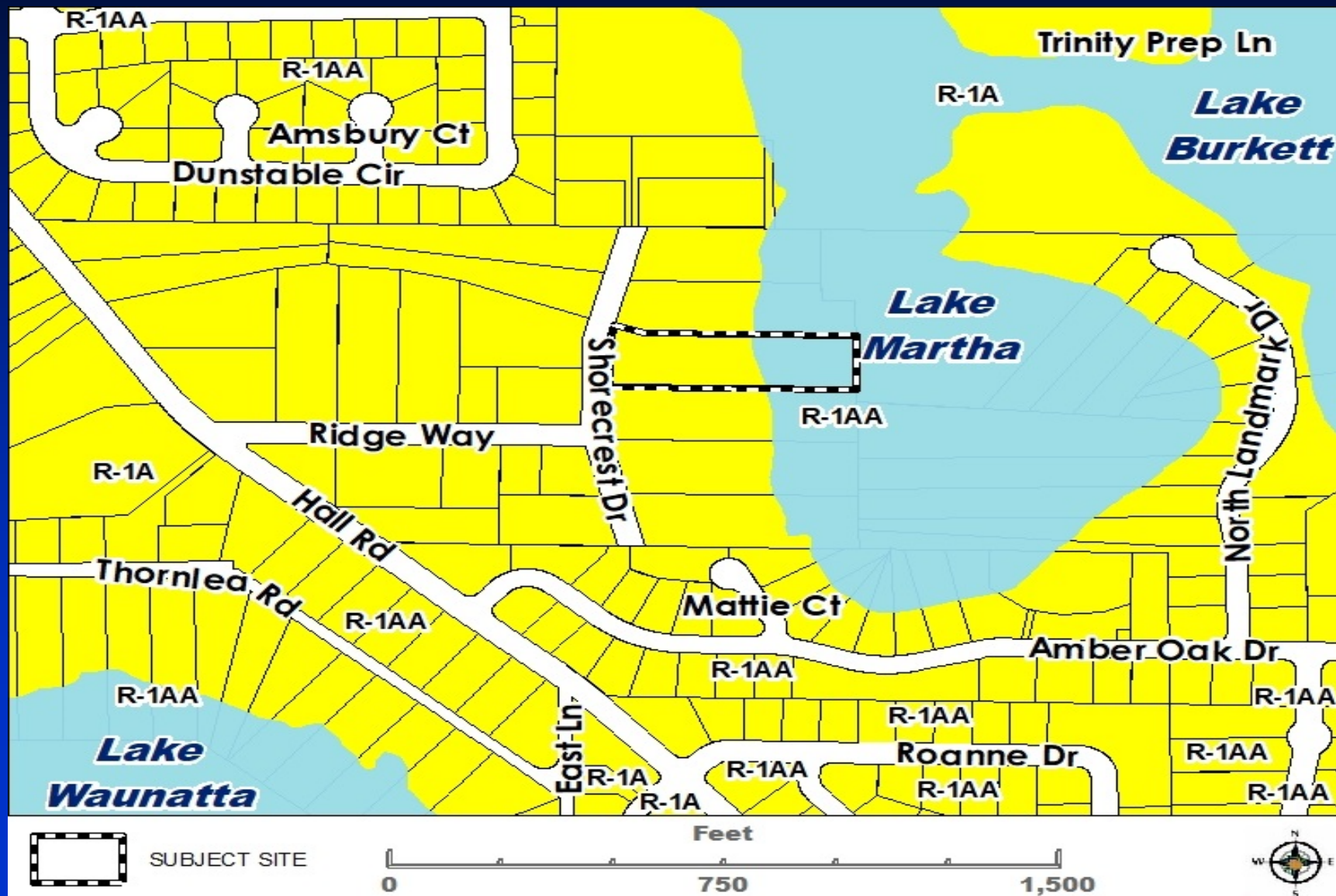


Location Map





Zoning Map





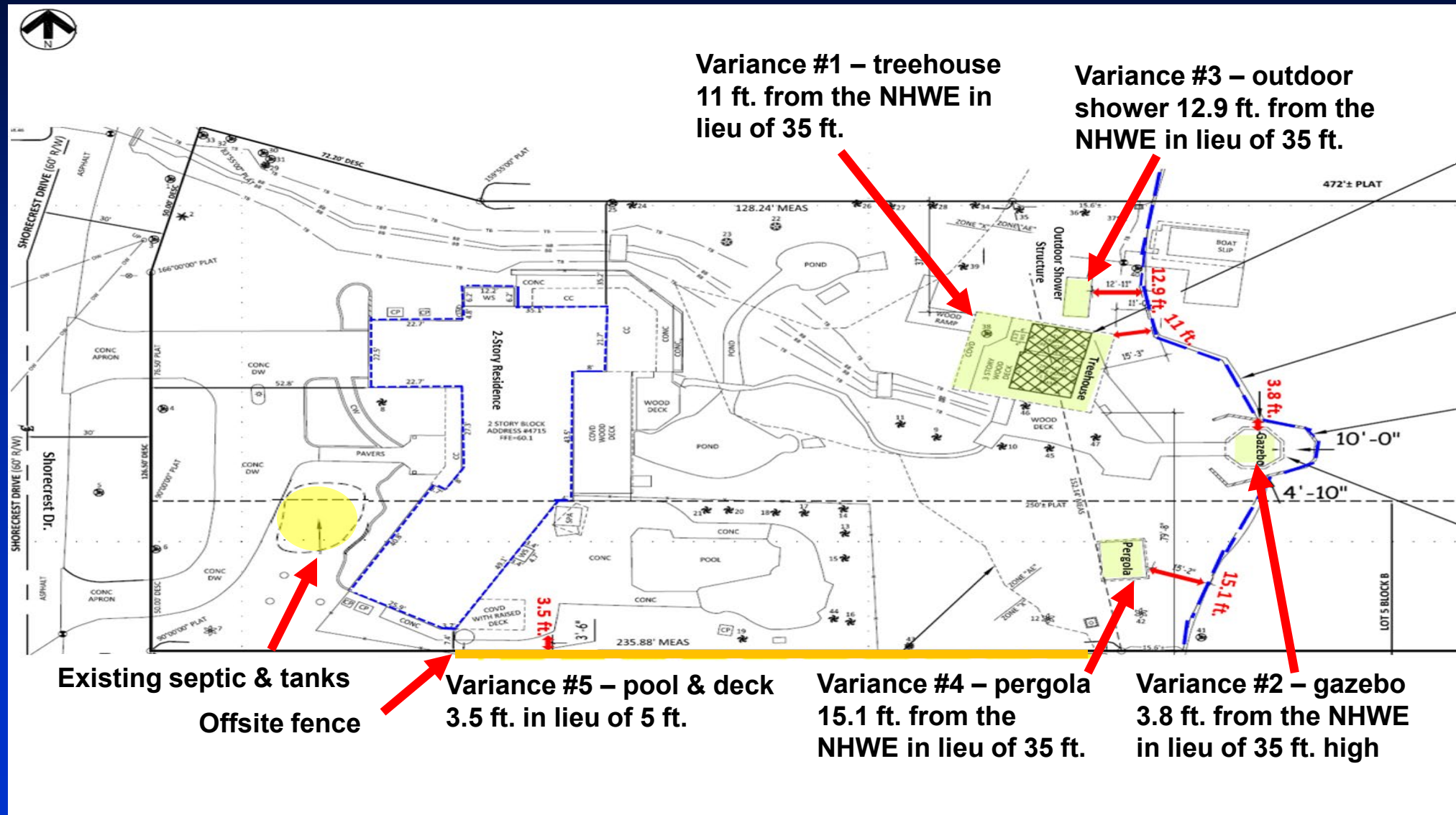


Aerial Map





Survey





Revised Requests

Based on updated site plan received Feb. 27, 2024

Variances in the R-1AA zoning district as follows:

- 1) To allow for an existing detached accessory structure (treehouse) 11 ft. from the Normal High Water Elevation (NHWE) in lieu of 35 ft.
- 2) To allow an existing detached accessory structure (gazebo) 3.8 ft. from the Normal High Water Elevation (NHWE) in lieu of 35 ft.
- ~~3) To allow an existing detached accessory structure (outdoor shower) 12.9 ft. from the Normal High Water Elevation (NHWE) in lieu of 35 ft.~~
- ~~4) To allow an existing detached accessory structure (pergola) 15.1 ft. from the Normal High Water Elevation (NHWE) in lieu of 35 ft.~~
- 5) To allow an existing pool/deck with a south side setback of 3.5 ft. in lieu of 5 ft.

