Orange County Zoning Division

BCC APPEAL PUBLIC HEARING ON BZA #VA-17-04-022

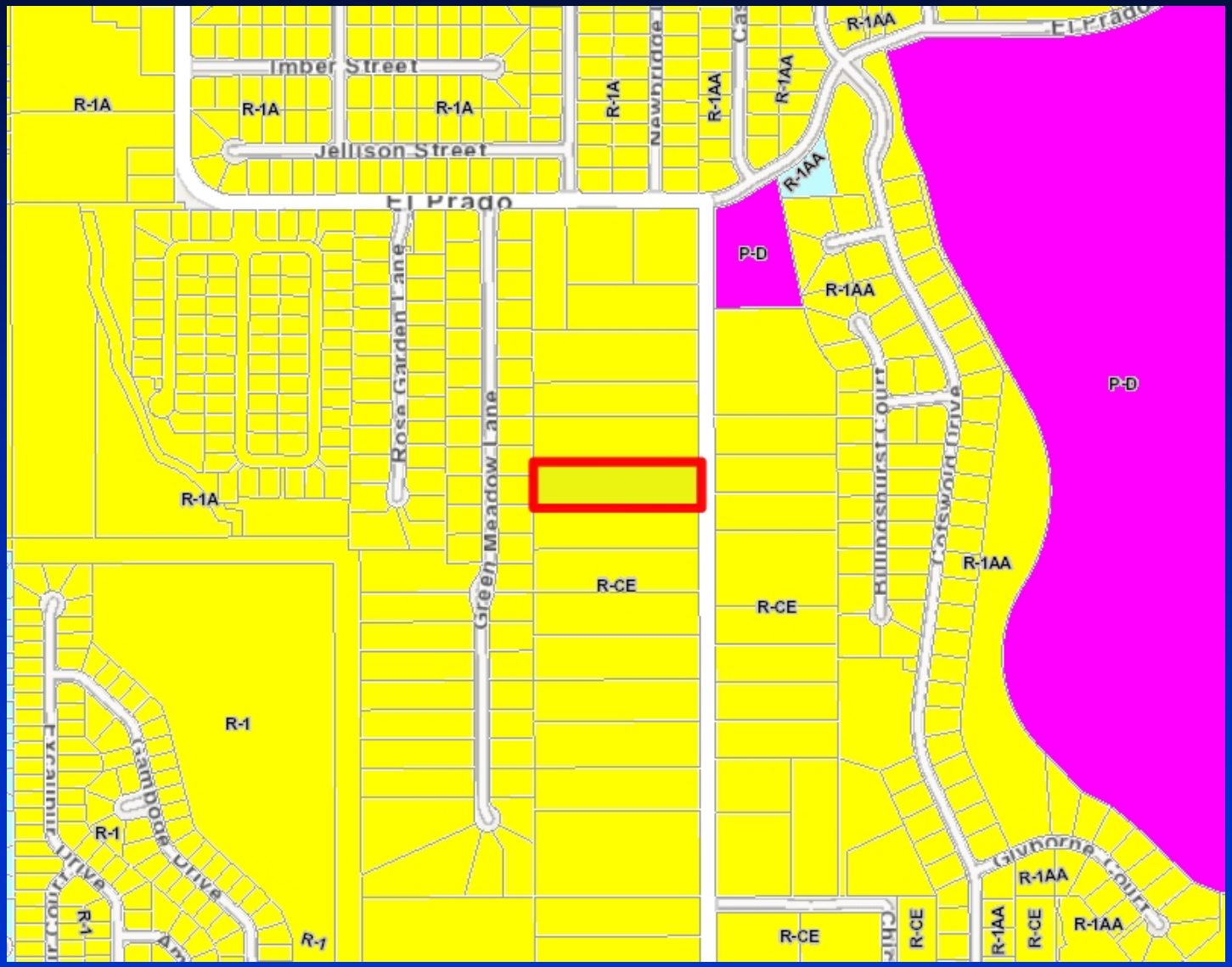
APPLICANT/APPELLANT: ARIEL MALAGON

June 20, 2017

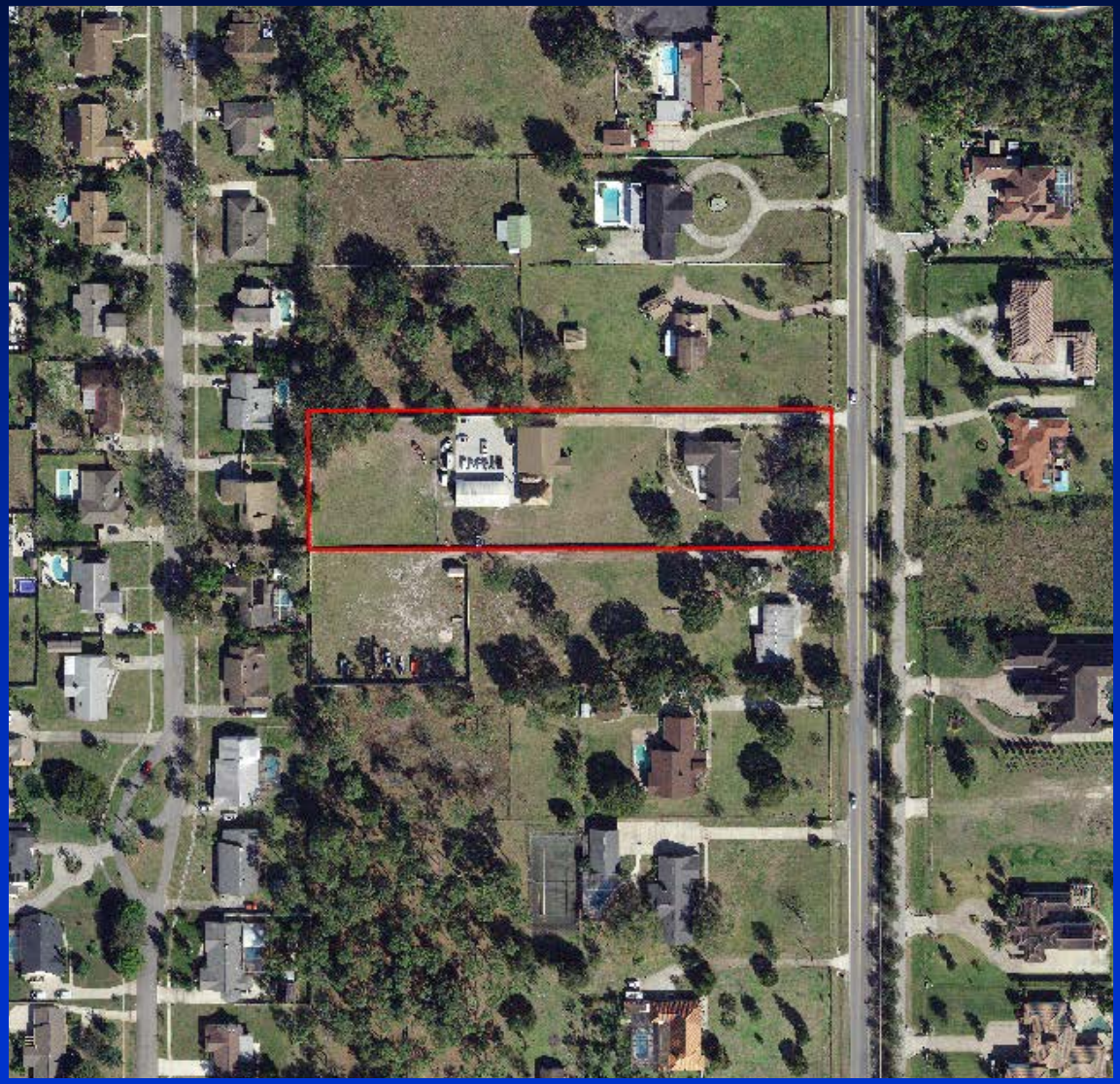
Background

CASE #:	VA-17-04-022
APPLICANT:	Ariel Malagon
REQUEST:	Variance in the R-CE zoning district to permit a cumulative total of 5,169 sq. ft. for accessory structures in lieu of 2,000 sq. ft. This case is a result of Code Enforcement action.
ZONING:	R-CE
TRACT SIZE:	163 ft. x 634 ft. (2.37 ac.)
LOCATION:	1616 S Chickasaw Trail; West side of S. Chickasaw Trail, approx 1,000 ft. south of El Prado and approx .8 miles north of Curry Ford Rd.
DISTRICT:	#3

