



## Interoffice Memorandum

September 24, 2021

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: October 26, 2021 – Board called Public Hearing  
Applicant: Whispering Oaks (Brianne Heffner)  
BZA Case #SE-21-07-063, August 5, 2021; District 6

Board of Zoning Adjustment (BZA) Case # SE-21-07-063, located at N. Hiawasse Rd. Orlando, FL 32818, in District 6, is a Board called public hearing. The applicant is requesting a special exception to allow a 3-story multi-family development to be located 30 ft. from the east property line in lieu of 100 ft. from the property line of a single-family dwelling district and use, and a variance to allow a maximum building height of 43 ft. in lieu of 35 ft. The subject property is located on the east side of N. Hiawasse Rd., south of Silver Star Rd.

At the August 5, 2021 BZA hearing, staff recommended approval of the special exception and the variance. The BZA recommended approval of the requested special exception and the variance with four conditions of approval by a 4-3 vote.

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.

**ACTION REQUESTED:** Deny the applicant's requests; or approve the applicant's requests with conditions. District 6.

**PLANNING, ENVIRONMENTAL, AND DEVELOPMENT SERVICES DEPARTMENT  
ZONING DIVISION PUBLIC HEARING REPORT**

**October 26, 2021**

The following is a Board called public hearing before the Board of County Commissioners on October 26, 2021 at 2:00 p.m.

**APPLICANT:** WHISPERING OAKS (BRIANNE HEFFNER)

**REQUEST:** Special Exception and Variance in the R-3 zoning district as follows:  
1) Special Exception to allow a 3-story multi-family development to be located 30 ft. from the east property line in lieu of 100 ft. from the property line of a single-family dwelling district and use.  
2) Variance to allow a maximum building height of 43 ft. in lieu of 35 ft.

**LOCATION:** N. Hiawassee Rd. Orlando, FL 32818, East side of N. Hiawassee Rd., south of Silver Star Rd.

**TRACT SIZE:** 10.14 acres

**ZONING:** R-3

**DISTRICT:** #6

**PROPERTIES NOTIFIED:** 142

**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 for each the Variance and Special Exception, and the reasons for a recommendation for approval of the Variance and Special Exception.

Staff noted that no comments were received in support and one comment was received in opposition.

The applicant and the engineer discussed the project, including the elevations, internal layout and the need for the variance and special exception.

There were 4 persons in attendance to speak in opposition to the request and none to speak in favor of the request. The members of the public expressed concerns regarding traffic, height of the buildings, and water runoff.

The BZA discussed the proposed site improvements, the permitted use of the site, the need for the variance, special exception, and the concerns that were discussed by members of the public.

The BZA recommended approval of the variance and special exception by a 4-3 vote, subject to the four (4) conditions in the staff report.

**BZA HEARING DECISION:**

A motion was made by Charles J. Hawkins, II, seconded by Juan Velez and unanimously carried to recommend APPROVAL of the Special Exception request in that the Board finds it met the requirements governing Special Exceptions as spelled out in Orange County Code, Section 38-78, and that the granting of the Special Exception does not adversely affect general public interest; and further, 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 (4 in favor, 3 opposed):

1. Development shall be in accordance with the site plan and elevations dated July 15, 2021, as modified by these 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. Permits shall be obtained within 4 years 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.

# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **AUG 05, 2021**

Case Planner: **Laekin O'Hara**

Case #: **SE-21-07-063**

Commission District: **#6**

## GENERAL INFORMATION

APPLICANT(s): **WHISPERING OAKS (BRIANNE HEFFNER)**

OWNER(s): **SP WHISPERING LLC**

REQUEST: **Special Exception and Variance in the R-3 zoning district as follows:**

- 1) Special Exception to allow a 3-story multi-family development to be located 30 ft. from the east property line in lieu of 100 ft. from the property line of a single-family dwelling district and use.
- 2) Variance to allow a maximum building height of 43 ft. in lieu of 35 ft.

PROPERTY LOCATION: **N. Hiawasse Rd., east side of N. Hiawasse Rd., south of Silver Star Rd.**

