



AGENDA

ORMOND BEACH BOARD OF ADJUSTMENT AND APPEALS

January 4, 2012

ORMOND BEACH CITY COMMISSION CHAMBERS

7:00 P.M.

- I. ROLL CALL
- II. APPROVAL OF THE MINUTES
 - A. September 7, 2011
- III. ADMINSTRATIVE ITEMS
 - A. Election of Chairperson and Vice-Chair.
 - B. Acceptance of 2012 BOAA calendar.
 - C. Approval of the 2012 Rules of Procedures.
- IV. NEW BUSINESS
 - A. **Case No. 12V-021: 739 Alcazar Avenue, garage addition side yard setback variance.**

This is a request for a side yard setback variance submitted by Donna Burch, property owner of 739 Alcazar Street, to construct a 23' by 12' garage addition which will square off the existing building. The subject property is zoned as R-3 (Single Family Medium Density), and Chapter 2, Article II of the Land Development Code (LDC), Section 2-15.9.c. requires a side setback to be a minimum of 8' from the property line to the principal structure and a combined side yard setback of 20' for both side yards. The current principal structure and proposed garage is located at 5.68' from the property line and the applicant requests a 2.32' variance to the side yard setback. In addition, the total combined side yard setback is 14.63' and the applicant requests a 5.37' combined side yard variance.
- V. OTHER BUSINESS
- VI. ADJOURNMENT

MINUTES
BOARD OF ADJUSTMENT

September 7, 2011

7:00 p.m.

City Commission Chambers
22 South Beach Street
Ormond Beach, Florida

I. ROLL CALL

Members Present

Ryck Hundredmark
Jean Jenner
Norman Lane
Dennis McNamara
Tony Perricelli

Staff Present

Richard Goss, AICP, Planning Director
Steven Spraker, AICP, Senior Planner
Ann-Margret Emery, Deputy City Attorney
Meggan Znorowski, Minutes Technician

II. APPROVAL OF THE MINUTES

The Board members voted to approve the minutes of the October 6, 2010 meeting, as presented.

III. OLD BUSINESS

There was no old business to discuss.

IV. NEW BUSINESS

A. Case No. 11V-103: 831 East Lindenwood Circle, playhouse, side yard variance.

Mr. Spraker advised that this request for a side-yard variance for the property at 831 East Lindenwood Circle for a playhouse. Mr. Spraker detailed the location of the variance request in relation to North Ridgewood Avenue and the middle school.

Mr. Spraker explained the history of the permit process, as follows:

- The owner began construction on the playhouse structure without a permit. The owner then applied for a permit.
- The building permit was issued in error with a 3' setback instead of a 7.5' setback.

- In July 2011, there was complaint issued with the Building Department Staff who made a site visit and inspected the structure and concluded there was an error. Staff talked to the side property owner and the rear property owner at 838 North Ridgewood Avenue. The side property owner did not have an objection to the encroachment. The property owner to the rear expressed an objection as to lack of privacy that the structure would cause based on the height and the scope. One solution discussed was not to put a window, thereby having a solid wall facing the property to the rear so no one could see into the adjoining property. That was agreed to by the applicant.
- The property owner then had two choices, either to move the structure or to apply for the variance. The applicant applied for the variance. Since the Building and Planning Department had a part in the error it was taken to the City Commission for the variance to be paid on the part of the applicant. Mr. Spraker made it clear that because the City paid for the application fee it does not mean the variance should or should not be granted on that alone and that the Board should look at all the information and testimony given to it before making a determination.

Mr. Spraker stated the Land Development Code (LDC) requires a 7.5' side yard setback and 7.5' rear yard setback for playhouses and that there is no maximum height limitation on a playhouse. Mr. Spraker said the height would revert back to the zoning district which is 30'. Mr. Spraker explained that the current location of the structure is 9'x12' and located 10' from the rear property line and 3' from the side property line requiring a 4.5' variance on the side property line.

Mr. Spraker advised that there is a letter from the side property owner stating that he has no objection to the encroachment. Mr. Spraker said staff was aware of objections from the rear property owner based on size and scope of the playhouse.

Mr. Spaker stated that the Planning Department believed the variance could be argued either way, but felt that moving the playhouse would create more of an impact to the rear property owner by virtue of the playhouse being more in the middle of the yard.

Mr. McNamara then called for the property owner to speak.

The applicant, Chris Remigio, 831 East Lindenwood Circle spoke. Ms. Remigio stated that when they initially began building the structure they did not know they needed a permit. Ms. Remigio said when they were made aware of same, they submitted plans for a permitted and everything was approved and began building again. Ms. Remigio stated that when it

came to their attention that there was a mistake, they again stopped building. Ms. Remigio stated that they understood the property owner's concerns, but that moving the playhouse is not going to change the concerns. Ms. Remigio believed that they are making concessions to the abutting property owner, such as no window on that side of the playhouse.

Mr. Perricelli asked why the applicant's did not want to move it to the other side of the pool.

Ms. Remigio responded that the playhouse was placed there because there is a door that goes to the outside on that side of the house and she can see them from her kitchen window and if it were placed on the other side of the house it would be behind her bedroom and she could not see the children unless she went outside. Ms. Remigio said the playhouse replaced a previously placed swing set and playhouse in the same location.

Mr. Lane asked what the downside of moving it straight towards the house but on the same side would be.

Ms. Remigio stated that they would be moving a large playhouse which is already 10' feet off the property line.

Mr. Lane stated that if they moved it diagonally would make the angle of viewing into the rear property owner's yard would be a lot less favorable. Mr. Lane asked if it would be feasible to move the playhouse closer to the applicant's house.

Ms. Remigio stated that even if they moved the playhouse closer to their house it would not change the side yard variance need.

Mr. Perricelli pointed out that there is a screened patio and the deep end of the pool is on that side and that the applicant is able to look out at the deep end of the pool.

Ms. Remigio stated that only if she goes to the back Florida room.

Mr. Perricelli stated that it seems like that if the applicant placed the playhouse on the other side of the house that the applicant wouldn't need a variance because there is plenty of room.