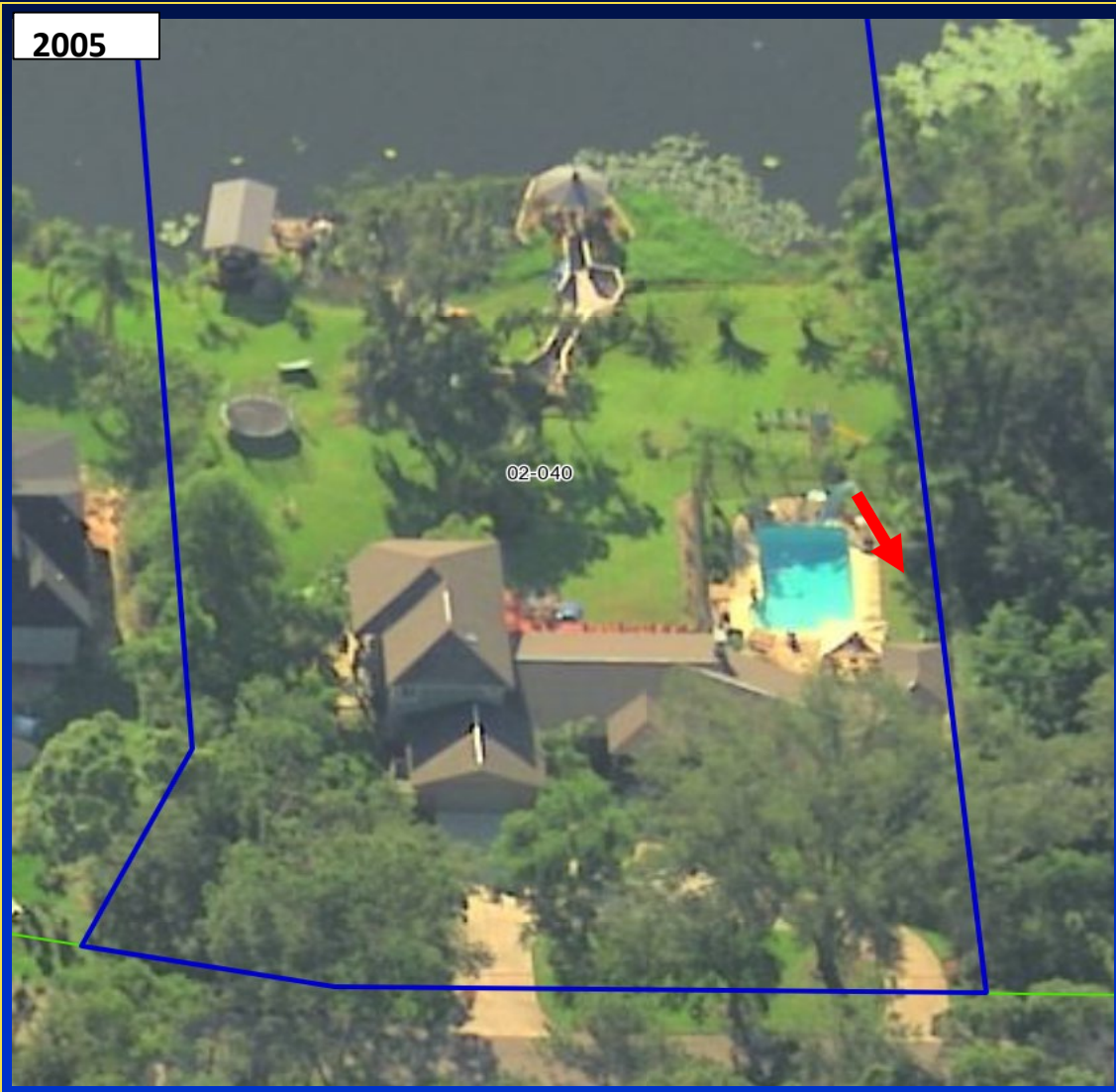


History

- **1959: Construction of residence, pool & deck concurrent, based on aerials**
- **1998: Owner Purchased the property**
- **1999: Gazebo installed with permit**
- **Prior to 2007: Pool and deck expanded without permit**
- **Prior to 2023: detached accessory structures constructed, no permit:**
 - Accessory structure around a tree
 - Outdoor shower
 - Pergola