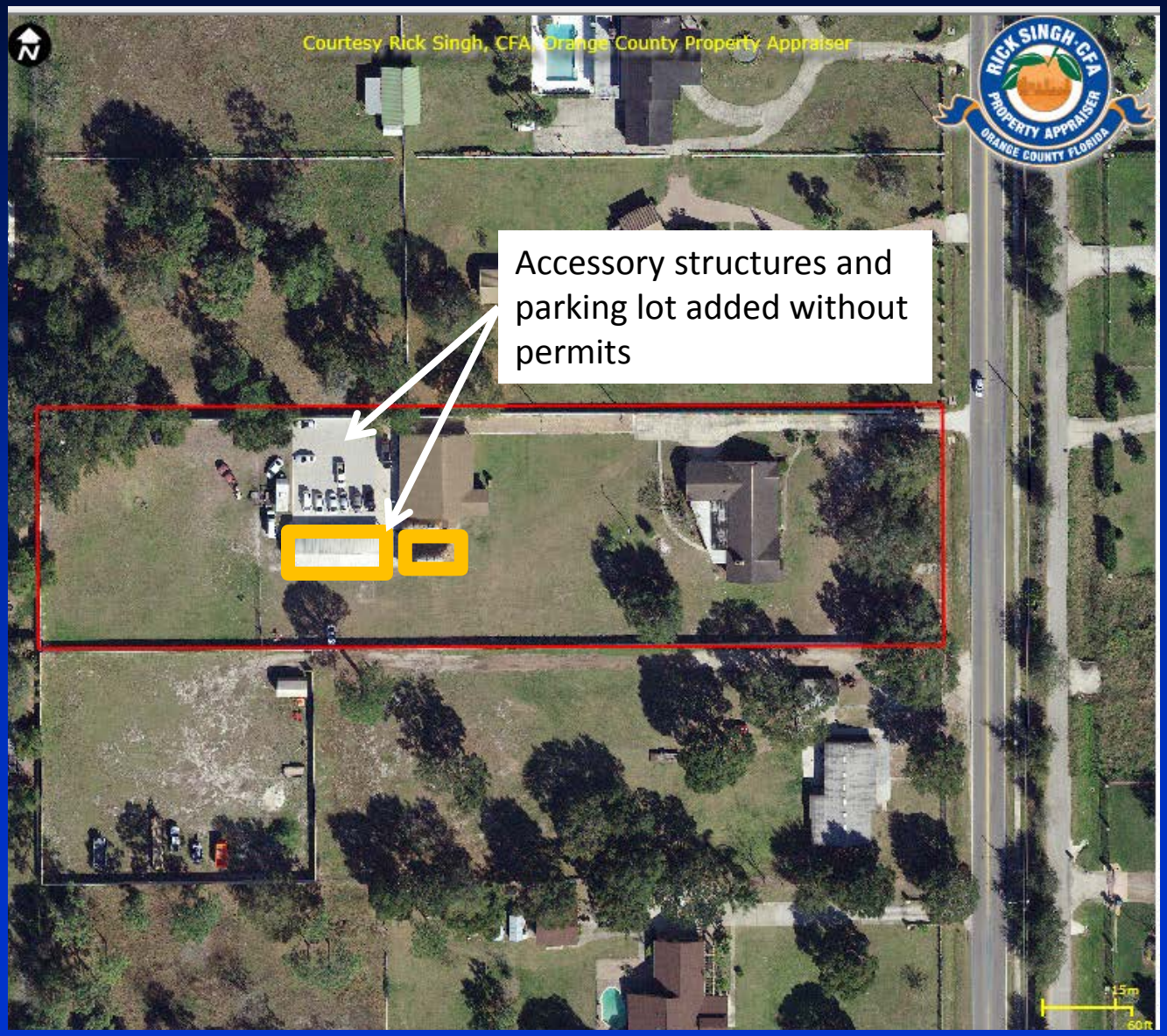
Zoning Map


Imber Street
Jellison Street
El Prado
Rose Garden Lane
Green Meadow Lane
Billingshurst Court
Cotswold Drive
Calvhorne Court
R-1A
R-1AA
R-CE
R-1
P-D