Mr. Lane asked if the issue was the placement but rather the fact that the applicant would have to move the structure.

Ms. Remigio answered yes because the playhouse is already built.

Mr. Lane asked if there was a concrete footing on that.

Ms. Remigio answered that there are no concrete footings but that they are poles set very deeply in the ground.

Tom Remigio, 831 East Lindenwood Circle, stated that the playhouse is sitting on utilities poles buried 3' in the ground and was built to what their permit was approved for. Mr. Remigio stated that they came with the intention of satisfying the needs to obtain the variance, but what he is hearing is the privacy issue in relationship to the rear yard neighbor. Mr. Remigio stated if the playhouse were to be moved to the other side of the yard and put it in compliance with the code of 7.5' from the fence, it would be closer to the rear property line. Mr. Remigio stated under this scenario, there would be no concessions. Mr. Remigio stated the variance is to accommodate the other property owner and feels that they will be less satisfied if they place the playhouse where the Board wants them to put it. Mr. Remigio concluded even if the playhouse is required to be torn down, it would be put back up and the variance would ease the burden of both people.

Mr. McNamara asked if the roof on the playhouse would be a shingle roof.

Mr. Remigio stated no, that it could not be a shingled roof and it had to be a plastic tarp roof.

Mr. McNamara then called for any of the neighbors to speak.

Jim Morris, Esquire, 420 South Nova Road, Daytona Beach, spoke on behalf of Lori La Sasso, the property owner to the rear of the applicant's property at 838 North Ridgewood Avenue. Mr. Morris stated that Ms. La Sasso objected to the variance. Mr. Morris passed out a pamphlet to the Board. Mr. Morris spoke to the standards of obtaining a variance and that the burden is on the applicant to prove their right to a variance. He stated that according to Chapter 2: District and General Regulations, Article III: General Regulations of the Land Development Code, the playhouse which was permitted by the City as a shed, is considered to be an accessory structure. He emphasized the portion as follows: "...accessory uses shall be similar in design, materials, and colors to the principal structure occupying the site." Mr. Morris stated that when a hard roof is placed on the playhouse it would not be a 7.5' rear yard setback, it is a 25' rear yard setback.

Mr. Morris addressed Mr. Perricelli's comment about the other area of the yard. Mr. Morris stated that the structure that was permitted by the City by accident and the City has no fault in this matter. Mr. Morris stated the Remigio's started construction that they did not have a permit for. Mr. Morris stated the City attempted to be kind and accommodate the

applicant by granting a permit. Mr. Morris stated that the idea that somehow the City is at fault here is simply untrue.

Mr. Morris directed the Board's attention to a diagram where he placed the playhouse pursuant to the 25' rear yard set back and the side yard setback which is necessary. Mr. Morris stated that the pictures of the building show that the playhouse has trusses as if one was to put plywood decking on it, not suspensions for canvas. Mr. Morris stated he was not sure how long before the canvas roof became a hard roof. Mr. Morris again stressed that the City of Ormond Beach's code required an accessory building to be compliant with Chapter 2, and if they have a hard roof they have to have a 25' rear yard setback.

Mr. Morris addressed the applicant's statements that either way Ms. La Sasso would be unhappy. Mr. Morris stated that she wouldn't be unhappy if the Board did not grant the variance because the applicant would have to go back through and work on their permit a little longer. Mr. Morris directed the Board to pictures in the pamphlet he handed out which were of the view from inside Ms. La Sasso's home looking at the playhouse, which shows the 3' porch on the playhouse which gives direct sight into her backyard, her pool, and the back of her home. Mr. Morris compared the playhouse to swing sets and stated swing sets are designed to be moved and not almost 15.7' tall. Mr. Morris said this playhouse is designed so that kids would be playing on the top of the back of this house. Mr. Morris stated if you look at the zoning restrictions of height in a single family residential area that it is 30', but it is 30', 25' away from the property line. Mr. Morris stated that if they cannot establish a hardship to the property that they are not entitled to receive the variance.

Mr. Morris addressed the application of variance criteria, numbers 1-8. Mr. Morris pointed out Paragraph 6 as to "other hazard to the public". Mr. Morris stated that in the building permit there is no information as to how the foundation was calculated to meet the City's wind-load standards. Mr. Morris stated that Ms. La Sasso was afraid of wind-blown debris in a storm. Mr. Morris outlined the process of conducting the tests that would determine the foundation of poles in the ground as a sufficient foundation. Mr. Morris referenced the language on the building permit in red which states: "These plans are conditionally approved as reviewed for compliance with adopted building/fire codes..." Mr. Morris stated that because the City made a mistake does not give the applicant a free pass and the City is entitled to correct any mistakes it may make. Mr. Morris stated if there are not foundation computations for the playhouse, they certainly have to be there and that information has to establish the uplift standards applied by the Building Code would be met by this structure. Mr. Morris directed the Board to Page 4 of the permit. Mr. Morris stated that the structure permitted by the City was a 6'x12' structure not a 9'x12'

structure. Mr. Morris stated to the Board that if they can avoid granting a variance, they should. Mr. Morris recapped his argument and deferred to the Board for their questions.

Mr. McNamara asked the Board if there were any questions for Mr. Morris. Having none, Mr. McNamara asked if there was any other member of the audience who would like to comment on this case.

Jason Ames, 821 East Lindenwood Circle, the property owner to the south of the applicant, stated that he felt that moving it would not solve anything and that it didn't matter where you move it because the fence is only 5' and they would have the same view no matter where it was placed.

Ann Margaret Emery, Deputy City Attorney for the City of Ormond Beach mentioned that as to the permit issue, she agreed that it is not relevant to the issue of whether or not the variance should be granted or not granted. Ms. Emery stated if anything, it was a mutual mistake and it is not considered a unilateral mistake. Ms. Emery said the permitting issue is not relevant to the determination of whether or not to approve or disapprove the variance. Ms. Emery concluded that she believes that Mr. Morris' legal assessment of the variance criteria is exact.

Mr. McNamara asked if it has to be permitted if it is a playhouse.

