

Orange County Zoning Division

VA-18-10-135
APPLICANT:
MIKE FITZPATRICK

JANUARY 29, 2019



Background

CASE: VA-18-10-135

APPLICANT: Mike Fitzpatrick

ZONING: P-D, Planned Development District (Preserve at Lakeside Village)

**FUTURE
LAND USE:** V, Village (Horizon West)

ADDRESS: 8361 Torcello Isle Dr., Windermere, FL 34786

LOCATION: Easterly side of Torcello Isle Dr., approximately 625 ft. southwesterly of Reams Rd.

TRACT SIZE: 51 ft. x 165 ft. (AVG)/.19 ac.

DISTRICT: 1

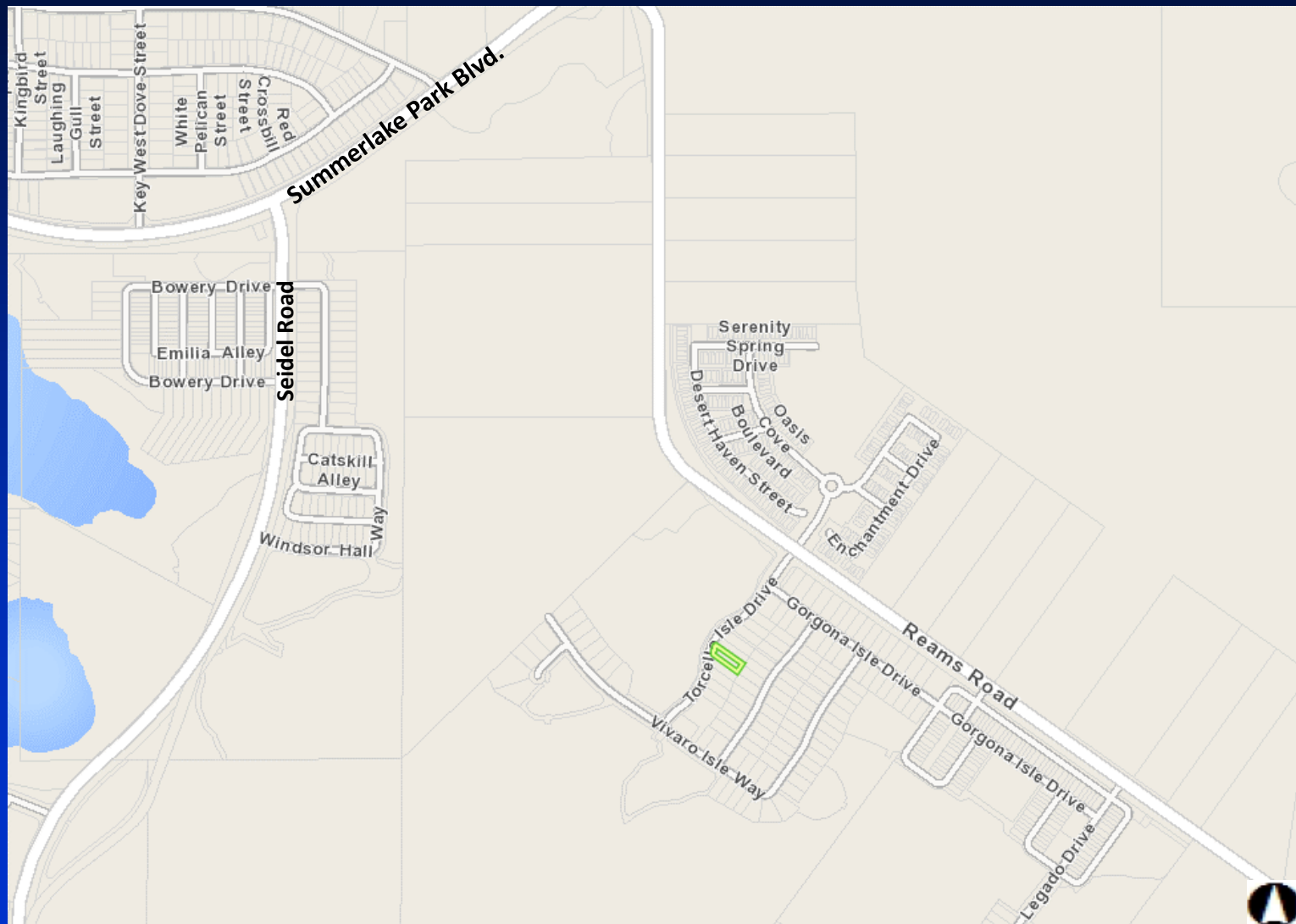


Background

REQUEST: Variance in the P-D zoning district to allow a generator 1.5 ft. from the side (northerly) property line along the side of a home in lieu of 10 ft.