- **December 2022: Code Compliance Citation (CE #616540)**
 - For the construction of detached accessory structure around a tree without a permit, not meeting code
- **January 22, 2024: EPD received a complaint regarding potential onsite environmental violations. Incident No. 24-634827 opened.**
- **February 2024: Outdoor shower & Pergola removed**

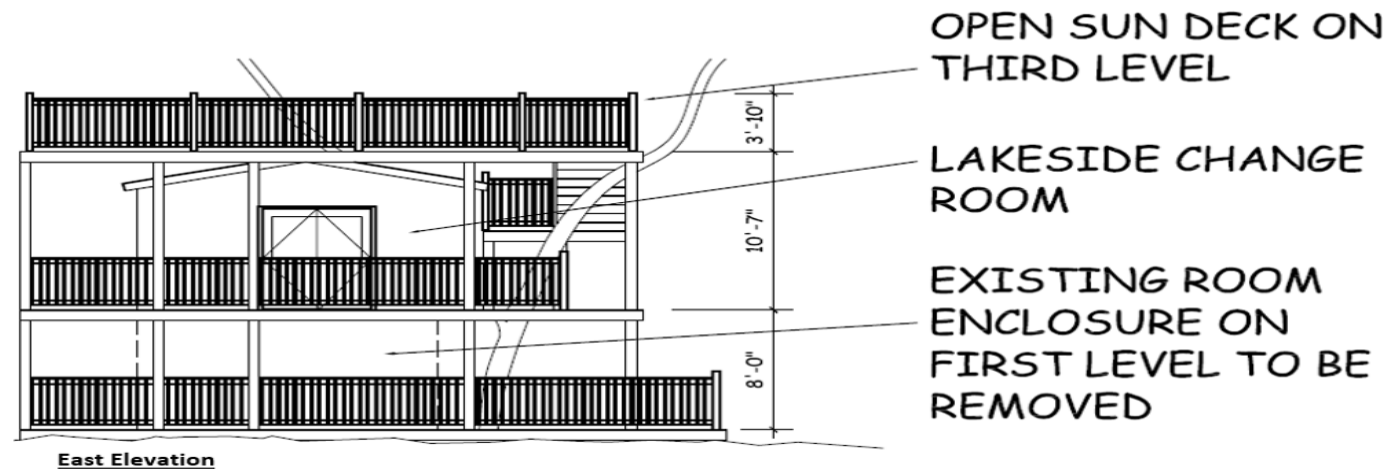
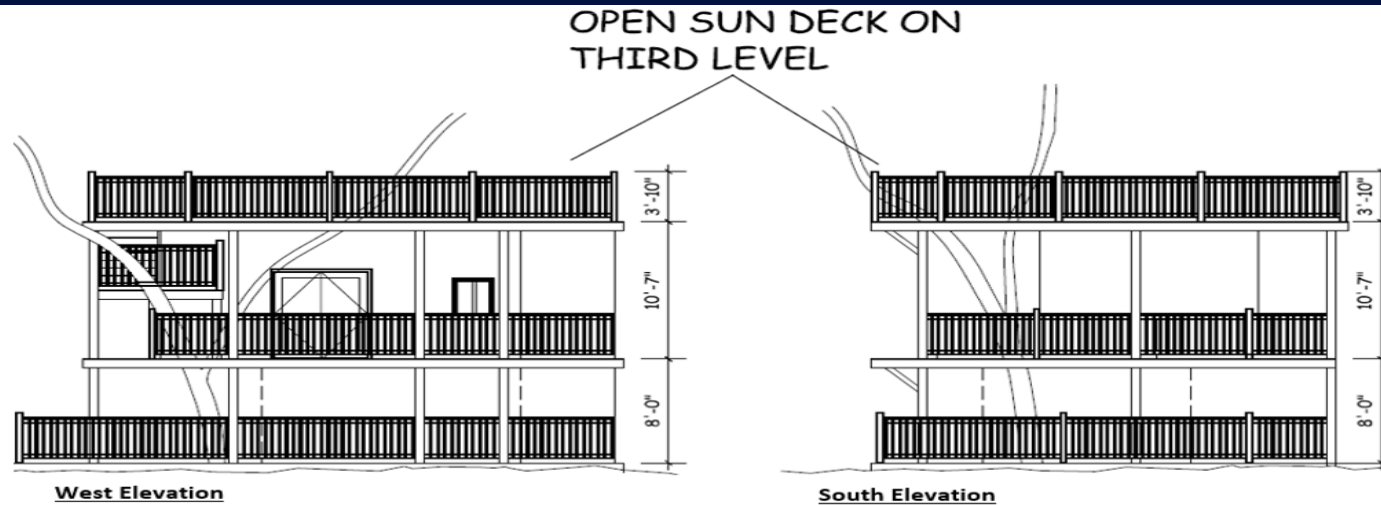