Mr. Spraker explained that there is a specific section dealing with the shed and utility structures and there is specific playhouse section. Mr. Spraker questioned at what point a playhouse becomes something you permit. He stated that this is one that definitely requires a permit.

Mr. Perricelli asked if it would need to be permitted if they were to buy one of the packaged playhouses and somehow put it in their backyard.

Mr. Spraker answered that if it is portable, he would say no, but once you start doing footings, foundations, or that scope of work, of actually constructing a structure, then yes it requires a permit.

Mr. Perricelli asked if it still requires the setbacks if it is portable.

Mr. Spraker explained that if it was portable, yes, but if it does not meet the setbacks, you can also move it easily. Mr. Spraker further explained that the City does not permit every playhouse that is built in the City of Ormond Beach.

Mr. Lane asked why they don't just pull it out of the ground and make it portable.

Mr. Spraker stated that it would take a little bit more work to make this playhouse portable.

Mr. Lane asked if accessory buildings have to be the same style of the house, but lots of people have playrooms or a screened porch for a pool-are they accessory buildings?

Mr. Spraker explained that there are certain exemptions. Mr. Spraker stated that accessory uses are trying to mimic the house so you keep the characteristics. Mr. Spraker said that there are some accessories that are not going to match the house, such as a playhouse, shed, or screen enclosure. Mr. Spraker said what would be required to mimic the house are things such as a detached garage, which would have to match the characteristics of the house.

Mr. Lane then asked if they could legally place a canvas roof on this playhouse.

Mr. Spraker answered yes.

Mr. Lane asked if the uplift calculations are a requirement if the structure had a canvas roof.

Mr. Spraker explained that he spoke to the Chief Building Official who has stated that this structure does not require uplift calculations based on the size of the playhouse. Mr. Spraker stated that the building code has exemptions for accessory structures under which this playhouse would qualify. Mr. Spraker also stated that the Chief Building Official has inspected the structure and is very comfortable with the way it is being constructed and he has been monitoring the process of this. Mr. Spraker concluded that this is a very sound and safe structure.

Mr. Hundredmark stated that Mr. Morris refers to the structure as a shed and the applicant referring to the structure as a playhouse, and in Mr. Spraker's opinion was it a shed or a playhouse?

Mr. Spraker answered that it is a playhouse.

Mr. Jenner stated that it is a really big playhouse; he understands that the pylons go 3' into the ground, and that they are cut down telephone poles. Mr. Jenner asked if there was a requirement for wind lift conditions. Mr. Jenner then stated that he cannot support this for the reasons stated and for one more reason, precedent that this would create.

Mr. Perricelli stated the way the playhouse was built looks nothing like the picture in the permit with the canopy roof because it has trusses and it

looks like it has been built to have a hard roof just like how you would build a house and looks nothing like the playhouse you would buy in a store, a packaged unit.

Mr. Lane asked that as far as the variance, discussing the 3' setbacks, the applicants could place the playhouse 7.5' from the fence or anywhere else and would have exactly the same or worse privacy issue. He felt the privacy issue is not what should be discussed here. They should be talking about the variance.

Mr. Jenner stated that you cannot deny that the code is there to protect the people, and there is an appeal process to the code which is to show a hardship. Mr. Jenner further said that he cannot determine what the hardship is because there is an alternative to move the playhouse to the other side.

Mr. Morris directed the Board's attention to the permit. He stated that the permitted has the heading of Shed Residential Detached and that the Building Department didn't treat it as a playhouse because they gave it that description.

Mr. Remigio stated that he was told that the enclosed portion of the playhouse was the measurements they were going by and that the porch was not included in the dimensions of the permitted structure other than the porch being added on. The permit paperwork he submitted had all of the dimensions on it. Mr. Remigio stated that when this was categorized as an accessory structure for the playhouse, that they were not required to meet the principal building setback of 25'. Mr. Remigio stated that the speculation as to what kind of roof is going to be installed has no bearing on the variance application.

Mr. McNamara asked what roof was permitted.

Mr. Remigio stated the roof permitted was a canvas roof, and that was done because apparently when you put a hard roof on a building it becomes a principal structure. The canvas roof was to eliminate the necessity of the different setback.

Mr. Perricelli stated that he did not have a problem with the applicant building a playhouse for his kids as long as it is in the proper location.

Mr. Remigio stated that they were getting off on tangents and said that it is being scrutinized to the nth degree. Mr. Remigio stated the location is the problem, not the construction, not the type of roof, not the dimensions, but the location and the view into that yard. Mr. Remigio said there is nothing that this variance is going to cause other than unnecessary movement of

the structure for no satisfaction of anyone, and as far as setting a precedent, many sheds are in violation of setbacks.

Mr. Morris stated that the applicant has to meet the Board's standards and that the applicant has not met those standards, it is an argument of convenience. Mr. Morris stated that they should not have to show that they should be turned down, but rather on the applicant to show they should be approved.

Mr. McNamara called for any other comments from the public.

Mr. Lane commented that none of these cases are black and white, that it could be pretty easy to deny every case, but taking into account things like: does it hurt anybody and in this case there is no hardship. Mr. Lane stated he did not feel legally they could justify a variance.

Mr. Jenner responded to Mr. Lane by stating that they have criteria to give variances and not hurting anyone is not one of them. Mr. Jenner stated the Board cannot start granting variances based on it not hurting anybody.

Mr. Jenner made a motion to deny the variance.

Mr. Perricelli seconded the motion.

The vote was called: Mr. Perricelli, Mr. Jenner, and Mr. Lane voted to deny the variance; Mr. Hundemark and Mr. McNamara vote against denying the variance.

Mr. McNamara stated the variance is denied and that hopefully the City will work with the applicant to find another location.

Mr. Remigio stated that he is very happy with the way the City is working with them.

B. Case No. 11V-100: 198 South Atlantic Avenue (Souvenir City), building addition- side yard variance.

Mr. Spraker explained that this is an application for a side yard variance for 198 South Atlantic Avenue at the current Souvenir City. Mr. Spraker explained that it is an existing structure that is currently 30' from the property line and the applicant wants to build an addition approximately 10' and bring the building out. Mr. Spraker stated the applicant wants to renovate the building which will meet the City's architectural standards and reinvest in the building, and as part of that they want to add on. Mr. Spraker stated a portion of the building addition can be done as a permitted addition, but there is a portion of 85 square feet of which they

cannot meet the side yard setback. Mr. Spraker said the Land Development Code has a provision for squaring off of non-conforming buildings.