PARCEL ID: **13-22-28-0000-00-045**

LOT SIZE: **10.14 acres**

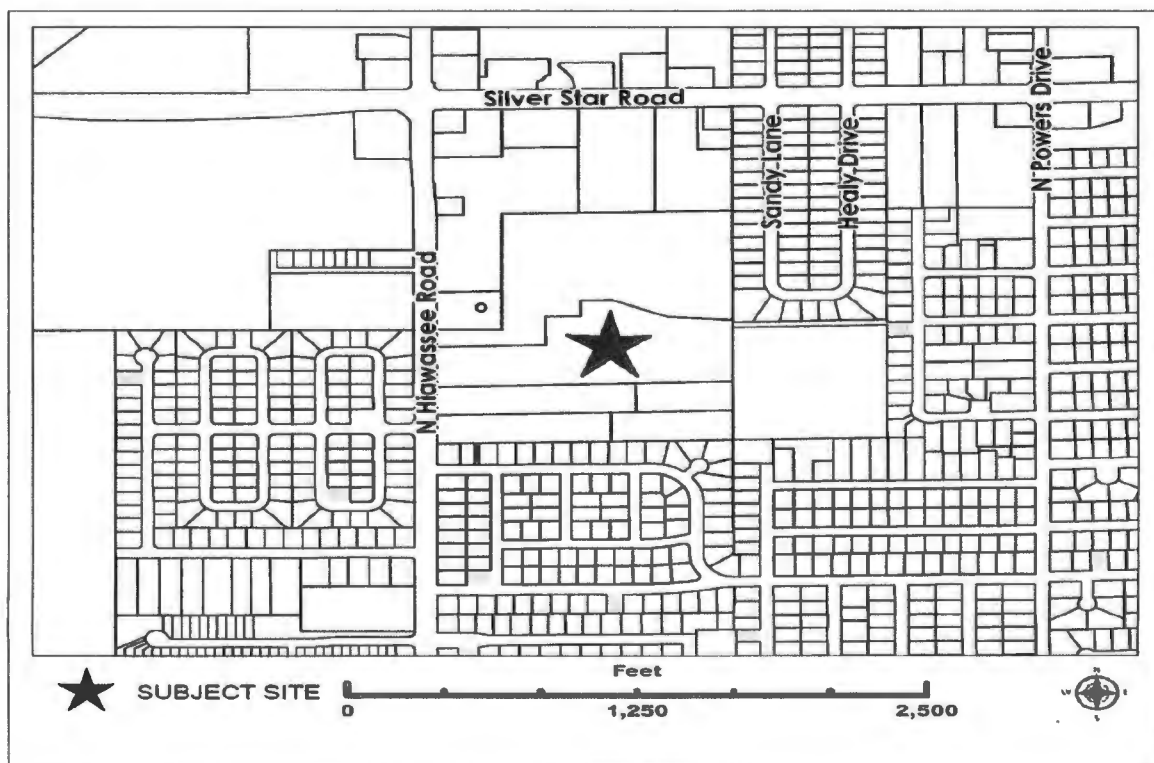
NOTICE AREA: **500**

NUMBER OF NOTICES: **142**

## STAFF RECOMMENDATIONS

Approval, subject to the conditions in this report.

## LOCATION MAP



---

**SITE & SURROUNDING DATA**

---

	Property	North	South	East	West
Current Zoning	R-3	R-3	R-1A	R-1A	R-2
Future Land Use	MDR	MDR	LDR	LDR	LDR
Current Use	Vacant	Multi-family	Vacant	Vacant	Single-family residences

---

**BACKGROUND AND ANALYSIS**

---

**DESCRIPTION AND CONTEXT**

The property is located in the R-3, Multiple-family Residential zoning district, which allows single-family homes and multi-family development.

The subject property is a 10.14 acre parcel, and is vacant. The area consists of single-family homes in the immediate vicinity, and multi-family units to the north.

The applicant is proposing to construct a 192 unit multi-family development, consisting of 8 multi-family buildings, a clubhouse, and a total of 384 parking spaces. It should be noted that the applicants cover letter references both 192 unit and 194 units, but they have since confirmed that the proposal is for 192 units. Each the multi-family buildings will be 42.41 ft. in height, and 3 stories.

Vehicular and pedestrian access to the site will be provided from Hiawasse Road to the west, including sidewalk connections from each of the buildings to Hiawasse Road. The proposed landscaping plan for the project will provide a landscape buffer with canopy trees and shrubs along the perimeter, meeting code.

The project also proposes a 1-story clubhouse with amenities, and a trash enclosure located near the main entrance. The buildings are proposed to be a minimum of 20 ft. from the west property line, 130 ft. from the south property line, 30 ft. from the east property line, and 10 ft. from the north property line, meeting the setback requirements. The south and east property lines abut single-family uses and districts, as well as to the west across Hiawasse Road. Orange County Code requires special exception approval for multi-family residential buildings in excess of 1-story less than 100 ft. from any single-family district and use. Therefore, the applicant is requesting a Special Exception to allow the multi-family 30 ft. from the east property line, which is the distance to the adjacent residential district, although the buildings will be located at least 191.4 ft. from the closest single-family residence to the east and 181.5 ft. across Hiawasse Rd. to the west.

In order to provide a more aesthetic design, the applicant is proposing a 43 ft. building height, which allows for a pitched roof for the 8 residential buildings in lieu of the max height allowed by the County Code of 35 ft., requiring a variance. The height is proposed to be more compatible with the nearby residential areas as well as the adjacent multi-family development to the north instead of a flat roof design that meets the building height code requirements.

Transportation has indicated that this project is located within the Alternative Mobility Area (AMA). An

ordinance is currently being considered that would remove it from the AMA. If that ordinance is adopted prior to permitting for this project, then a Capacity Encumbrance Application for transportation concurrency will be required.

As of the date of the preparation of this report, no comments have been received in opposition or support.

The parking requirements for the development:

Unit Type	Parking Requirement	Number of Units Provided	Required # of Spaces
3 units or more with 2 and 3 bedrooms	2 spaces/unit	192	384
Total			384

Based upon the above unit count, the total parking spaces required is 384 parking spaces. The applicant is proposing 384 spaces.