Aerial

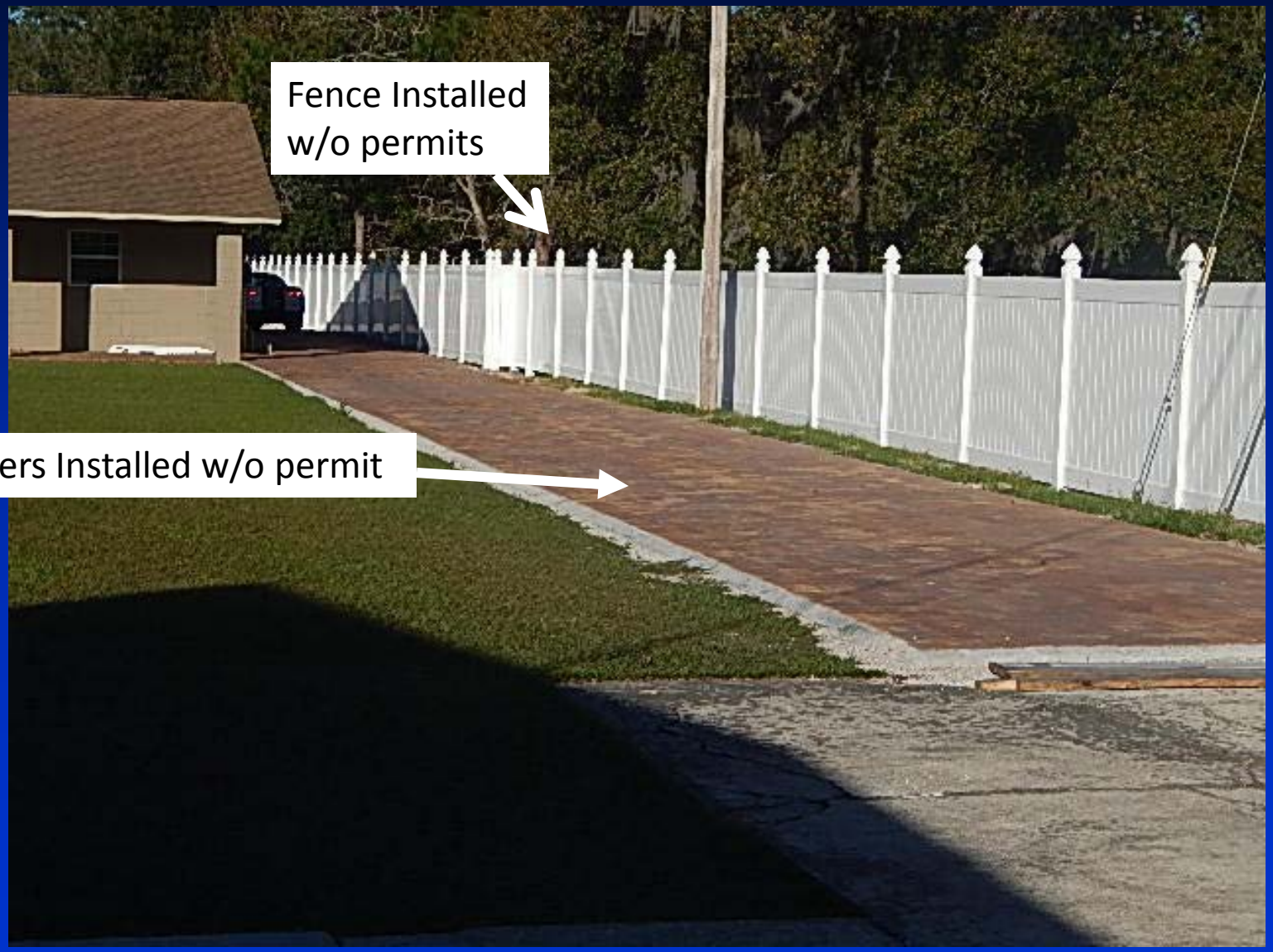


Close-Up Aerial



Site Photograph

Site Photograph



Site Photograph