Mr. Perricelli asked if the applicant would be building past the roof line.

Mr. Spraker responded slightly. Mr. Spraker stated staff viewed this as an investment and is highly encouraging redevelopment and building investment in the A1A corridor. Mr. Spraker concluded that staff does believe it meets the squaring off provision of the Land Development Code.

Mr. Jenner stated that the applicant is his landlord and needs to disclose that. Mr. Jenner stated that he spoke with the City Attorney who stated that he could vote on the matter.

Mr. McNamara asked the applicant to address the Board.

Rick Dixon, P.E., 102 South Orange Street, New Smyrna Beach, authorized agent for the property owner stated that Mr. Spraker gave an excellent presentation regarding the squaring off of the building at approximately 9.75' to the front of the building and using this as an opportunity to upgrade the building itself.

Mr. Perricelli asked what the addition was for.

Mr. Dixon answered more retail space.

Mr. McNamara asked if they were changing the roof line.

Mr. Dixon answered no.

Mr. Perricelli asked if they were just going to come out straight.

Mr. Dixon answered that they were coming out straight 9.75', the existing sidewalk there so they are going over existing impervious area and that they are going to add additional landscaping area. Mr. Dixon stated they are adding landscaping on the two south corners which do not exist currently and embellish the front buffer.

Mr. Perricelli asked how far past the roof line they were building.

Mr. Dixon answered that the existing roof line is approximately 5' and they are going to be 9.75' to meet the set back.

Mr. Perricelli asked the depth of the sidewalk.

Mr. Dixon answered 12', and that the finished building would leave approximately two feet of the existing sidewalk which is the front setback line.

Mr. Perricelli asked if they were going to put impact glass in.

Mr. Dixon answered that they are going to upgrade the building and the City's architectural standards will be met.

Mr. McNamara asked if the building is empty.

Mr. Dixon answered no; it is the existing Souvenir city.

Mr. Jenner stated he thought it was exactly squaring off.

Mr. Perricelli made a motion to approve the variance.

Mr. Hundredmark seconded the motion to approve the variance.

The vote was called and approved unanimously.

IV. OTHER BUSINESS

Mr. Spraker advised that there were no applications for the month of October. Therefore the October meeting would be cancelled.

V. ADJOURNMENT

As there was no other business, the meeting was adjourned at 8:00 p.m.

Respectfully submitted,

Steven Spraker, AICP, Senior Planner

ATTEST:

Dennis McNamara, Chair

Minutes prepared by Meggan Znorowski.

Pursuant to section 286-0105, Florida Statutes, if any person decides to appeal any decision made by the board of adjustment with respect to any matter considered at this public meeting, such person will need a record of the proceedings and for such purpose, such person may need to ensure that a verbatim record of the proceedings is made, including the testimony and evidence upon which the appeal is to be based.

All persons appealing to the board of adjustment must be present, or represented at the public hearing scheduled for the consideration of his request. Failure to be present or to be represented, results in the automatic refusal by this board to grant permission for any variance. In order to allow the meeting to proceed in an orderly fashion, the board, by motion, may limit the time allowed for remarks concerning a specific agenda item to a maximum of thirty (30) minutes for city staff, the designated representative of the applicant and the designated representative of any organized group and to five (5) minutes for members of organizations and other individual speakers. Additional time shall be allowed to respond to questions from the board.

Persons with a disability, such as a vision, hearing or speech impairment, or persons needing other types of assistance and who wish to attend city commission meetings or any other board of committee meeting may contact the city clerk in writing, or may call 677-0311 for information regarding available aids and services.

CITY OF ORMOND BEACH

FLORIDA

PLANNING

MEMORANDUM

TO: BOAA Members

FROM: S. Laureen Kornel, AICP, Senior Planner

DATE: December 20, 2011

SUBJECT: BOAA Administrative Items

This is the first meeting of the Board of Adjustment and Appeals Board for the year 2012. There are several administrative items on the agenda including the election of the chairperson/vice-chairperson, calendar of meetings and the rules of procedures.

If there are any questions, I can be contacted at 676.3345 or by e-mail at kornel@ormondbeach.org. Thank you.

BOARD OF ADJUSTMENT AND APPEALS - 2012 CALENDAR

| Submittal Deadlines | Legal Notification* | Board Meeting Date |
|---------------------|---------------------|----------------------------------|
| November 1, 2011 | December 16, 2011 | <i>Wednesday, January 4</i> |
| January 2 | January 13 | <i>Wednesday, February 1</i> |
| February 1 | February 17 | <i>Wednesday, March 7</i> |
| March 1 | March 16 | <i>Wednesday, April 4</i> |
| April 2 | April 13 | <i>Wednesday, May 2</i> |
| May 1 | May 18 | <i>Wednesday, June 6</i> |
| June 1 | June 8 | <i>Wednesday, June 27</i> |
| July 2 | July 13 | <i>Wednesday, August 1</i> |
| August 1 | August 17 | <i>Wednesday, September 5</i> |
| September 4 | September 14 | <i>Wednesday, October 3</i> |
| October 1 | October 19 | <i>Thursday, November 1</i> |
| November 1 | November 16 | <i>Wednesday, December</i> |
| December 3 | December 14 | <i>Thursday, January 3, 2013</i> |

Note: Legal Notification consists of a legal ad in the newspaper, certified letters to abutting property owners and posting the property with a public notice sign. City staff will prepare the legal ad, the certified letters, and post the property as part of the application fee.

**RULES OF PROCEDURE
OF THE
BOARD OF ADJUSTMENTS AND APPEALS
FOR THE CITY OF
ORMOND BEACH, FLORIDA**

The Board of Adjustment and Appeals of the City of Ormond Beach, Florida ("Board") shall be governed by the terms of the Charter and Code of Ordinances of the City of Ormond Beach, the *Land Development Code* of the City of Ormond Beach, Florida, and the Rules of Procedure set forth herein and adopted by the Board.