#### **District Development Standards**

	Code Requirement	Proposed
Max Height:	35 ft.	43 ft. (Variance)
Min. Lot Width:	85 ft.	231 ft. at the building line
Min. Lot Size:	15,000 sq. ft.	10.14 acres

#### **Building Setbacks (that apply to structure in question) (Measurements in feet)**

	Code Requirement	Proposed
Front:	20ft.	25 ft.(West)
Rear:	20 ft.	30 ft. (East)
Side:	10 ft. North/30 ft. South	10 ft. North (Multi-family) 130 ft. South (Single-family)

---

### **STAFF FINDINGS**

---

#### **SPECIAL EXCEPTION CRITERIA**

##### **Consistent with the Comprehensive Plan**

The Future Land Use is Medium Density Residential and with approval of the special exception, the project will be consistent with the Comprehensive Plan. The Future Land Use allows for a density of 20 dwelling units per acre and the Orange County Comprehensive Plan encourages infill development. The applicant is proposing 192 units on a 10.14 acre site for a density of 18.93 dwelling units per acre.

**Similar and Compatible with the Surrounding Area**

The scale and massing of the proposed buildings are designed to be within a reasonable scale and massing of a residential development. Beyond the abutting properties, there are multi-family uses to the north and the proposed development will be compatible with residences in the surrounding area.

**Shall Not Act as a Detrimental Intrusion into a Surrounding Area**

Due to the proposed architectural design, as well as the proposed landscaping and buffers, the proposal will not be a detrimental intrusion to the surrounding area since the zoning district boundary is only 30 ft. away. The nearest building will be located over 181 feet from the closest adjacent single-family residence; however, the vast majority of the buildings are much farther from adjacent residences.

**Meet the performance standards of the district**

The development as proposed will meet the performance standards of the district with the exception of the requested variance for the height for aesthetics.

**Similar in Noise, Vibration, Dust, Odor, Glare, Heat Producing**

The characteristics and impacts of the multi-family residential development, as designed, is consistent with the surrounding uses in the area.

**Landscape Buffer Yards Shall be in Accordance With Section 24-5 of the Orange County Code**

The applicant has provided a landscaping plan, which addresses perimeter landscaping in compliance with section 24-5 of Orange County Code.

**VARIANCE CRITERIA****Special Conditions and Circumstances**

The special conditions and circumstances particular to the height requested, due to the increased pitch of the roof in order to provide an aesthetic design to more closely mimic and be compatible with the adjacent residential properties.

**Not Self-Created**

The need for the variance is not self-created in that the project is able to meet the Zoning Regulations pertaining to height through the replacement of the roof pitch with a less aesthetically desirable flat roof design.

**No Special Privilege Conferred**

Granting the height variance will also in-turn not confer special privilege since the restriction of building height meeting the literal interpretation of the code pertaining to height would preclude a superior exterior design.

**Deprivation of Rights**

Without the variance, the removal of the pitched roof to a flat roof that meets the height requirements would unnecessarily hinder the ability to provide a more desirable product.

**Minimum Possible Variance**

The request is the minimum possible variance to provide superior aesthetic design.

**Purpose and Intent**

The proposed building height will provide an appropriate exterior design that will be more compatible with adjacent properties than the strict adherence to the literal requirements of the Zoning Regulations.

---

**CONDITIONS OF APPROVAL**

---

1. Development shall be in accordance with the site plan and elevations dated July 15, 2021, as modified by these conditions of approval. 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. Permits shall be obtained within 4 years 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.

C: Brianne Heffner  
5403 W Gray St.  
Tampa, FL 33609

Mr. Abdul Alkadry  
1200 Hillcrest St. Suite 200  
Orlando, FL 32803



---

**COVER LETTER**

---

**HARRIS**

Harris CMI Engineers, LLC

*May 5, 2021*

**Orange County Zoning Division**  
201 South Rosalind Avenue, 1<sup>st</sup> Floor  
Orlando, Florida 32801  
(407)-836-3111

**Re: Whispering Oaks  
Special Exception  
Parcel: 13-22-28-0000-00-045**

**To Whom It May Concern:**

The enclosed request is for a Special Exception to permit the construction of 192 multifamily units and associated infrastructure (parking, amenities, stormwater management, utilities, etc), on Orange County Parcel 13-22-28-0000-00-045. The parcel is currently vacant with no structures present. The project proposes a multifamily use with associated amenities, totaling 87,000 square feet of roofed area. There is no existing parking on site and the proposed parking areas will be paved. The following narrative provides justification for how the request meets the six standards for special exception approval, as outlined in Section 38-78 of the Orange County Land Development Code.

- 1. The use shall be consistent with the comprehensive plan.**  
The comprehensive plan assigns a future land use designation of Medium Density Residential (MDR), which permits a density of 0 to 20 units per acre. This special exception requests a dwelling unit count of 194 which provides a density of 19.13 dwelling units per acre and is therefore within the allowed density per code.
- 2. The use shall be similar and compatible with the surrounding area and shall be consistent with the pattern of surrounding development.**  
The proposed project site lies south east of the intersection of Silver Star Road and Hiawasse Road. Based on the current development, the intersection provides commercial development at the core and the density progressively decreases in an outward trend. The proposed project site lies between commercial development and low density residential, thus the intended use of medium density aligns with the step-down pattern of development existing in the surrounding area. Directly north of this proposed development is Alta Westgate Apartments, a multi-family apartment site.
- 3. The use shall not act as a detrimental intrusion into a surrounding area.**  
Commercial and medium density residential developments already exist in the vicinity of the project. The use is consistent with the comprehensive plan (MDR) and the zoning map (R-3: multifamily residential buildings in excess of one story in height within 100 feet of the property line of any single-family dwelling district and use is a permitted use by special exception).