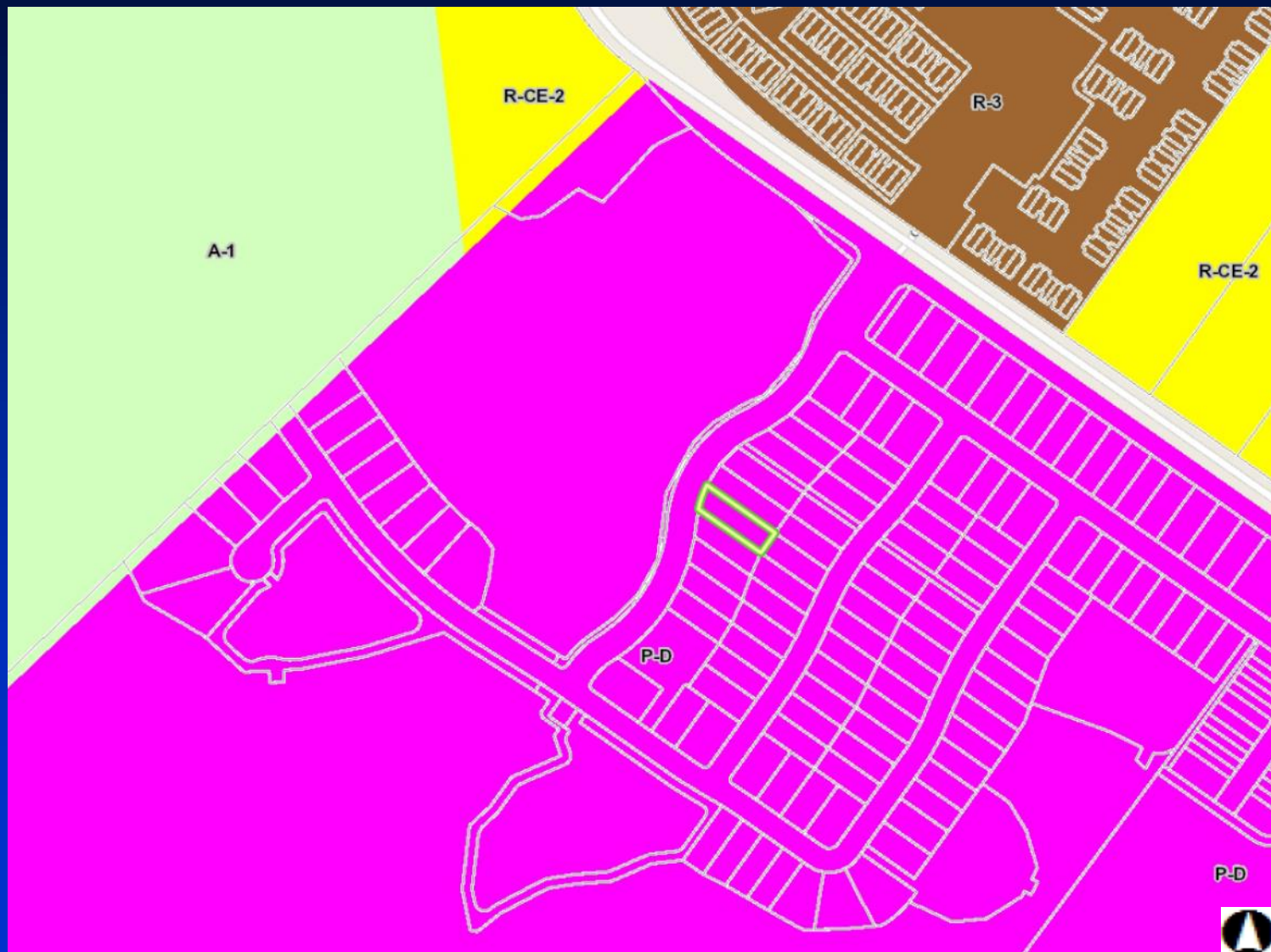


Location Map





Zoning Map







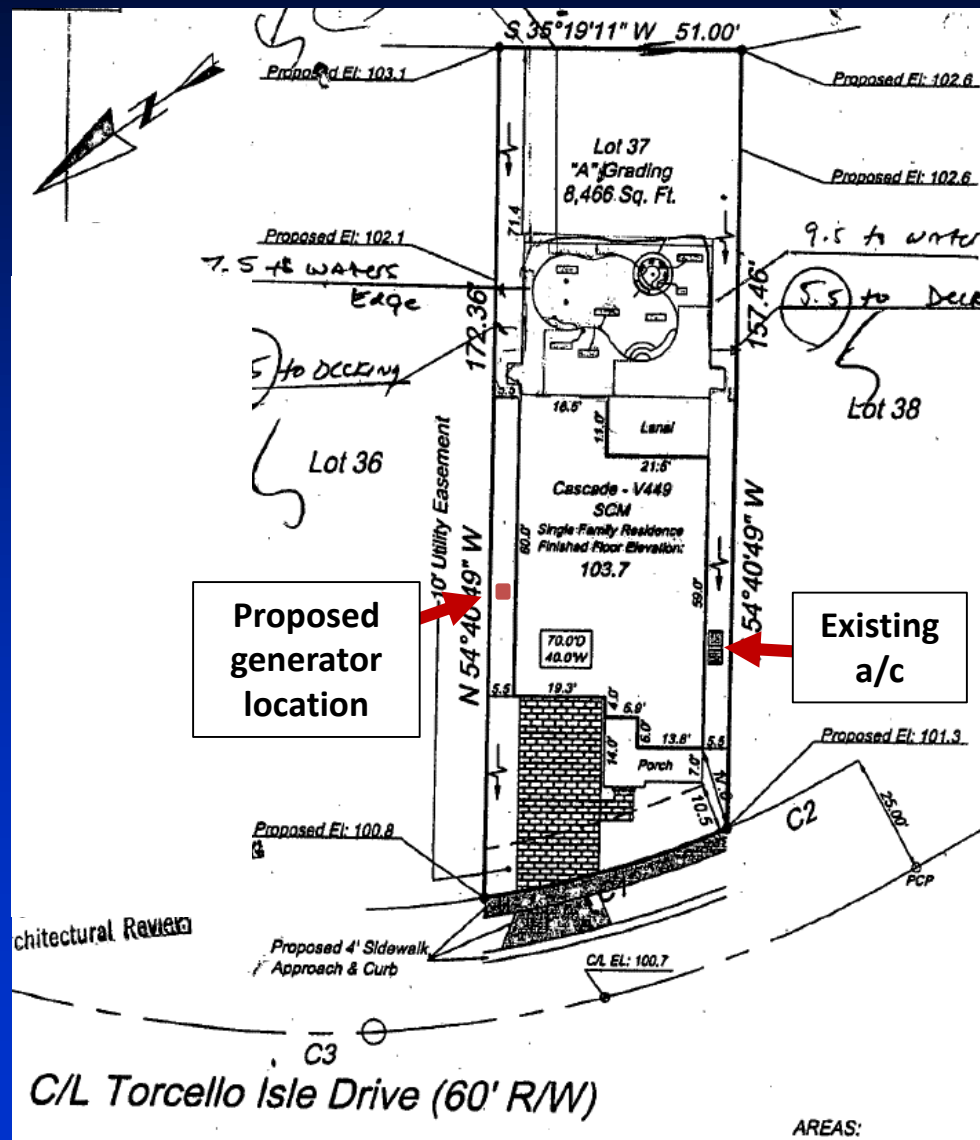


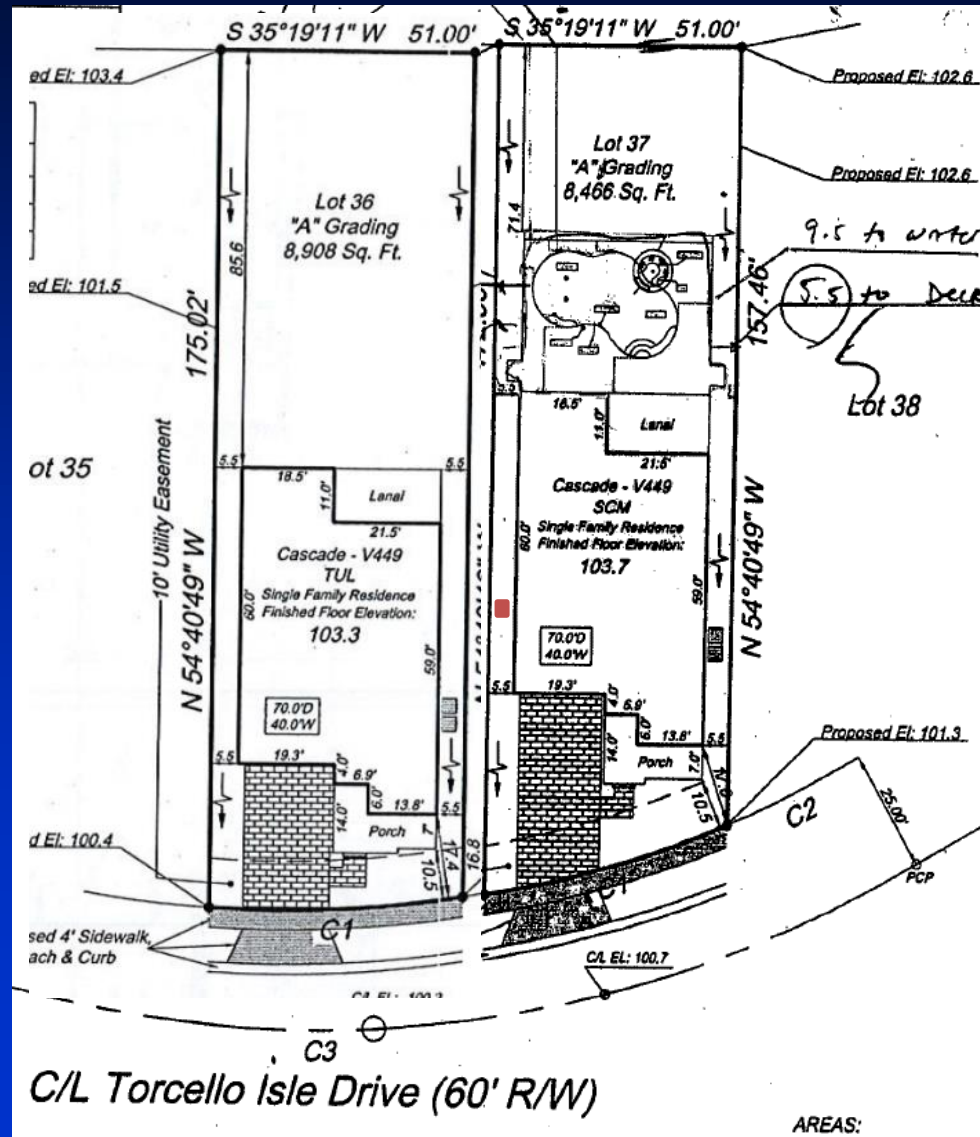
History

- **August 2018 - Home was completed**
- **August 15, 2018 – Variance application submitted for generator in side yard**
- **September 7, 2018 – Applicant purchased the property**
- **September 12, 2018 – Applicant applied for building permit for a swimming pool in the rear yard**



Proposed Site Plan







Site Photograph





Site Photograph

View along northeast property line





Site Photograph

View of north side of house





Site Photograph

View of rear yard





Staff Analysis

1. Principal building setbacks in this district are 15 feet in the front, 5 ft. on the sides, and 20 ft. in the rear. The existing house is setback 15 ft. in the front, 5.5 ft. on the sides, and 71.4 ft. in the rear.
2. Because the PD does not specify setbacks for generators, the requirements of Chapter 38 apply. A minimum 10 ft. side yard setback is required for a generator when located along the side of a principal residence. A 5 ft. side yard setback is permitted if the generator is located in the rear yard.
3. A 2016 Zoning Code amendment reduced the required setback for generators located along the side of a principal residence from 30 ft. to 10 feet.
4. The applicant is proposing to locate the generator on the northeastern side of the house. The existing a/c unit is located on the southwest side of the house.