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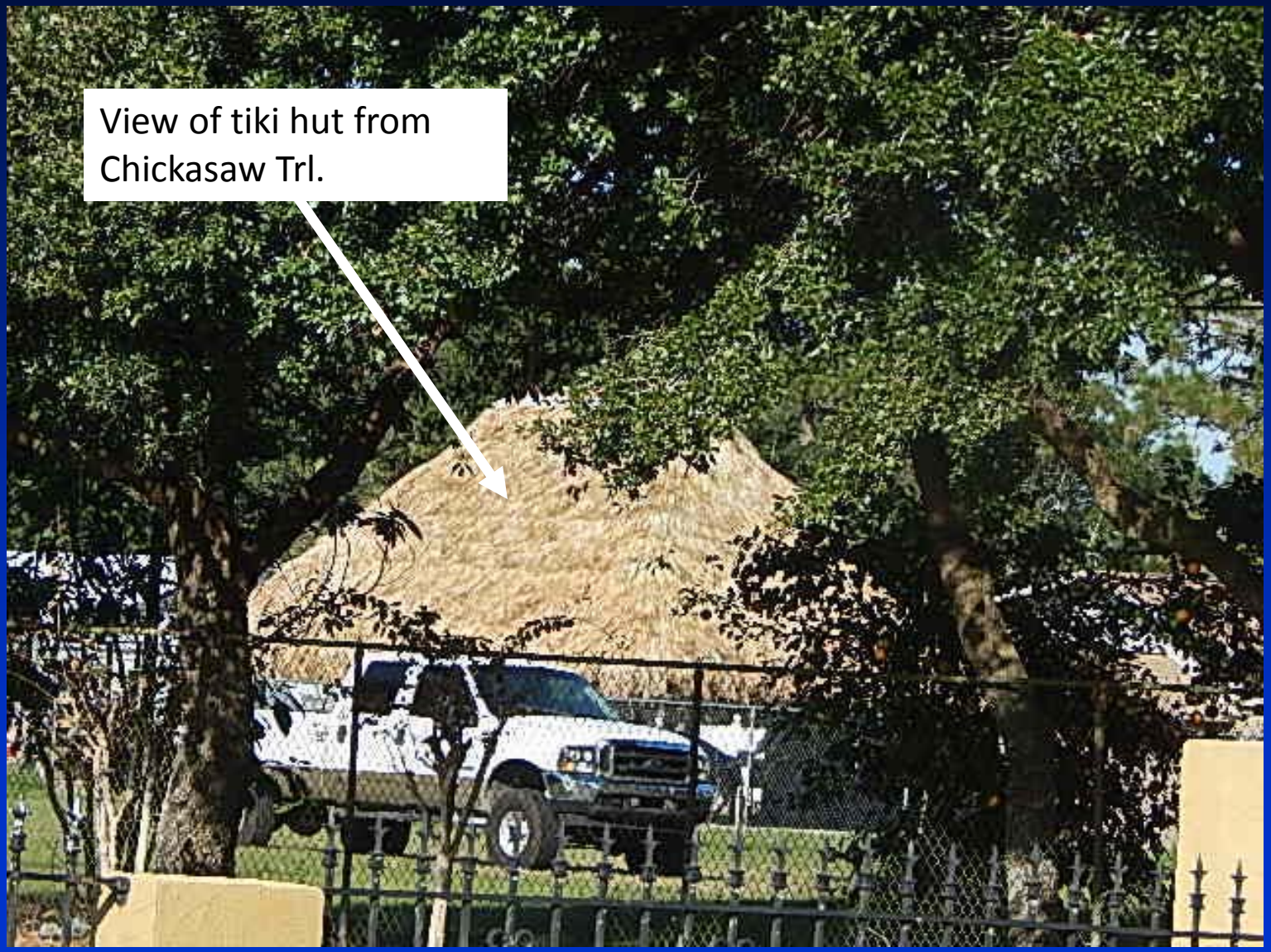
Site Photograph