Aerial Maps of Pool & Deck in 2005 and 2007

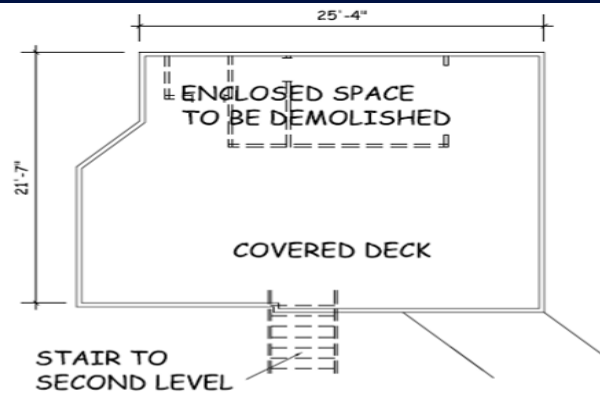




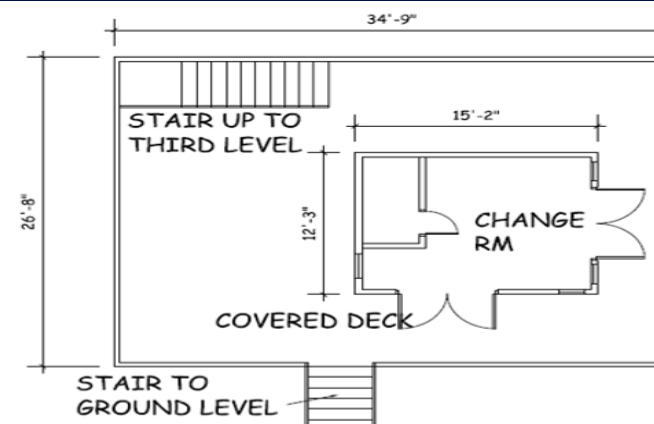
Treehouse Elevations



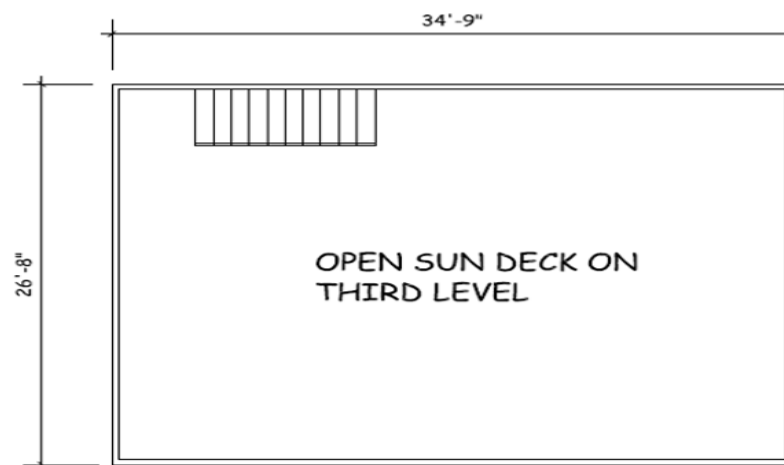
Treehouse Floor Plan



Ground Level



Second Level



Third Level



Site Photograph

Facing east from Shorecrest Dr. towards front of property





Site Photograph

Rear yard, facing east towards pool & deck side Variance





Site Photograph

Rear yard, facing northeast towards treehouse





Site Photograph - Feb. 29, 2024

Rear yard, facing northeast towards treehouse





Site Photograph

Rear yard, facing west towards treehouse





Site Photograph – Feb. 29, 2024

Rear yard, facing west towards treehouse





Site Photograph

Rear yard, facing east towards gazebo and Lake Martha





Staff Findings and Analysis

- Lakefront lot – Lake Martha
- 2 story 5,915 gross sq. ft. single-family home
 - Original pool and deck installed at same time as home
 - 144 sq. ft. gazebo built in 1999
- Unpermitted treehouse, pergola, outdoor shower, and expanded pool & deck built between 1998 and 2024
- Code Compliance citation December 2022
 - Construction of an accessory structure in tree without permits



Staff Findings and Analysis

■ Remaining requests:

- 3 story, 22.3 ft high 2,030 sq. ft. treehouse built approx. 2006 with a 11 ft. NHWE setback in lieu of 35 ft. (Variance #1)
- 144 sq. ft. gazebo with a 3.8 ft. NHWE setback in lieu of 35 ft. (Variance #2)
- 131 sq. ft. pergola – removed since the BZA meeting
- 80 sq. ft. outdoor shower structure – removed since the BZA meeting
- Pool and deck expanded in 2006 without permits. Pool and deck with a south side setback of 3.5 ft. in lieu of 5 ft. (Variance #5)



Staff Analysis - EPD

■ Variance Requests:

- Accessory structure (aka treehouse): A portion of the structure may be located in wetlands
 - Deck addition: A deck was added to the permitted walkway leading to the gazebo. The deck may be located in wetlands
- Pergola (removed): Remaining concrete foundation may be partially located in wetlands
- Outdoor shower (removed): Remaining concrete foundation may be partially located in wetlands



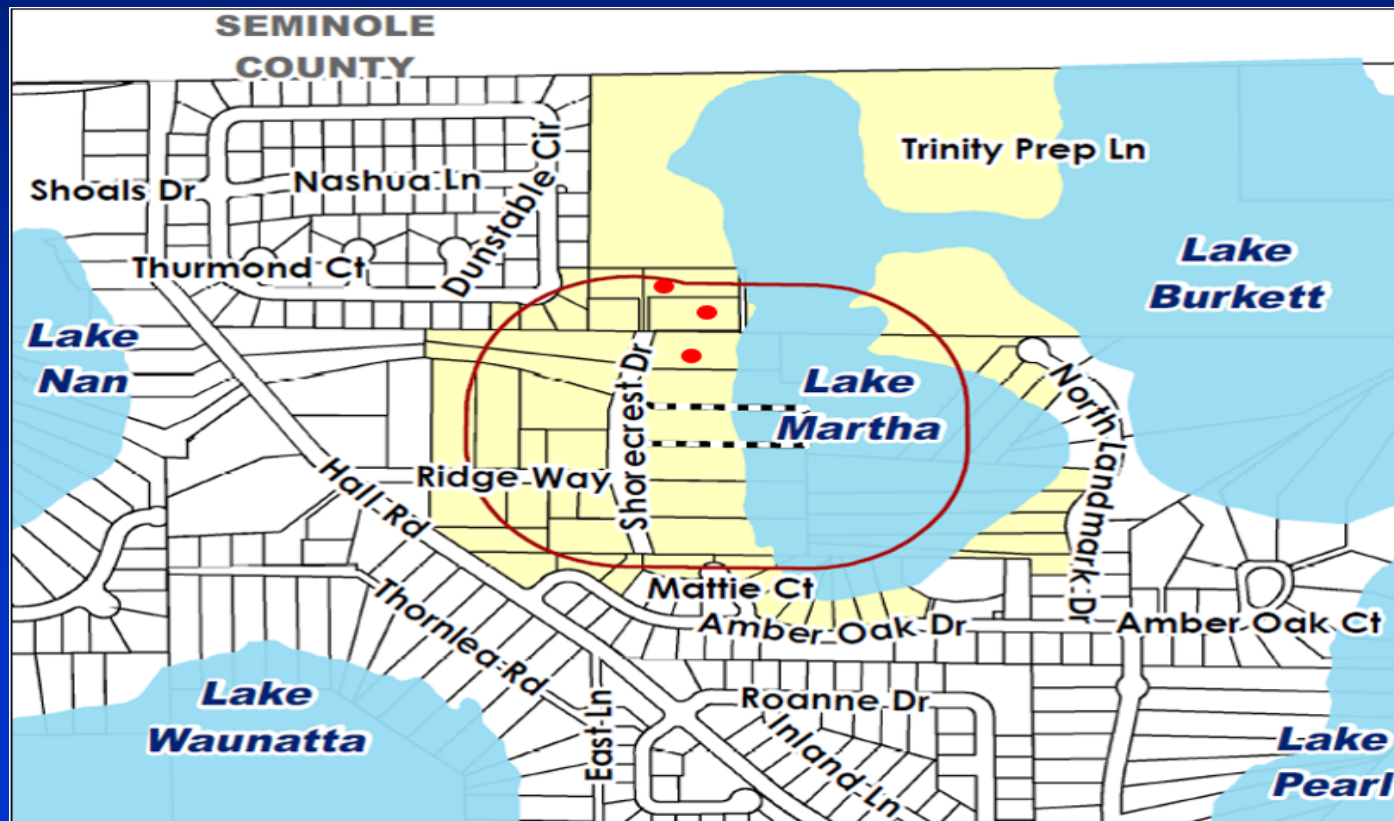
Staff Recommendation

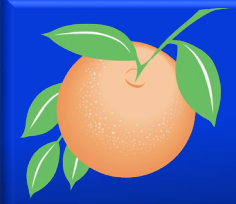
- Staff recommended denial of Variances #1, #3, #4 and #5, as there are no special conditions and circumstances, the requests are self-created, would grant special privilege, there would not be deprivation of rights and the Variances are not the minimum possible as the detached accessory structures could have been built in a code compliant manner since there is sufficient space in the rear yard of the property and the pool and deck could be renovated in a manner to meet code.
- Staff recommended approval of Variance #2 as there are special conditions and circumstances particular to this request since the gazebo has been in the same location since 1999 as permitted, the request is not self-created, no special privilege would be conferred, there would be deprivation of rights, and the Variance is the minimum possible.