1200 Hillcrest Street  
Suite 200  
Orlando, FL 32803

Telephone: 407-629-4777  
Fax: 407-629-7888  
www.harriscmiengineers.com

---

## COVER LETTER

---

4. **The use shall meet the performance standards of the district in which the use is permitted.**

Orange County Article X. Performance Standards permits a broad range of uses in certain commercial and industrial standard by establishing standards of performance for commercial and industrial activities, to protect residential districts from certain adverse effects of commercial and industrial activities, and to promote a safe and healthful environment in and near commercial and industrial districts. This proposed development meet the performance standards of R-3 Zoning.

5. **The use shall be similar in noise, vibration, dust, odor, glare, heat producing and other characteristics that are associated with the majority of uses currently permitted in the zoning district.**

The project proposes a multifamily residential use which is consistent with the noise, vibration, dust, odor, glare, heat producing, and other characteristics associated with the majority of the existing uses currently permitted in the zoning district.

6. **Landscape buffer yards shall be in accordance with section 24-5 of the Orange County Code. Buffer yard types shall track the district in which the use is permitted.**

Orange County Land Development Code Section 24-5 Buffer Yard provides Type A-Type F buffer yards to provide a separation between commercial and industrial uses with residential uses. The proposed project is zoned R-3 and intended to be developed with a residential use, which is a consistent use with the surrounding development, therefore no buffer yards are required by Section 24-5.

Additionally, the application requests a building height variance for the proposed project. Per Orange County Land Development Code Section 38-1501- Basic Requirements, the building height for the R-3 Zoning District is a maximum of 35 feet. This request is to increase the maximum building height to 43 feet. The following narrative provides justification for how the request meets the six standards for variance approval, as outlined in Section 30-43 (3) of the Orange County Land Development Code.

**1. Special Conditions and Circumstances**

The site has a challenging topography for development, sloping to the south and southeast. Based on the topographic survey conducted as a part of the site due diligence, the elevation changes from 111 feet from the center of the site to 74 feet at the southern boundary, over a 40-foot drop. Due to this extreme shift in elevation, the developable area is significantly reduced i.e. it is not physically or financially feasible to develop residential buildings over the southern portion of the site. The developer and architect have determined that going vertical with three-story buildings is the most effective and efficient way to maximize the development potential of this site.

**2. Not Self-Created**

The elevation changes and developmental challenges of the site are due to naturally occurring land masses and topography of the site.

---

## COVER LETTER

---

**3. No Special Privilege Conferred**

The variance to allow for additional height will not provide privileges to the applicant that have not been conferred to neighboring properties. Upon approval of the zoning variance request, the development will be consistent with the aesthetics of the neighboring community.

**4. Deprivation of Rights**

The Alta Westgate Apartments, located directly north of the applicant site and with the same zoning designation (R-3) as the applicant property, was developed with an elevation above 35'. Based on the attached elevation from the Orange County approved building plans, the Alta Westgate Apartments have a maximum elevation of roughly 43'. A denial of the applicant's request for a zoning variance permitting an elevation of 43' would be depriving the applicant of rights to develop a property in a manner in which has previously been approved by the board.

**5. Minimum Possible Variance**

The applicant is requesting a zoning variance to allow for a maximum building elevation of 43', or an additional 8' above the current maximum height of 35'. The current plans and elevations include three-story buildings with a roof pitch of 5:12. The pitch of the roof allows for increased flexibility of mechanical systems and duct work during the architectural design of the residential buildings. Additionally, a lower roof pitch could limit the integrity of the shingles. The current elevation is the minimum height in which the design capability associated with mechanical work is not restricted while also maintaining the integrity of shingles based on roof slope.

**6. Purpose and Intent**

The intent and purpose of the R-3 zoning district is to permit multiple-family dwelling properties at high population densities. Upon approval of the applicant's zoning variance request, the development will be consistent with this intent. The variance will provide the legal authority to develop the site with a multifamily property consistent with the density standards purposed by the zoning regulations.

