



Interoffice Memorandum

DATE: June 9, 2017

TO: Mayor Teresa Jacobs
-AND-
Board of County Commissioners

FROM: Jon V. Weiss, P.E., Director
Community, Environmental and Development Services Department

CONTACT PERSON: Carol L. Knox, Manager, Zoning Division
407-836-5585

SUBJECT: June 20, 2017 – BCC Appeal Public Hearing
Applicant/Appellant: Ariel Malagon
BZA Case #VA-17-04-022, April 6, 2017; District #3

Case #VA-17-04-022, located at 1616 S. Chickasaw Trail, in District #3, is a BCC appeal public hearing to be heard on June 20, 2017. The applicant is requesting a variance to allow a total of 5,169 sq. ft. for accessory structures in lieu of 2,000 sq. ft. for accessory structures. On April 6, 2017, the BZA approved the applicant to keep up to 2,667 sq. ft. for accessory structures. However, the applicant filed an appeal because he wants to keep the entire 5,169 sq. ft. for accessory structures. This case is a result of code enforcement action.

The subject property is located on the west side of S. Chickasaw Trail, approximately 1,000 ft. south of El Prado.

During the April 6, 2017 hearing, four (4) neighbors spoke in opposition to this request. They had concerns about late night partying, converting a garage into living quarters, operating a commercial business from a residential location, and bright lighting. Staff recommended the applicant be allowed to keep up to 2,667 sq. ft. of accessory uses because old historic records show that amount of square footage on the site in the late 1980's. But the remaining square footage should be removed. The BZA agreed with the staff recommendation and recommended approval with conditions. The vote was 4-2.

The application for this request is subject to the requirements of Ordinance 2008-14, 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 Carol Knox at 6-5585 or Rocco Relvini at 6-5386.

ACTION REQUESTED: Deny the Appeal and approve BZA's recommendation of April 6, 2017. District #3.

**COMMUNITY ENVIRONMENTAL DEVELOPMENT SERVICES
DEPARTMENT
ZONING DIVISION PUBLIC HEARING REPORT
June 20, 2017**

The following is a public hearing on an appeal before the Board of County Commissioners on June 20, 2017 at 2:00 p.m.

APPELLANT/APPLICANT: ARIEL MALAGON

REQUEST: Variance in the R-CE zoning district to permit a cumulative total of 5,169 sq. ft. of accessory floor area in lieu of 2,000.

(Note: The applicant states that the structures in question were in existence when the applicant purchased the property in October of 2016. This is a result of code enforcement action after numerous complaints regarding work being done without permits).

LOCATION: West side of S. Chickasaw Trail, approximately 1,000 ft. south of El Prado, and approximately .8 mi. north of Curry Ford Rd.

TRACT SIZE: 163 ft. x 634 ft.

ZONING: R-CE

DISTRICT: #3

PROPERTIES NOTIFIED: 54

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

Staff noted that this application was the result of code enforcement action.

The applicant completed a significant amount of work on the structures without obtaining any permits. Code Enforcement staff had informed the applicant that they needed to stop work on the construction of a tiki hut and obtain variances and permits. However, the applicant completed the structure. Code Enforcement also cited the applicant for operating one or more businesses from the property which is contrary to both the intent of the Zoning Code and the Comprehensive Plan.

Staff outlined 3 possible courses of action the BZA could take, noting that staff recommends allowing an amount of accessory floor area equal to that of a free-standing garage which has existed on the site since the late 1980's and require all floor area in excess of that be removed.

A representative of the Code Enforcement Division explained the chronology of events that took place since late last year when the applicant received the original citation notice for the work done without permits. They had documentation that one or more businesses were operating from the property and they advised the applicant to stop work.

The applicant indicated the business has been removed from the property and they are willing to get permits for all unpermitted work. They also indicated that the realtor they had purchased the property from had told them that a business had existed on the property in the past and that it would be permissible to operate a commercial business from this property.

No one was in attendance to speak in favor of the application. 4 nearby neighbors spoke in opposition to this request. They cited: constant problems with noise late at night; headlights shining into their windows during the night; constant partying during late night hours; and they had suspicions there may be one or more persons living in the converted garage.

The applicant noted that the business is no longer on the property. He stated that he would return all of the buildings to their original condition.

The BZA concluded this property had many code enforcement matters to resolve and the request was excessive. In addition, they discussed the parking area the applicant installed without permits and whether it should be allowed to remain. The BZA chose the option that required the removal of the excess square footage above what was constructed in the late 1980's.