SECTION 1. OFFICERS, MEMBERS AND DUTIES

1.1 Chairman. A Chairman shall be elected by the Board, in accordance with Section 1.16.A.6 of the *Land Development Code*. The Chairman shall decide upon all points of order and procedure subject to these rules, unless otherwise directed by a majority of the Board in session at the time. The Chairman shall appoint from the Board membership any committee found necessary to investigate matters before the Board. The Chairman shall sign all minutes of the Board and all pertinent correspondence.

1.2 Vice-Chairman. A Vice-Chairman shall be elected by the Board in accordance with Section 1.16A6 of the *Land Development Code*. The Vice-Chairman shall serve as Acting Chairman in the absence of the Chairman and, at such times, shall have the same powers and duties as the Chairman.

1.3 Secretary. The Secretary shall be the Director of Planning or the designee of the said Director. The Secretary shall keep all records, shall conduct all correspondence of the Board, shall cause to be given the required legal notice of each public hearing and shall generally take charge of the clerical work of the Board. The Secretary shall take, or cause to be taken, the minutes of every meeting of the Board. These shall show the record of all important facts pertaining to each meeting and hearing, every resolution acted upon by the Board, and all votes of members of the Board upon any resolution or upon the final determination of any questions, in dictating the names of members absent or failing to vote. The Secretary shall endeavor to present the final copy of the minutes to the Chairman for signature not later than five (5) days before the next regular meeting. The Secretary shall keep all records open to the public at all times during normal business hours (8:00 AM-5:00 PM), but shall in no event relinquish the original of any record to any person, unless such authority is granted by the Chairman of the Board.

1.4 Members. As required by the Land Development Code Subsection 1-16:A.2, members of the Board shall be appointed by the City Commission. Terms and conditions of appointment shall be governed by Article I, inclusive. Members shall provide the Secretary with their current home address and home and/or office telephone number, unless such information is made confidential by law. Such information shall be kept current by the members. In the event that a member of the Board shall be unable to attend a regularly scheduled meeting, the member shall notify the Secretary of the member's expected absence

no later than five (5) days before that meeting. The five (5) days notice of absence shall not apply to emergency absences beyond the member's control, nor to special meetings described in Subsection 2.2 below.

1.5 Viewing. The Board members shall make every effort to view any site being considered for recommendation. The Secretary shall provide each member with a map showing the subject site.

SECTION 2. MEETINGS

2.1 Regular Meetings. Regular meetings of the Board of Adjustment and Appeals shall be held on the first Wednesday of each month, at 7:00 P.M. in City Hall Commission Chambers. If the Chambers are not available, an alternate location shall be noted on the agenda and in all related advertising and notices. The time and place of the regular monthly meeting may be changed by affirmative vote of a majority of the Board.

2.2 Special Meetings. Special meetings of the Board may be called at any time by the Chairman, or at the direction of any three (3) members of the Board. At least seventy-two (72) hours advance notice of the time and place of special meetings shall be given by the Secretary or Chairman to each member of the Board.

2.3 Cancellation of Meetings. Whenever there is no business for the Board, or whenever so many members notify the Secretary of inability to attend that a quorum will not be available, the Chairman may dispense with the regular meeting by instructing the Secretary to give written or oral notice to all members not less than twenty-four (24) hours prior to the time set for the meeting.

2.4 Quorum. A quorum shall consist of four (4) members for the transaction of business.

2.5 Conduct of Meeting. All meetings shall be open to the public. The order of business at regular meetings shall be as follows:

- a. Roll Call
- b. Approval of the Minutes
- c. Unfinished Business, if any
- d. New Business and Hearing of Cases
- e. Board Comments, if any
- f. Adjournment

2.6 Continued Meetings. The Board may continue a regular or special meeting if all business cannot be disposed of on the day set, and no further public notice shall be necessary for resuming such a meeting if the time and place of its resumption is stated at the time of continuance and is not thereafter changed.

2.7 Adjournment. New items will not be heard by the Board after 10:00 PM unless authorized by a majority vote of the Board members present. Items which have not been

heard before 10:00 PM may be continued to a date and time certain, or to the next regular meeting, as determined by affirmative vote of the majority of the Board members present.

SECTION 3. VOTING

3.1 Vote. The affirmative vote of a majority of the members present and legally entitled to vote at any meeting shall be necessary to reverse any order, requirement, decision or determination of the Chief Building Official, or to decide in favor of the applicant on any matter. The Chairman shall have one (1) vote on all issues voted upon by the Board.

3.2 Voting Conflict of Interest. No member of the Board shall participate in any matter which would inure to the member's special private gain or loss, which the member knows would inure to the special private gain or loss of any principal by whom the member is retained, or to the parent organization or subsidiary of a corporate principal by which the member is retained; or which the member knows would inure to the special private gain or loss of a relative or business associate of the member without first disclosing the nature of the member's interest in the matter.

Such disclosure, indicating the nature of the conflict, shall be made in a written memorandum filed with the Secretary prior to the meeting in which consideration of the matter will take place, and shall be incorporated in the minutes. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the Board, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

In the event that disclosure has not been made prior to the meeting, or that any conflict is unknown prior to the meeting, the disclosure shall be made orally at the meeting when it becomes known that a conflict exists. A written memorandum disclosing the nature of the conflict shall then be filed within fifteen (15) days after the oral disclosure with the Secretary and shall be incorporated into the minutes of the meeting at which the oral disclosure was made. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the Board, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

Any member of the Board who, after written notice and public hearing, is found to have violated the provisions listed above, shall have the member's membership on the Board immediately terminated.