Tiki hut construction continues after advised by CE to stop work

Site Photograph



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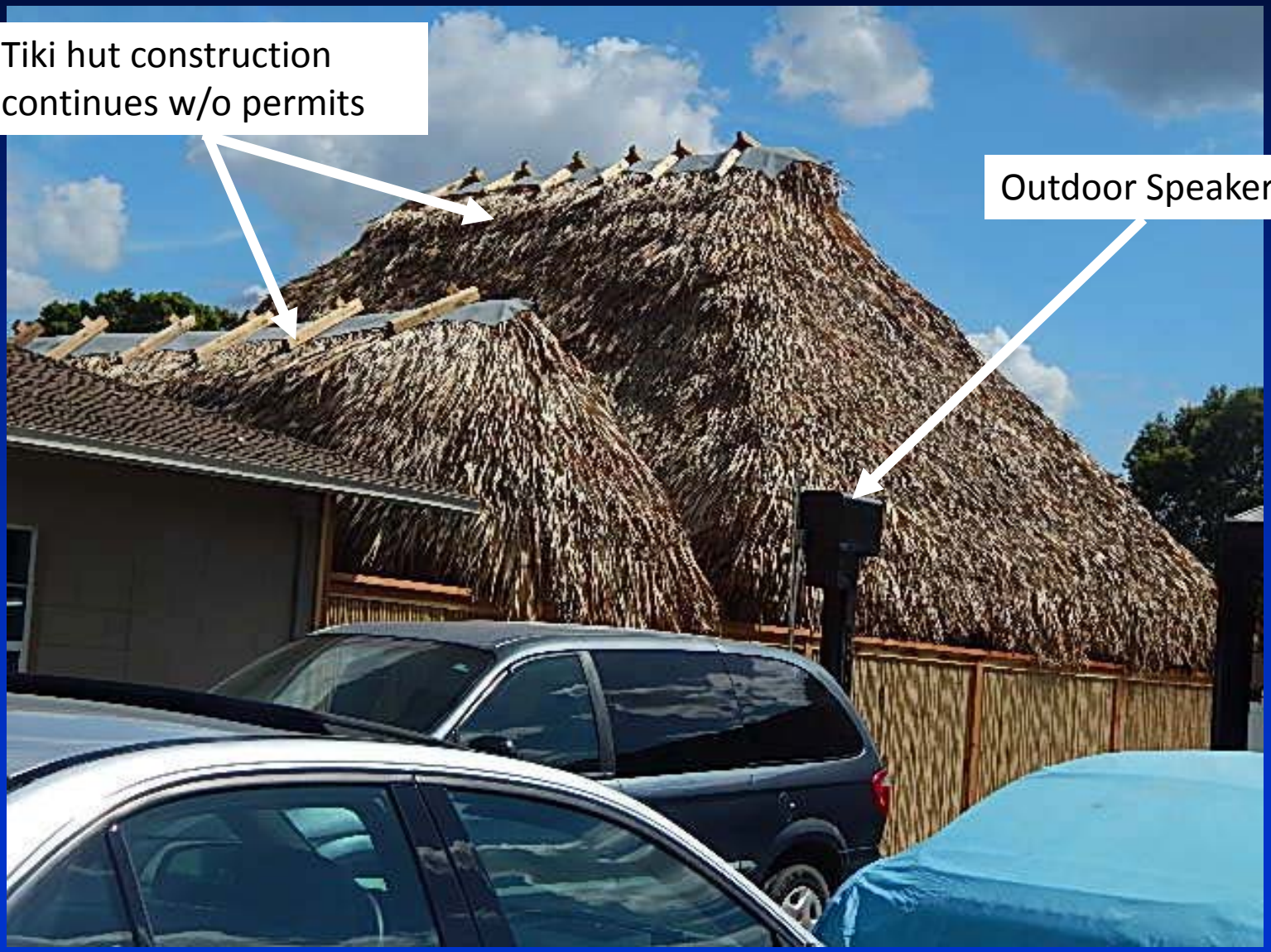