Public Feedback

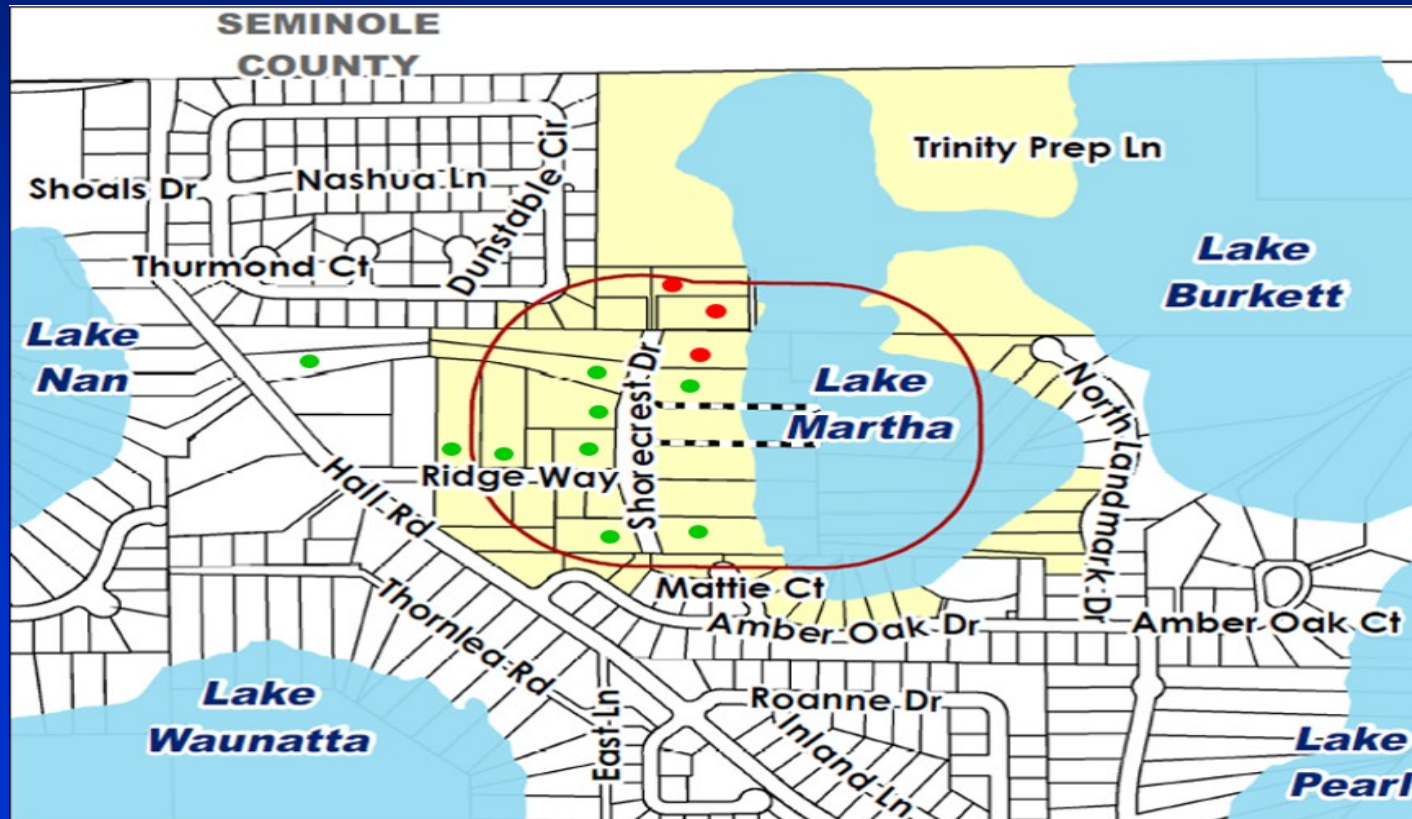
- Staff mailed a total of 78 notices to adjacent property owners in a 500 ft. radius
 - Staff has received no correspondences in favor of this request
 - Staff received four (4) correspondences in opposition to this request, 1 unmapped





Public Feedback – since the BZA

- Staff mailed a total of 78 notices to adjacent property owners in a 500 ft. radius
 - Staff has received 9 correspondences in favor of this request, 2 duplicates
 - Staff received 4 correspondences in opposition to this request, 1 unmapped





BZA Findings

- The BZA concluded that the approval of Variances #1, #3 and #4 would confer special privilege, were not the minimum necessary, and determined that the Variances are not in harmony with the purpose and intent of the zoning regulations since the unpermitted structures could have been built to meet code requirements and recommended denial of Variances #1, #3 and #4.
- The BZA concluded that the approval of Variances #2 and #5 would not confer special privilege, were the minimum necessary, and approval would allow improvements to the site in harmony with the purpose and intent of the Zoning regulations without any quantifiable negative impacts to the surrounding properties and recommended approval of Variances #2 and #5.



Variance Criteria

Section 30-43 (3), Orange County Code

Section 30-43 of the Orange County Code Stipulates specific standards for the approval of variances. No application for zoning variance shall be approved unless the Board of Zoning Adjustment finds that all of the following standards are met:

1. **Special Conditions and Circumstances** - Special conditions and circumstances exist which are peculiar to the property and which are not applicable to other properties
2. **Not Self-Created** - The special conditions and circumstances do not result from the actions of the applicant
3. **No Special Privilege Conferred** - Approval will not confer on the applicant any special privilege
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
5. **Minimum Possible Variance** - The minimum variance that will make possible the reasonable use of the land, building, or structure
6. **Purpose and Intent** - Approval will be in harmony with the purpose and intent of this Chapter and will not be injurious to the neighborhood



Requested Action

- Deny the applicant's request; or
- Approve the applicant's request with conditions



Conditions of Approval

1. Development shall be in accordance with the site plan received February 27, 2024, survey received November 20, 2023, and elevations received October 11, 2023, as modified to remove the treehouse, ~~pergola, and outdoor shower structure~~, 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.