BZA HEARING DECISION:

APPROVED 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 (4 in favor and 2 opposed):

1. Development in accordance with site plan dated February 14, 2017, and all other applicable regulations. Any deviations, changes, or modifications to the plan are subject to the Zoning Manager's approval, less the two pole barns. The Zoning Manager may require the changes be reviewed by the Board of Zoning Adjustment (BZA) for administrative approval or to determine if the applicant's changes require another BZA public hearing;

ZONING DIVISION AGENDA
TUESDAY, June 20, 2017

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 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 Zoning Adjustment shall be resubmitted for the Board's review or the plans revised to comply with the standard;
4. The use of the building shall be limited to residential storage only. No accessory structure shall be used as temporary or permanent dwelling unit without approval by the BZA as an Accessory Dwelling Unit or a Guest House. Nor shall any accessory structure be used for any commercial use not associated with a bona fide home occupation;
5. Any structures in excess of the approved square footage shall be removed within sixty (60) days of final action on this application with proper permits;
6. The applicant shall obtain permits for all remaining unpermitted work within ninety (90) days of final action on this application by the County or this approval becomes null and void and will be turned over to the Code Enforcement Division;
7. The use of the property shall be limited to those uses identified in Chapter 38 of the Orange County Code. No vehicles associated with the applicant's business(es) shall be stored on the subject property;
8. Failure to comply with the above conditions shall result in Code Enforcement action, not BZA action; and,
9. This approval is for a total of 2,667 sq. ft. of accessory structure floor area only.

ARIEL MALAGON
VA-17-04-022

REQUEST: **Variance** in the R-CE zoning district to permit a cumulative total of 5,169 sq. ft. of accessory floor area in lieu of 2,000.
(Note: The applicant states that the structures in question were in existence when the applicant purchased the property in October of 2016. This is a result of code enforcement action after numerous complaints regarding work being done without permits).

ADDRESS: 1616 S. Chickasaw Trail, Orlando FL 32825

LOCATION: West side of S. Chickasaw Trail, approximately 1,000 ft. south of El Prado, and approximately .8 mi. north of Curry Ford Rd.

S-T-R: 01-23-30

TRACT SIZE: 163 ft. x 634 ft.

DISTRICT#: 3

LEGAL: S 5 ACRES OF E1/2 OF NE1/4 OF NW1/4 (LESS SLY 164.37 FT & LESS R/W ON E) OF SEC 01-23-30

PARCEL ID: 01-23-30-0000-00-044

NO. OF NOTICES: 54

February 14, 2017

Orange County Zoning Division
Orlando, Florida

Zoning Variance
1616 S Chickasaw Trail
Orlando, Florida
01-23-30-0000-00-044

Staff measurements:

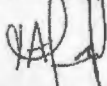
Dear Sirs:

I purchased the above property in October of 2016. At the time of purchase the property, included the following structures (please see survey). They were also listed in the Orange County Appraiser page (copy of page is attached).

- Wood shed -288 square feet which I have torn down and is no longer on the property (*Removed*)
- A concrete garage 2,363 sq feet. Which is listed in the Orange County Property Appraiser's page. See attached listing.
- An open metal roof structure ~~1,772~~^{1,646} sq feet.
- A concrete covered structure on a concrete slab ~~1,034~~^{1,022} sq feet. The concrete cover was replaced by a Tiki Hut type cover using the existing concrete slab.

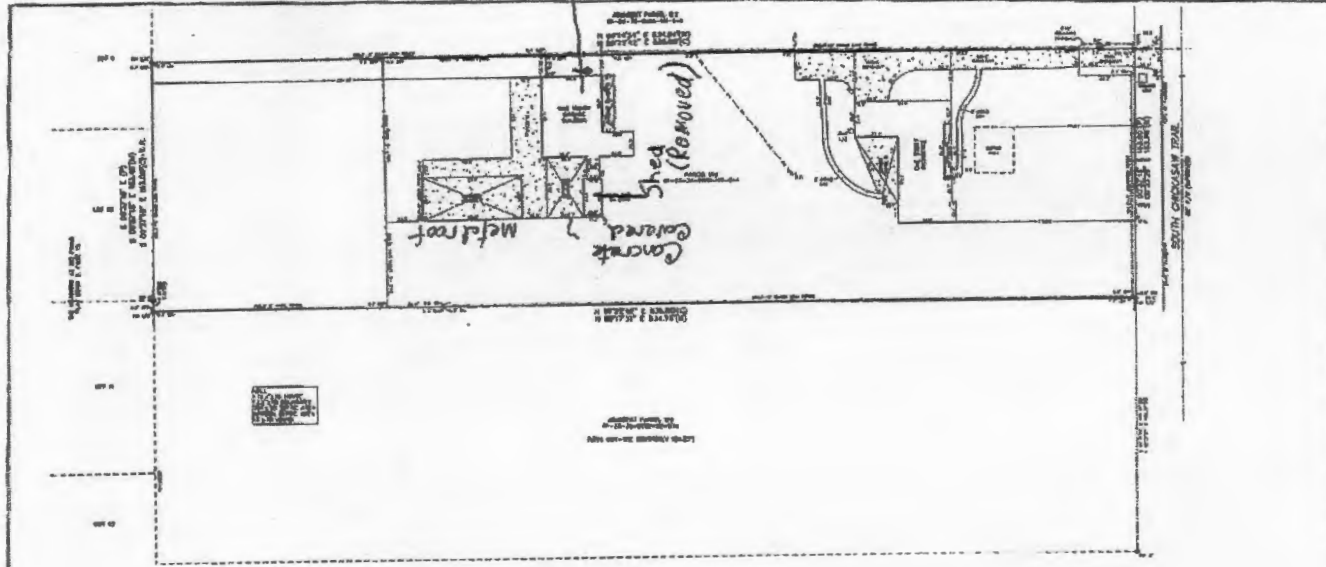
I am respectfully requesting a variance be accepted and grandfathered in on these existing structures. I am including the required application and the documentation for your review