3.3 Abstention. All members of the Board shall vote in favor of, or in opposition to, all matters coming before the Board for vote, and such vote shall be recorded in the official records of the Board. However, no member shall vote upon any matter which would inure to the member's special private gain or loss; which the member knows would inure to the special private gain or loss of any principal by whom the member is retained or to the parent organization or subsidiary of a corporate principal by which the member is retained, other than an agency as defined in §112.312(2), *Florida Statutes*; or which the member knows would inure to the special private gain or loss of a relative or business associate of the member. Any member so required to abstain shall, prior to the vote being taken, publicly

state to the assembly the nature of the member's interest in the matter from which the member is abstaining from voting and, within fifteen (15) days after the vote occurs, disclose the nature of the member's interest as a public record in a memorandum filed with the Secretary, who shall incorporate the memorandum in the minutes.

3.4 Policy. It shall be the policy of the Board to provide sufficient findings of fact in making a decision on each issue pending before the Board. All findings of fact shall be based on the applicable standards and regulations contained in the Land Development Code, the information provided by the applicant, City Staff's review of the application and appropriate information or evidence and testimony presented at the public hearing.

SECTION 4. ATTENDANCE

Attendance of the Board of Adjustment and Appeal Board members shall be subject to the standards contained in the Code of Ordinances, Chapter 2 Administration, Article VI Boards, Commissions, Committees and Other Agencies, Division 1. Generally, Section 2-202, Attendance of Members, as amended.

SECTION 5. APPEALS AND APPLICATIONS

All appeals and applications shall be filed in the manner provided for in Article I of the *Land Development Code*.

SECTION 6. RESIDENCY REQUIREMENTS

All Board members must be residents of the City of Ormond Beach. A member who, after appointment or selection to the Board, ceases to be a resident of the city shall promptly tender a resignation, which shall be effective immediately upon its tender. Failure to resign shall result in the person's membership on the Board being terminated by the City Commission.

SECTION 7. APPLICATIONS

All applications for Board action shall be complete and filed in the manner provided for in the Land Development Code.

SECTION 8. CONDUCT OF HEARINGS

The applicant, their agent or attorney, must be present, at the public hearing before the Board of Adjustment and Appeal. Failure to be present, or to be represented, will result in the application being tabled until the next regularly scheduled meeting. The applicant shall be billed for any additional advertising costs associated with the failure to be present. If the applicant fails to appear before the Board of Adjustment and Appeal a second time, the Board may deny the application.

The order of procedure for each hearing shall be as follows:

8.1 In order to allow the meeting to proceed in an orderly fashion, the Board, by motion, may limit the time allowed for remarks concerning a specific agenda item to a maximum of thirty (30) minutes for City staff, the designated representative of the applicant and the designated representative of any organized group and to five (5) minutes for members of organizations and other individual speakers. Additional time shall be allowed to respond to questions from the Board. The Chairman may also direct speakers to limit their comments to issues which have not been previously stated;

8.2 The Chairman or the Chairman's designee, shall request that staff present the application;

8.3 The staff shall present its analysis and recommendations regarding the application;

8.4 The Board, with permission of the Chairman, may question staff regarding the application.

8.5 The applicant or the applicant's agent shall be afforded the opportunity to speak, typically 10 minutes unless extended by the Board, in behalf of the application;

8.6 Any Board member, with permission of the Chairman, may question the applicant or his agent;

8.7 The Chairman shall direct persons wishing to speak in favor of, or in opposition to, the application shall be allowed to do so after signing in and stating their name and address - such presentation shall be made at the podium and be limited to five (5) minutes unless extended by the Board;

8.8 The Chairman shall ensure that there is sufficient time allocated to the applicant to provide comments and to address questions, comments and recommendations raised by the public hearing;

8.9 After public comments, a motion is required to allow Board discussion of the application. Any Board member, with permission of the Chairman, may ask the Applicant, staff, or member of the general public a question regarding the application.

8.10 After Board discussion, a motion is required to approve, approve with conditions, or deny an application.

8.11 The Chairman will state the name of the Board member making the motion and the name of the Board member who seconded the motion.

8.12 The recording secretary will perform a roll call vote of each Board member for or against the proposed motion.

8.13 After the vote, the Chairman shall announce a summary of the vote.

8.14 After the vote, the Chairman shall close the public hearing

8.15 Arguments between the parties shall not be permitted - all remarks shall be addressed to the Chair;

8.16 Where there is no opposition to an application, the Chairman, by consensus of the Board and upon confirmation that all Board members have read the staff report, may waive the staff analysis;

8.17 Members shall at all times speak directly into the microphones to facilitate the recording of the meetings; and

8.18 Copies of any and all letters, exhibits, or any information not otherwise provided prior to the meeting are required to be presented to the recording secretary for inclusion in the Board minutes.

SECTION 9. DECISIONS

9.1 Time. Decisions by the Board shall be made in the form of a motion upon completion of the hearing.

9.2 Applicant's Rights. The Chairman shall inform the applicant of his or her right to appeal an unfavorable decision to the Circuit Court within thirty (30) days, and of his or her need to implement a successful decision by obtaining the necessary permits within twelve (12) months. In cases in which work requiring a variance began prior to consideration by the Board, and a request for a variance is denied, the Chairman shall inform the applicant that the City will take action to have offending structure(s) removed unless the City Commission decides otherwise, upon application for consideration by the applicant.

9.3 Notification. The Secretary shall send a copy of the Board's Order to the appellant or applicant within thirty (30) days of the date of decision by the Board. A copy of the Board's Order shall be inserted in the applicant's file and a copy of all Orders sent shall be attached to the Chairman's copy of the minutes.

9.4 Follow-up. The Planning Director or designee should keep the Board advised of all subsequent actions taken by the City and/or by the applicant in cases in which the Board has rendered a final decision.

SECTION 10. AGENDA

Each appeal shall be placed upon the agenda of the Board by the Secretary. The order shall be by the time of filing with the first application submitted appearing as the first case. There may be a cut-off date established by the Board after which no further cases shall be added to the agenda. If more than ten (10) cases appear on the agenda, the Secretary may first confer with the Chairman before a decision is made concerning the number of cases to be heard. The agenda of cases to be heard shall be mailed to each member of the Board and each alternate five (5) days before the regular meeting.

SECTION 11. RECONSIDERATION, REHEARINGS AND REAPPLICATIONS

11.1 Reconsideration. Once a motion has been adopted, the Board may reconsider that matter at the same meeting, provided a motion to reconsider is made by a member who voted with the prevailing side.