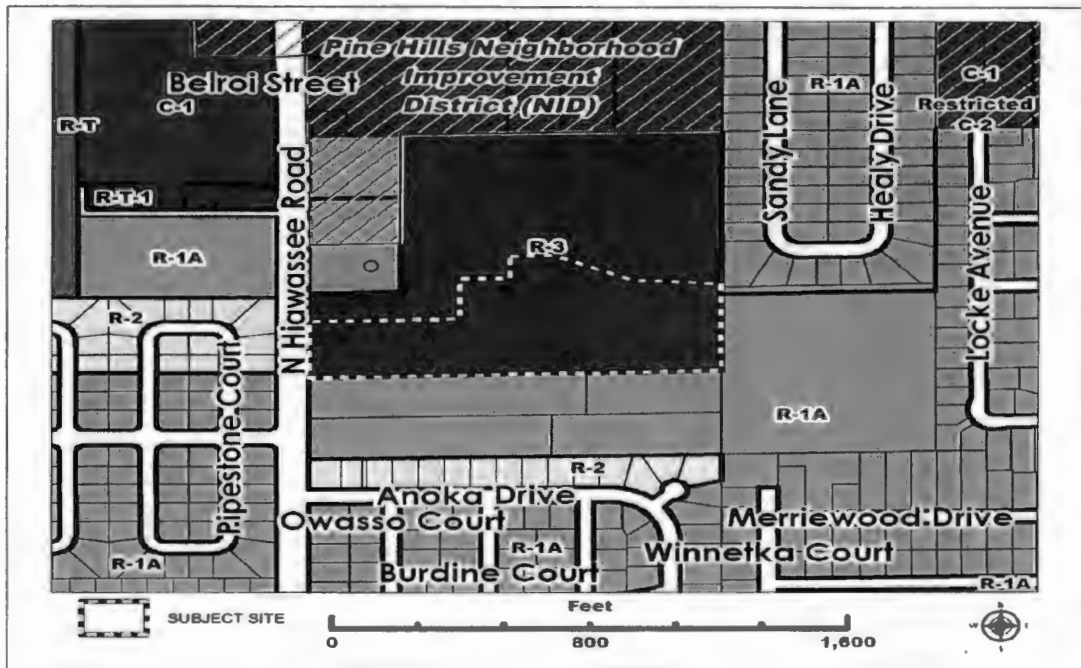
Should you have any additional questions or concerns, please do not hesitate to contact us at (407) 629-4777.