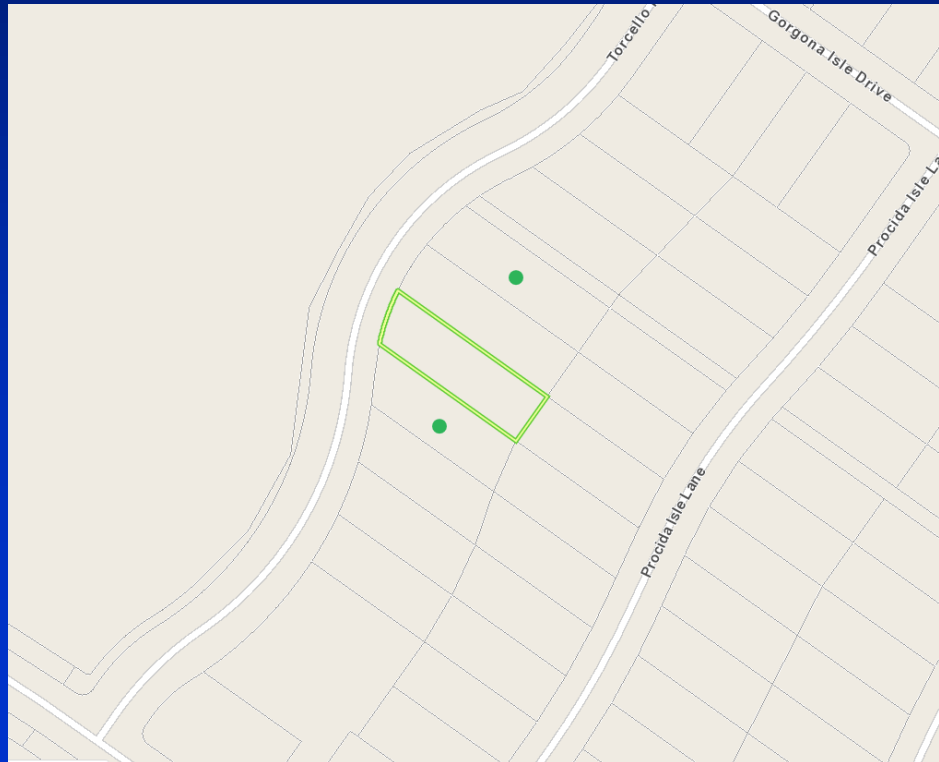
Staff Analysis

5. The proposed generator performs a self-test every week for twelve (12) minutes. During this period, the generator operates as a noise level of 52 Decibels (Db). Normal conversation is 50 Db.
6. When the generator is operating at full power during a power outage, it operates at a level of approximately 65 Db, which is between the sound of conversation in a restaurant and a vacuum cleaner. This is approximately the sound of an a/c compressor.
7. The generator could be located to the rear of the pool enclosure and comply with all of the required setbacks for generators.
8. Staff recommended denial as there are no special conditions and circumstances which are peculiar to the property, the request is self-created as the applicant could locate the generator in a conforming location to the rear of the pool cage and granting the variance would confer a special privilege, as others have installed permanent generators in compliance with this provision of the code, which were significantly reduced in 2016. Denying the variance would not deprive the applicant of a generator in a conforming location.



Public Feedback

- Staff mailed out 22 notices within a 500 ft. radius
- Staff received 2 letters in support of the request
- Staff received 0 letters in opposition to the request





Variance Criteria

Section 30-43 (3), 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 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 Privileges 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



BZA Findings

- The BZA had concerns regarding the proposed location, the fumes that may be created by the generator, and as this is in a Planned Development the applicant may seek a waiver through the Development Review Committee for the entire subdivision.



BZA Recommendation

- A motion was made to deny the request, which failed due to a tie vote. A subsequent motion was made to approve the request, which also resulted in a tie vote; therefore, the result is a de facto denial.



Conditions of Approval

1. Development in accordance with the site plan dated August 15, 2018, 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 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.



Requested Action

- Approve the applicant's request; or
- Approve the applicant's request with modifications and/or conditions; or
- Deny the applicant's request.

***Any approval is subject to standard conditions of approval.**