11.2 Rehearing.

11.2.1 Any aggrieved party may apply for a rehearing before the Board by filing a written statement setting forth what fact(s) or principle(s) of law which the party believes was overlooked by the Board.

11.2.2 The application for a rehearing must be filed in the same manner as was the original application and within thirty (30) days of the date of the Board's Order. All filing fees and notice requirements shall apply as for an original application.

11.2.3 The matter will be placed on the first available agenda and, before any debate or argument, the Chairman will entertain a motion for or against rehearing the case. The motion will be considered without argument or debate other than by the Board, by the applicant or his agent or attorney, and by the City. All debate and argument shall be limited to matters allegedly overlooked in the original hearing of the case. No new evidence whatsoever will be considered.

11.2.4 If a motion to grant the rehearing is approved, the case shall proceed as an original hearing. If the rehearing request is denied, the Board's original ruling shall be final as of the date of denial of the motion for rehearing.

11.2.5 No more than one request for rehearing shall be entertained in any case.

11.3 Reapplication. Upon denial of any application, and exhaustion of all appeals therefrom, no reapplication to the Board may be made unless:

11.3.1 There is an allegation in the application demonstrating that there has been a substantial change in facts or conditions, any such allegation being supported by a statement setting forth the specific nature of the change; and

11.3.2 At least six (6) months has expired since the action of the Board, or the denial of any appeal therefrom, whichever is last to occur.

SECTION 12. AMENDMENTS

These Rules of Procedures may be amended or modified by an affirmative vote of not less than four (4) members of the Board, provided that such amendment be presented in writing at a regular meeting and action taken thereon at a subsequent regular meeting.

SECTION 13. MOTIONS

Every motion shall require an affirmative vote of the majority of the Board members present and voting. Prior to polling the board, the Chairman shall announce the movant and the second.

SECTION 14. ROBERTS RULES OF ORDER

Any point of procedure not otherwise addressed by these Rules shall be governed by *Roberts Rules of Order, Newly Revised*.

PRESENTED IN WRITING at a regular meeting of the Board on January 4, 2012.

APPROVED at a regular meeting of the Board on_____.

DATED: January 4, 2012.

STAFF REPORT

City of Ormond Beach Department of Planning

DATE: December 23, 2011

SUBJECT: 739 Alcazar Avenue

APPLICANT: Donna Burch, Property Owner

FILE NUMBER: V-12-021

PROJECT PLANNER: S. Laureen Kornel, AICP, Senior Planner

INTRODUCTION:

This is a request for a single variance for side yard setback variance with two standards submitted by Donna Burch, property owner of 739 Alcazar Street, to construct a 23' by 12' garage addition which will square off the existing building. The subject property is zoned as R-3 (Single Family Medium Density). Chapter 2, Article II of the Land Development Code (LDC), Section 2-15.9.c. requires a side setback to be a minimum of 8' from the property line to the principal structure and a combined side yard setback of 20' for both side yards. The current principal structure and proposed garage is located at 5.68' from the property line and the applicant requests a 2.32' variance to the side yard setback. In addition, the total combined side yard setback is 14.63' and the applicant requests a 5.37' combined side yard under the same variance.

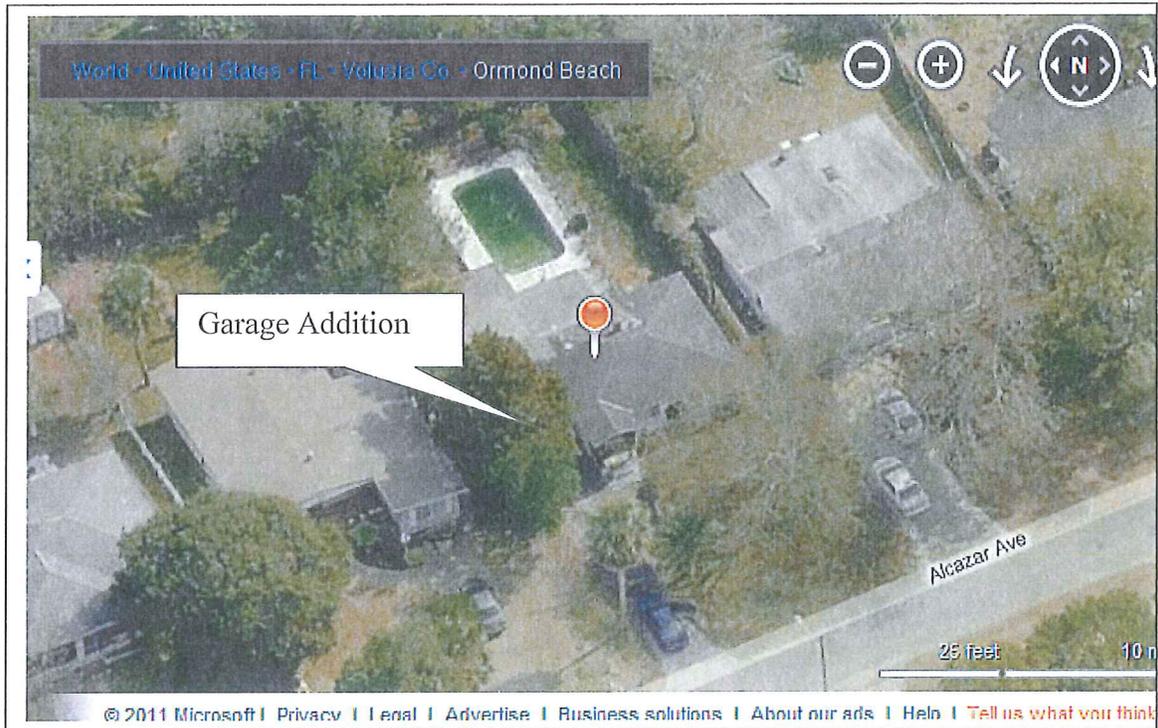
BACKGROUND:

The property is designated as "Low Density Residential" on the City's Future Land Use Map (FLUM) and is zoned R-3 (Single Family Medium Density) on the City's Official Zoning Map. The existing use of the property is consistent with the FLUM designation and zoning district. The adjacent land uses and zoning for the surrounding properties are listed below.