Sincerely,


Ariel Malagon

Existing Garage	2363
Existing Tiki Hut	1022
Existing Open Storage	1646
	<hr/>
	3031
1517	3031 over

RECEIVED
FEB 14 2017
Zoning Division



Legal Description:

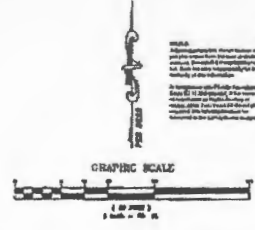
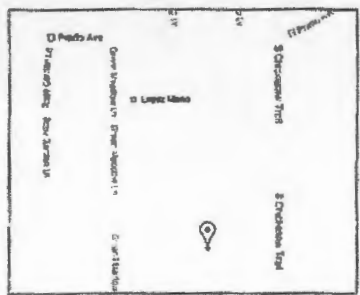
The South 5 acres of the East 1/2 of the Northeast 1/4, of the Northeast 1/4 of Section 1, Township 23 South, Range 30 East Orange County, Florida, less the Southwesterly 164.37 feet thereof, Subject to road rights of way.

Community number: 120179 Parcel: 0270
 Subject: F.F.L.R.M. Date: W25/2009 Flood Zone: X
 Date of field work: 10/78/2016 Completion Date: 10/19/2016

Certified to:
 Ariel Malagon, Mortgage Title Services, Inc.; Chicago Title Insurance Company.

Property Address:
 1616 South Cheltenham Trail
 Orlando, FL 32825

Survey number: SL171060

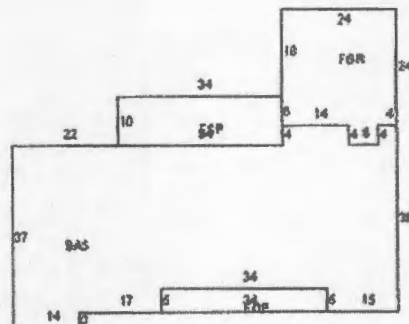
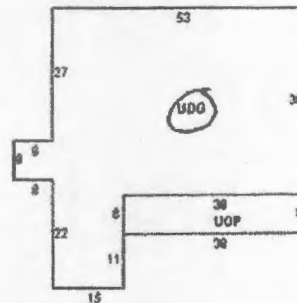


SURVEY DATA	
Survey Number	SL171060
Community Number	120179
Parcel Number	0270
Subject	F.F.L.R.M. Date: W25/2009 Flood Zone: X
Date of field work	10/78/2016
Completion Date	10/19/2016
Certified to	Ariel Malagon, Mortgage Title Services, Inc.; Chicago Title Insurance Company.
Property Address	1616 South Cheltenham Trail, Orlando, FL 32825
Survey number	SL171060

Building Details - 1616 S Chickasaw Trl - Building #1



Courtesy Rick Singh, Orange County Property Appraiser



Sub Area	Sqft	Value
BAS - Base Area	2664	working...
FGR - Fin Garage	600	working...
FOP - F/Opn Prch	170	working...
FSP - F/Scr Prch	340	working...
<u>UDG - Unf Dt Grg</u>	2363	working...
UOP - Unf O Prch	304	working...

Model Code: 01 - Single Fam Residence

Type Code: 0103 - Single Fam Class III

<http://www.ocpafl.org/Searches/BuildingPrinterFriendly.aspx/PD...> 2/11/2017



STAFF REPORT

CASE #VA-17-04-022

Orange County Zoning Division

Planner: David Nearing, AICP

Board of Zoning Adjustment

April 6, 2017

Commission District: 3

GENERAL INFORMATION:

APPLICANT: Ariel Malagon

REQUEST Variance in the R-CE zoning district to permit a cumulative total of 5,169 sq. ft. of accessory floor area in lieu of 2,000.