Sincerely,

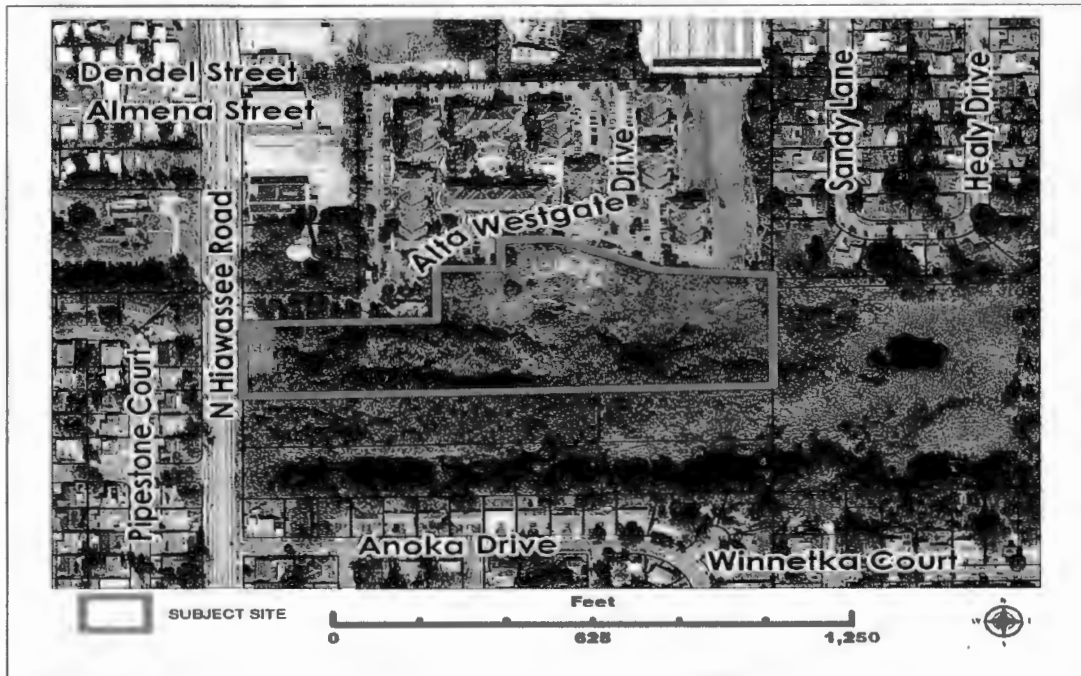
**HARRIS CIVIL ENGINEERS, LLC**

Abdul Alkadry, P.E.  
Project Manager

## ZONING MAP



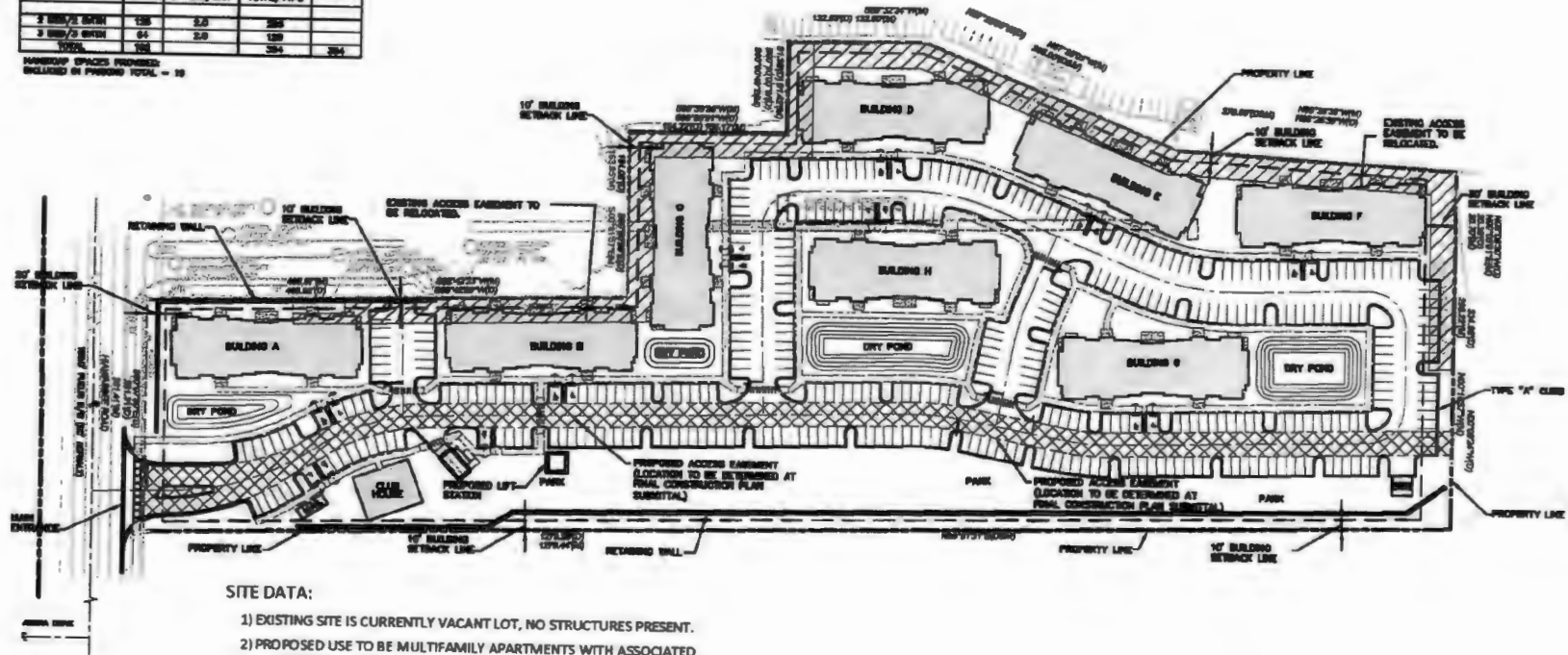
## AERIAL MAP



# SITE PLAN

PARKING CALCULATIONS				
UNIT TYPE	No.	SQ. FT./UNIT	TOTAL/TYPE	PROVIDED
2 BR/1.5 BATH	128	2.0	256	
3 BR/2.0 BATH	64	2.0	128	
TOTAL	192		384	384

MINIMUM SPACES PROVIDED  
INCLUDED IN PARKING TOTAL = 19

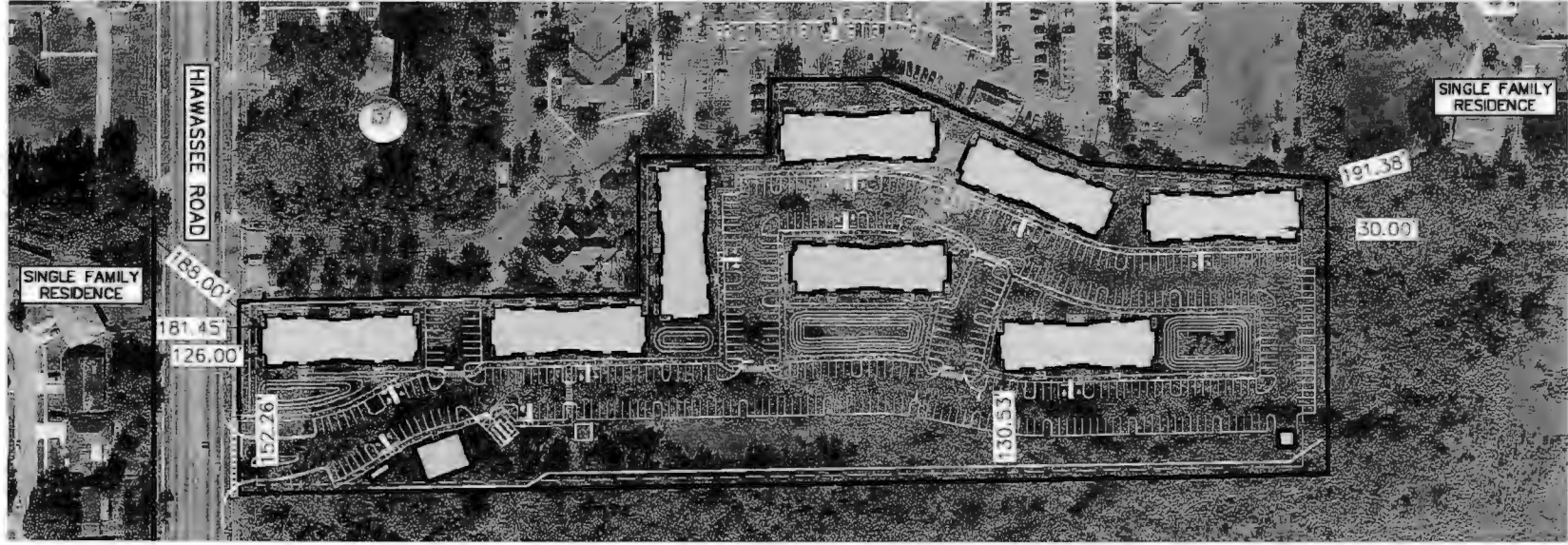


## SITE DATA:








- 1) EXISTING SITE IS CURRENTLY VACANT LOT, NO STRUCTURES PRESENT.
- 2) PROPOSED USE TO BE MULTIFAMILY APARTMENTS WITH ASSOCIATED AMENITIES = 87,000 S.F.
- 3) NO EXISTING PARKING ON SITE. PROPOSED PARKING TO BE PAVED.