Conditions of Approval

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 of the existing detached structures and the pool and deck, the portion of the fence which encroaches into the adjacent property shall be removed.
5. 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 gazebo is located no closer than 3.8 feet from the Normal High Water Elevation (NHWE) of Lake Martha.



Conditions of Approval

- If the Board should find that the applicant has satisfied the criteria for the granting of all the requested Variances, staff recommends that the approval be subject to the conditions in the staff report with the modification of Condition #1 and the addition of Conditions #5 and #6:
1. Development shall be in accordance with the site plan received February 27, 2024 survey received November 20, 2023, and elevations received October 11, 2023 ~~as modified to remove the treehouse, pergola, and outdoor shower structure~~, 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).
 5. A permit shall be obtained for the existing detached structures without permits 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.



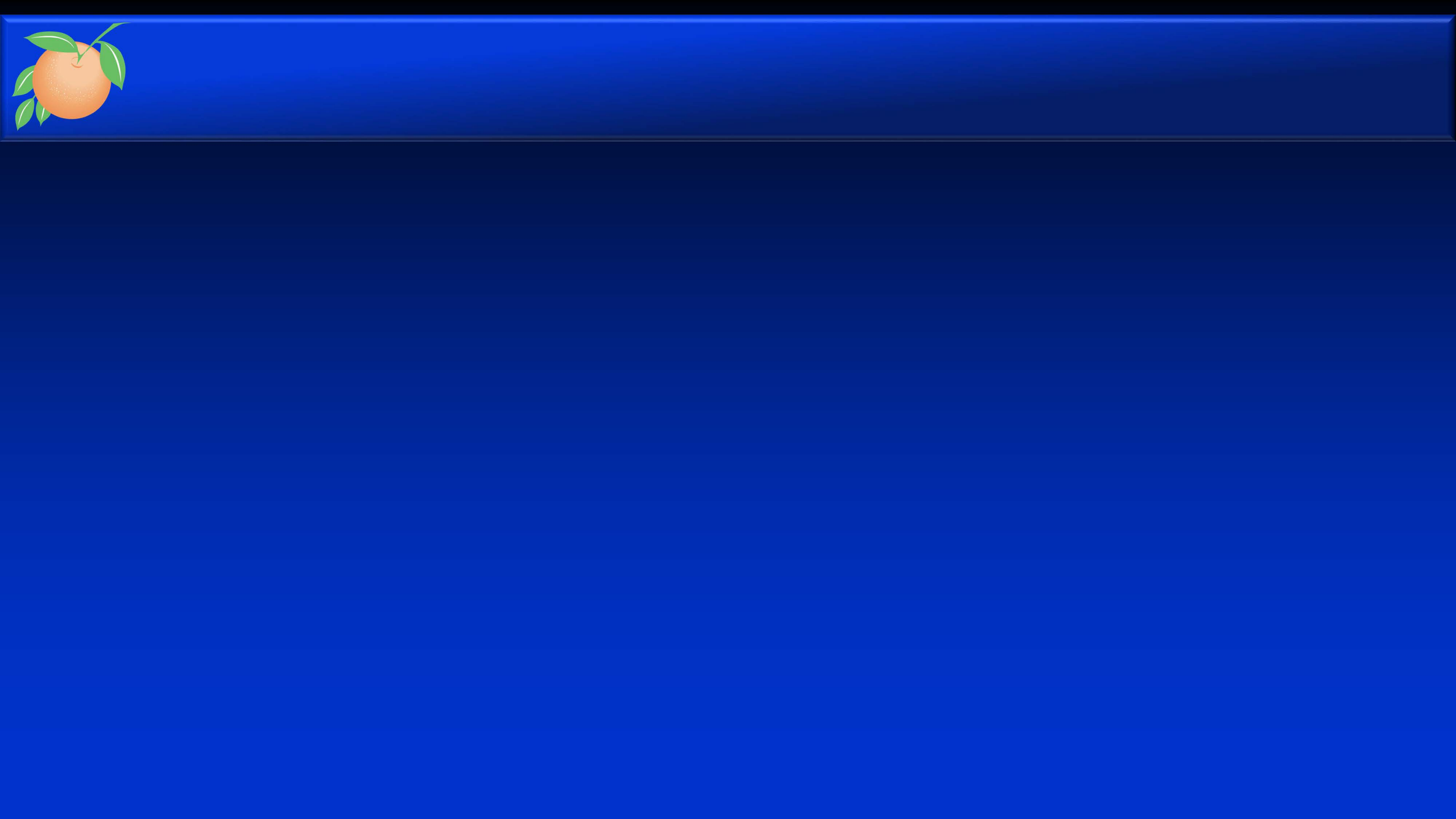
Conditions of Approval

- If the Board should find that the applicant has satisfied the criteria for the granting of all the requested Variances, staff recommends that the approval be subject to the conditions in the staff report with the modification of Condition #1 and the addition of Conditions #5 and #6:
6. 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 treehouse is located no closer than 11 feet, the gazebo is located no closer than 3.8 feet, is located no closer than 15.1 feet from the Normal High Water Elevation (NHWE) of Lake Martha.