Site Photograph

Site Photograph

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Site Photograph

RV storage w/o permits

Enclosure of existing pole building w/o permits

Site Photograph

Variance Criteria

Sec. 30-43, Orange County Code

VARIANCE CRITERIA

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 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 any proposed zoning variance.**

2. **Not Self-Created- The special conditions and circumstances do not result from the actions of the applicant. A self-created 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.**

3. **No Special Privileges Conferred- Approval of the zoning variance requested will not confer on the applicant any special privilege that is denied by the Chapter to other lands, buildings, or structures in the same zoning district.**

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 the property with intent to develop in violation of the restrictions of this Chapter shall not constitute grounds for approval.**

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.**

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

Staff Findings and Analysis

- The applicant made improvements without permits
  - Additional accessory structures
  - Hydraulic lift
  - Enclosing of pole building
  - Side and front yard fencing
  - Pavers
- The applicant has been utilizing property inconsistent with RCE residential zoning
  - Complaints regarding noise and operation of one or more businesses
  - The installation of a hydraulic lift would allow work on large vehicles
  - Parking of RV and commercial vehicles

Staff Findings and Analysis

- The applicant has indicated that the structures were in existence at the time they purchased the property.
- 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. A 1987 aerial shows this amount of accessory use square footage.
- The variance request is excessive. The amount of deviation from code requirements = 158.5%.

Staff Findings and Analysis

Staff offered the BZA three options:

1. 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.

2. 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.

3. 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.

Community Feedback at the BZA Public Hearing

- No one was in attendance to speak in favor of the application.
- Four (4) nearby neighbors spoke in opposition to this request. They cited:
  - Constant problems with noise late at night
  - Constant partying during late night hours
  - Headlights shining into their windows during the night
  - They had suspicions there may be one or more persons living in the converted garage
  - Businesses being operated from the property

BZA Findings

- Subject property had numerous code enforcement issues to resolve
- Request was excessive
- Existing land use may not be permitted by the zoning regulations
- Allow applicant to retain 2,667 total sq. ft. as seen on the 1987 aerial

BZA Recommendation

- APPROVED a variance to allow 2667 sq. ft. for accessory structures in lieu of 2000 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 nine (9) conditions recommended by staff as amended (4 in favor and 2 opposed)

BCC Action Requested

- Deny the Appeal and approve BZA's recommendation of April 6, 2017, subject to the nine (9) conditions in the staff report. District 3.

BZA Conditions

1. Development in accordance with site plan dated "Received February 17, 2014" and all other applicable regulations. Any deviations, changes or modifications to the plan are subject to the Zoning Manager's approval. The Zoning Manager may require the changes to be reviewed by the Board of Zoning Adjustment (BZA) for administrative approval or 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 125.002, 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;

BZA Conditions (Continued)

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;

BZA Conditions (Continued)

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.

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