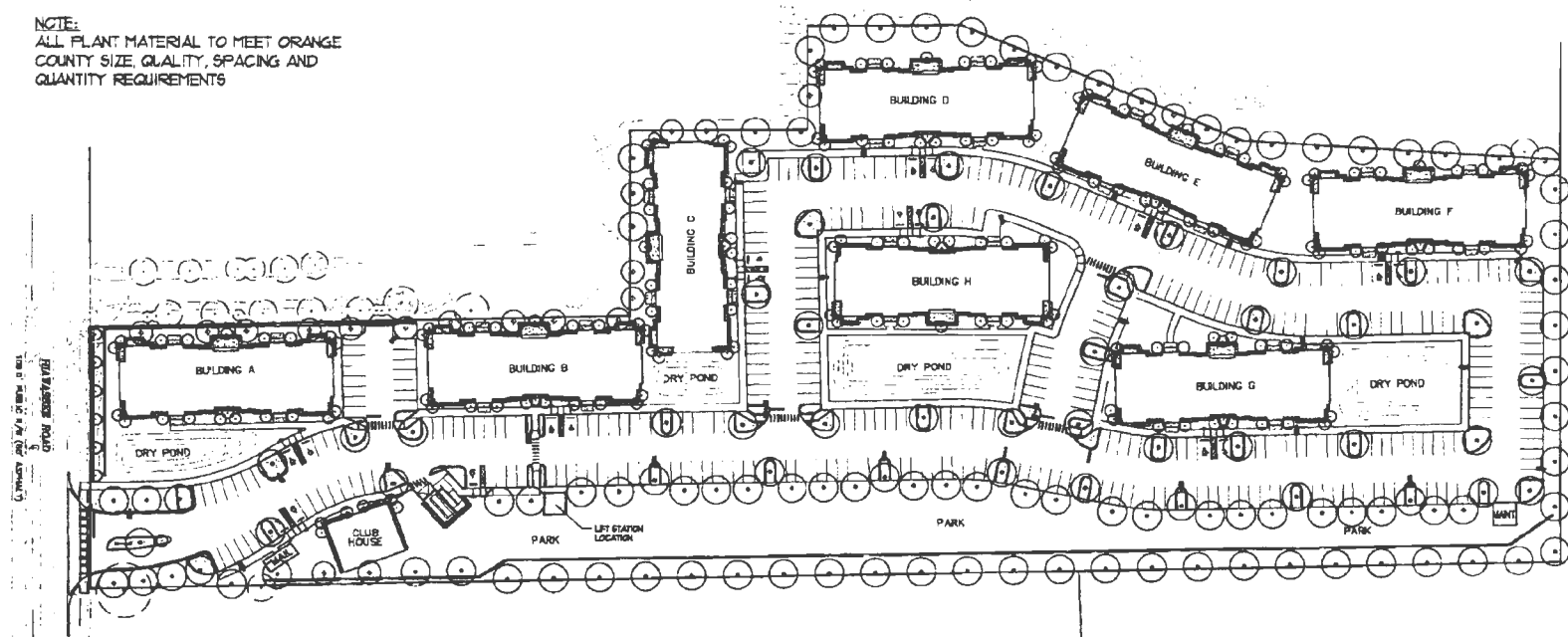
DISTANCE TO RESIDENTIAL PLAN



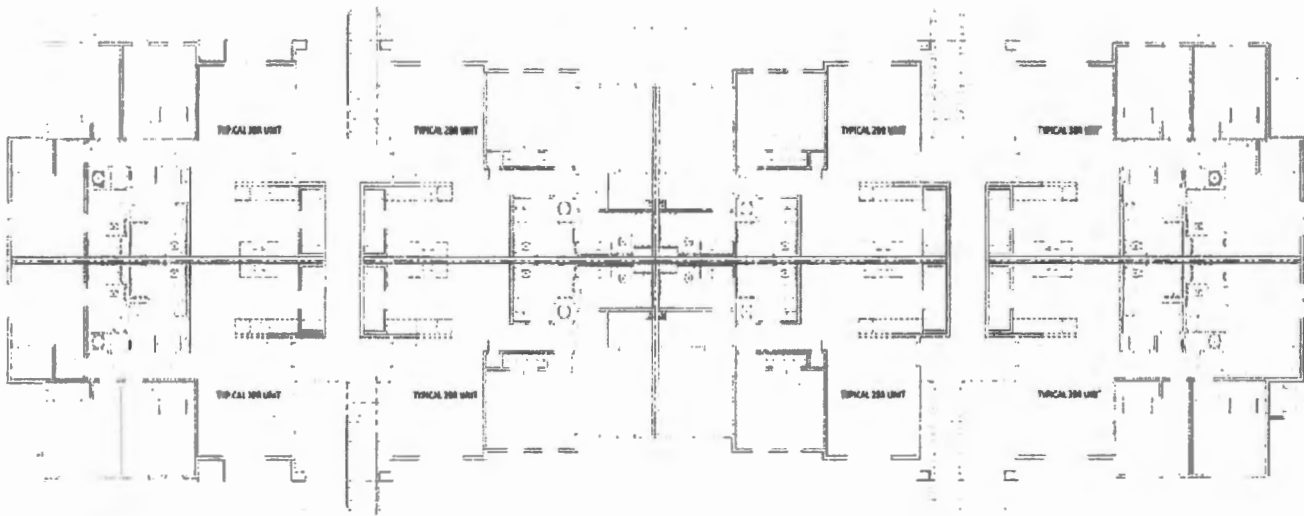
# LEGEND

- |   |                                 |   |   |
|---|---------------------------------|---|---|
|  | BROAD CANOPY TREE               |  | HEDGE & SHRUBS  |
|  | NARROW CANOPY TREE              |  | LOW SHRUB/GROUND COVER BED  |
|  | UNDERSTORY TREE                 |  | LED LIGHT TO MEET ALL COUNTY REQUIREMENTS FOR HEIGHT, FC OUTPUT, FULL CUT-OFF ILLUMINATION AND DARK SKY STANDARDS |
|  | EXISTING OFFSITE TREE TO REMAIN |   |   |

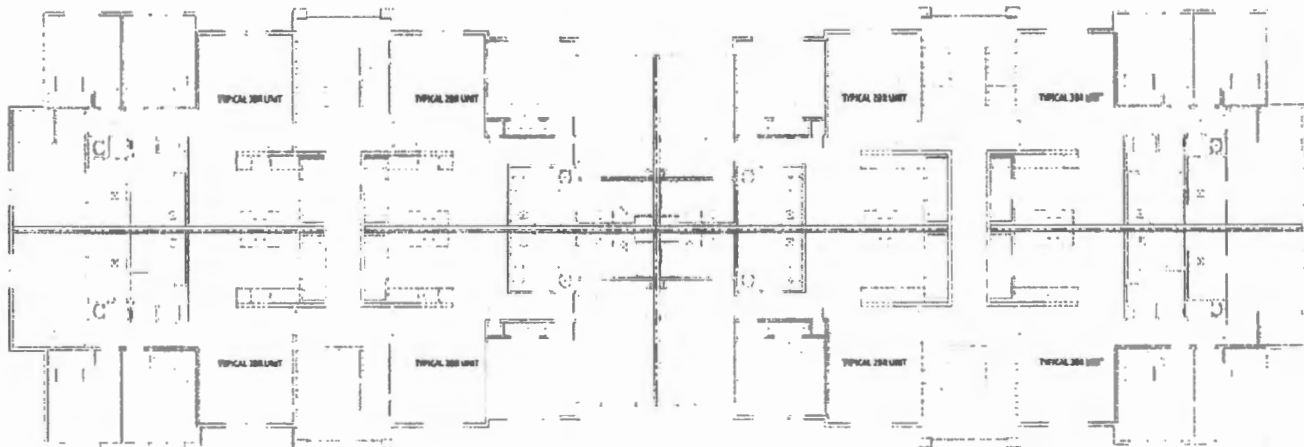
NOTE:  
ALL PLANT MATERIAL TO MEET ORANGE COUNTY SIZE, QUALITY, SPACING AND QUANTITY REQUIREMENTS