(Note: The applicant states that the structures in question were in existence when the applicant purchased the property in October of 2016. This is a result of code enforcement action after numerous complaints regarding work being done without permits).

LOCATION: West side of S. Chickasaw Trail, approximately 1,000 ft. south of El Prado, and approximately .8 mi. north of Curry Ford Rd.

PROPERTY ADDRESS: 1616 S. Chickasaw Trail

PARCEL ID: 01-23-30-0000-00-044

TRACT SIZE: 163 ft. x 634 ft.

DISTRICT #: 3

ZONING: R-CE

STAFF FINDINGS AND ANALYSIS:

1. The applicant has added at least one (1) structure to the property without obtaining the necessary permits, including installation of a hydraulic lift which would allow one to work on large vehicles.
2. The applicant has indicated that the structures were in existence at the time they purchased the property. However, improvements were made without permits, which if applied for, would have revealed the excessive amount of accessory floor area. Some of the complaints received by the Code Enforcement Division

include noise, operation of one or more businesses from the subject property, as well as doing construction without the necessary permits.

3. The request is excessive. The additional 3,169 sq. ft. of accessory structure represents a variance of 158.5%.
4. The purpose of the R-CE zoning district is to create a zone where large lot residential development can be protected from the negative effects of agricultural and commercial activities. The activities reported by neighbors and observed by County Code Enforcement Officers indicate that the subject property is being used for more than residential activity. As such, this application is not consistent with the intent of the R-CE zoning district.
5. The County's Comprehensive Plan places a Future Land Use of Low Density Residential (LDR) on the subject property, which is exclusively for residential activities. There appears to be more than just residential activity taking place on the subject property.
6. The existing garage identified on the Property Appraiser's website is 2,363 sq. ft. of enclosed space with an additional 304 sq. ft., identified as an unfinished open porch totaling 2,667 sq. ft. This garage appears on a 1987 aerial.

STAFF RECOMMENDATION:

Staff makes the following conclusions:

1. The size of the requested variance is excessive;
2. There has been a large amount of work done without permits;
3. There are numerous violations noted by the Code Enforcement Division staff;
4. Code Enforcement Division staff advised the applicant to cease further construction on any non-permitted improvements;
5. There is a possibility that there may be one or more businesses operating from this property; and,
6. There have been complaints received from neighbors.

Staff finds that there are three (3) possible courses of action which the BZA could follow:

- A. The BZA could grant approval of the variance, but only to permit up to 2,667 sq. ft., which would be the amount of square footage of the detached garage structure. The applicant would be given the option of what is to remain and what is to be removed. Any remaining structures must be properly permitted, and their floor area be used for only residential storage.
- B. The BZA could deny the application in its entirety. The result would be the applicant would be limited to the 2,000 sq. ft. of accessory floor area permitted in the R-CE zoning district. This would require that the applicant

remove all structures in excess of this amount. Again, it would be up to the applicant to determine what remains and what is to be removed.

- C. The BZA could grant approval of the entire variance as requested by the applicant. This would allow the applicant to retain all improvements on the property. However, they would still be required to obtain permits for all improvements which were made without permits, including the detached garage.

Based on the conclusions above, staff is recommending that the BZA choose option A above, approving only the 2,667 sq. ft. which is equal to the garage which appeared on the 1987 aerial. This would allow the applicant to retain an amount of accessory square footage which has historically been located on the subject property. If the BZA is in agreement with the staff recommendation, the following conditions should be imposed:

1. Development in accordance with site plan dated February 14, 2017, and all other applicable regulations, less the two (2) pole barns and tiki hut. Any deviations, changes, or modifications to the plan are subject to the Zoning Manager's approval. The Zoning Manager may require the changes be reviewed by the Board of Zoning Adjustment (BZA) for administrative approval or to determine if the applicant's changes require another BZA public hearing;
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 Zoning Adjustment shall be resubmitted for the Board's review or the plans revised to comply with the standard;
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5. Any structures in excess of the approved square footage shall be removed within sixty (60) days of final action on this application;

6. The applicant shall obtain permits for all remaining unpermitted work within ninety (90) days of final action on this application by the County or this approval becomes null and void and will be turned over to the Code Enforcement Division;
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8. Failure to comply with the above conditions shall result in Code Enforcement action, not BZA action.

cc: Ariel Malagon
1616 S. Chickasaw Trail
Orlando, Florida 32825