Requested Action

- Deny the applicant's request; or
- Approve the applicant's request with conditions



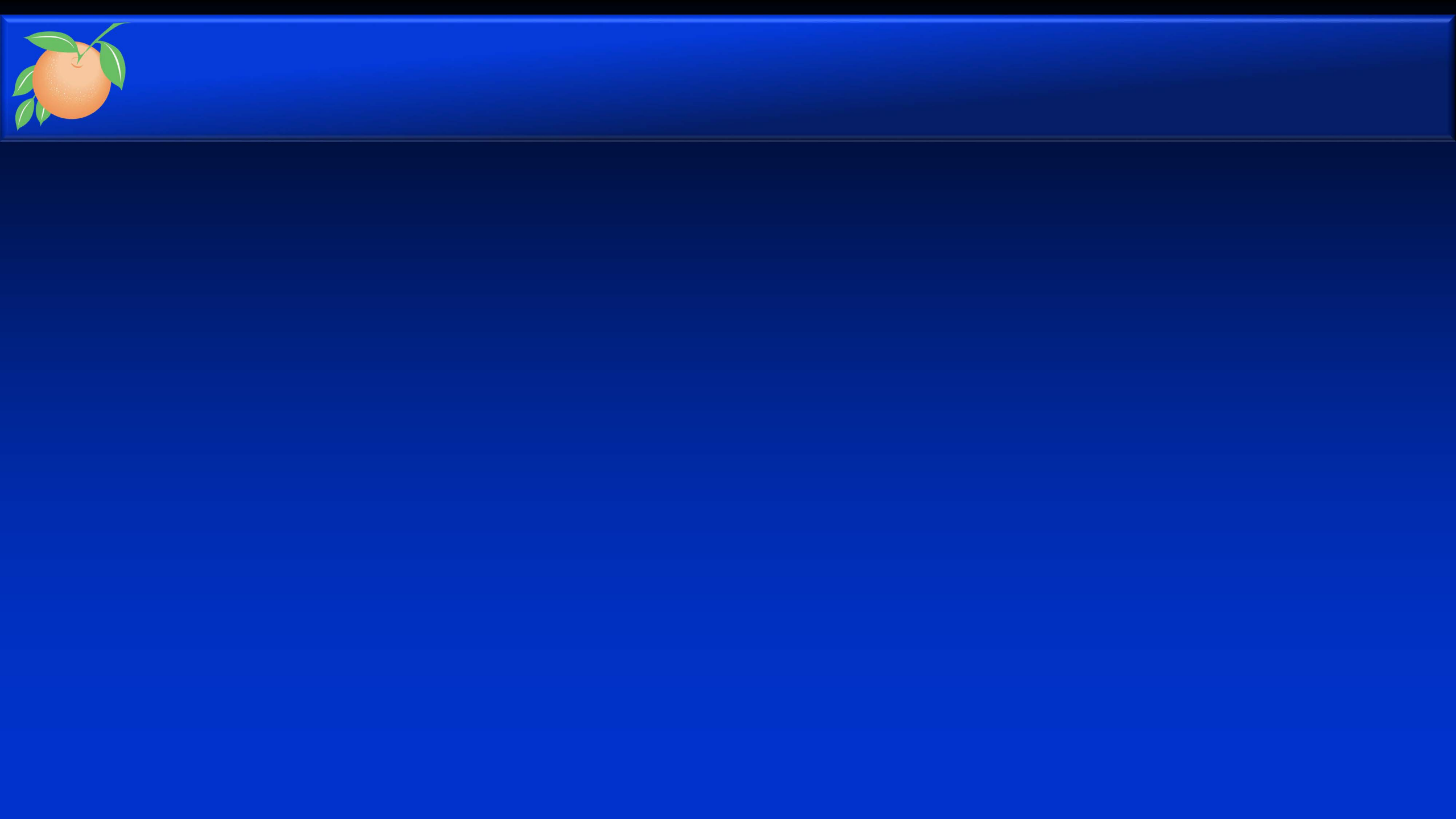


EPD Analysis

- **January 22, 2024: EPD received a complaint regarding potential onsite environmental violations. Incident No. 24-634827 opened.**
- **Applicable codes:**
 - **Orange County Code, Chapter 15, Article X, Section 15-376 states “No person shall conduct any activities within or immediately adjacent to any wetland...without first obtaining a permit...”**
 - **Orange County Code Chapter 15, Article VII, Section 15-254 states in part that: “All those persons desiring to perform or cause to be performed any clearance of shoreline vegetation shall be required to obtain a permit...”**
 - **Orange County Code, Chapter 15, Article IV, Section 15-115(a) states in part that: “It shall be unlawful for any person to cause, permit, suffer, or allow any illicit discharge or connection into the County’s MS4 or into waters of the county...”**

■ Corrective Actions:

- Remove the sunken boat
- Submit a Conservation Area Determination (CAD) application to determine the extent of wetlands/surface waters and any potential unauthorized impacts
- Remove any encroachments to the Class I wetland or Lake Martha,
OR
- Submit a Conservation Area Impact (CAI) permit application for any Class I wetland or Lake Martha impacts.
 - Demonstrate avoidance/minimization and reasonable use
 - Public hearing before the Board required





Site Photograph

Rear yard, facing east towards pergola





Site Photograph

Rear yard, facing southeast towards outdoor shower structure





Site Photograph

Facing northeast towards pool & deck - Variance to right





Site Photograph

Rear yard, facing east towards pool & deck side Variance