## TYPICAL FLOOR PLANS



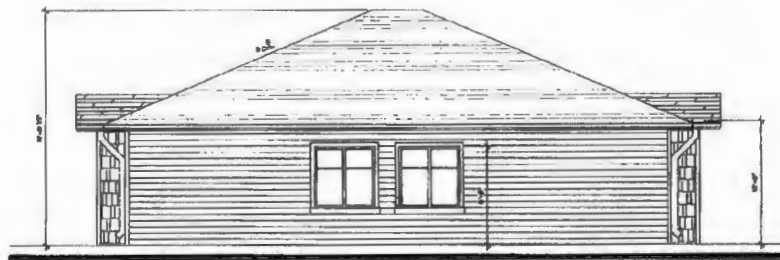
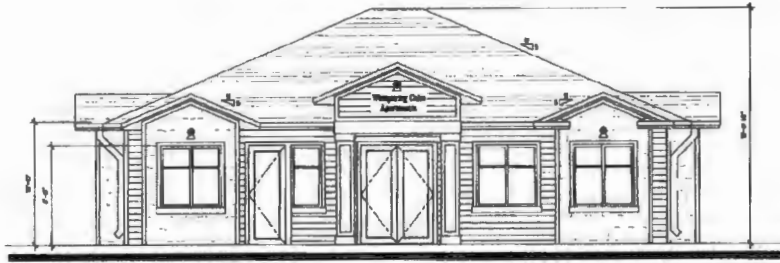
**Proposed Resident  
Building First Floor Plan**



**Proposed Resident  
Building Second Floor Plan**



## CLUBHOUSE ELEVATIONS



**Proposed  
Clubhouse Elevations**  
SCALE: 1/4" = 1'-0"

## TYPICAL BUILDING ELEVATIONS



**Proposed Resident  
Building Elevations**  
SCALE: 1/4" = 1'-0"

---

**SITE PHOTOS**

---



**View of property from adjacent SFR neighborhood to the east**



**View from front of property to nearest SFR across Apopka Vineland Road**

---

**SITE PHOTOS**

---



**Facing south on Hiawasse Road, subject site is on the left**



**ing subject property and multi-family to the north from Hiawasse Road**

Fac