Adjacent land uses and zoning:

| | Current Land Uses | Future Land Use Designation | Zoning |
|--------------|--------------------------|------------------------------------|-------------------------------------|
| North | Single-Family House | "Low Density Residential" | R-3 (Single Family Medium Density) |
| South | Single-Family House | "Low Density Residential" | R-3 (Single Family Medium Density) |
| East | Single-Family House | "Low Density Residential" | R-2 (Single Family Low Residential) |
| West | Single-Family House | "Low Density Residential" | R-3 (Single Family Medium Density) |

Site aerial of proposed room addition:



The structure was built in 1955. The plat of this subdivision has a 50' front yard setback which the current house structure and proposed garage complies with. A search of historic files revealed that a permit to enclose the garage was approved on June 18, 1987. The Land Development Code at that time did not require that there be a garage. Since the construction of the house, it appears that the introduction of the side yard set back in the 1978 LDC have caused the principal structure to encroach into said set back and created the existing legal nonconformity. The Volusia County Property Appraiser's website shows that the applicants purchased the property in July of 1998.

The current Land Development Code requires that single-family residences have a garage. The application would bring this property into compliance with the Land Development Code requirements for a garage and make the property more functional for the property owner. Staff views the application as an investment into an older structure that assists in maintaining the residential quality of life in this area of the City of Ormond Beach.

ANALYSIS:

The current principal structure and proposed garage is located at 5.68' from the property line and the applicant requests a 2.32' variance to the side yard setback. In addition, the total combined side yard setback is 14.63' and the applicant requests a 5.37' combined side yard under the same variance. Per Chapter 2, Article V, Sec. 2-63. F., the City's Board of Adjustment and Appeals may review

variance requests to allow for the expansion of the nonconforming portion of a structure.

Potential Alternatives:

- 1. Grant the applicant's request and permit a 5.68' side yard setback, granting a 2.32' variance and a 5.37' variance to the required 20' combined side yard setback for a garage addition.**

The non-conforming variance criteria were established to allow property owners of non-conforming homes to square off existing homes. The existing structure has a 23' by 12' (276 square feet) area for which the property owner is seeking a garage addition. Allowing a variance for the 2.32' encroachment as well as the 5.37' to achieve the required 20' combined setback would allow the building and roof plane to remain consistent with the existing house and would not negatively impact surrounding property owners.

- 2. Deny the request as presented and approve a permit for the construction of the garage addition that is within the required side yard set back offset from the original principal structure.**

This option would allow a garage expansion of 23' by 9.68' (222.64 square feet). The room addition would be off-set by 2.32' feet from the existing building line, but the requirement of the 20' combined side yard setback would not be met. This alternative would not match the existing building and roof plane. The area of the addition to the principle structure would not be uniformly squared off.

Neighbor Input:

The abutting neighbors to the north and west have indicated with their signatures that they have no objection to the proposed structure to be built.

CONCLUSION:

Chapter 1, Article II, Section 1-16.D.2, of the Land Development Code states: "The Board of Adjustment and Appeals shall first determine whether the need for the proposed variance arises out of the physical surroundings, shape, topographical condition, or other physical or environmental conditions that are unique to the specific property involved and are not the result of the actions of the applicant. If the basis for the request is the unique quality of the site, the Board shall make the following required findings based on the granting of the variance for that site alone. If, however, the condition is common to numerous sites so that requests for similar variances are likely to be received, the Board shall base its findings on the cumulative effect of granting the variance to all who may apply."

The Board must consider the following criteria established in Chapter 1, Article II, Section 1-16.D.4, of the Land Development Code for the expansion of the non-conforming structure:

1. **The property where the structure is located meets the minimum lot area standards for the zoning district, as specified in Chapter 2, Article II.**

The R-3 zoning classification requires a total lot area of 8,625 square feet. The lot meets the square footage requirements.

2. **There are no other ways of altering the structure that will not result in increasing the nonconforming cubic content of the structure.**

As described above, there are no other ways of altering the structure that would meet the setbacks. One option is to perform an expansion of 9.68' rather than the requested 12'. The alternative would not match the existing building and roof plane and could cause issues with construction. Additionally, the garage addition would still require a variance for the combined side yard setback requirement of the zoning district. The proposed variance is the only way to construct a garage on the subject property.

3. **The proposed expansion will be consistent with the use of the structure and surrounding structures, given that the use is permitted by right, conditional use or Special Exception in the zoning district within which the structure is located.**

The existing single-family residential use is a permitted use in the R-3 zoning district and is consistent with the purpose of this zoning district.

4. **The proposed expansion effectively "squares-off" an existing building, or does not extend beyond the furthest point of an adjacent building on the site.**

One of the purposes for the addition at its proposed location is that it does square off the existing building. The squaring off provides both visual and structural advantages rather than requiring a 2.32' offset to the existing building. Based on existing property and roadway construction, the 2.32' encroachment is not noticeable and will not impact and surrounding property owners.

5. **The proposed expansion is in scale with adjacent buildings.**

The proposed addition squares off the existing building and has no additional impact to the scale with adjacent buildings. Adjoining property owners to the north and west have provided their signature that they have no issue with the expansion of the existing building at the proposed location.

6. **The proposed expansion will not impact adjacent properties by limiting views or increasing light and/or noise.**

The expansion will not impact adjacent properties by limiting views or increasing light or noise. The property owner has provided no objection

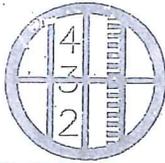
signatures from the surrounding property owners stating that they have no objection with the granting of this variance.

RECOMMENDATION:

It is recommended that the Board of Adjustments and Appeals **APPROVE** a variance for a 2.32' side yard setback and 5.37' to achieve the required 20' combined setback (Chapter 2, Article II, Section 2-15.9.c of the LDC) to allow a 23' by 12' garage addition to the existing house at 739 Alcazar Avenue.

Exhibit A

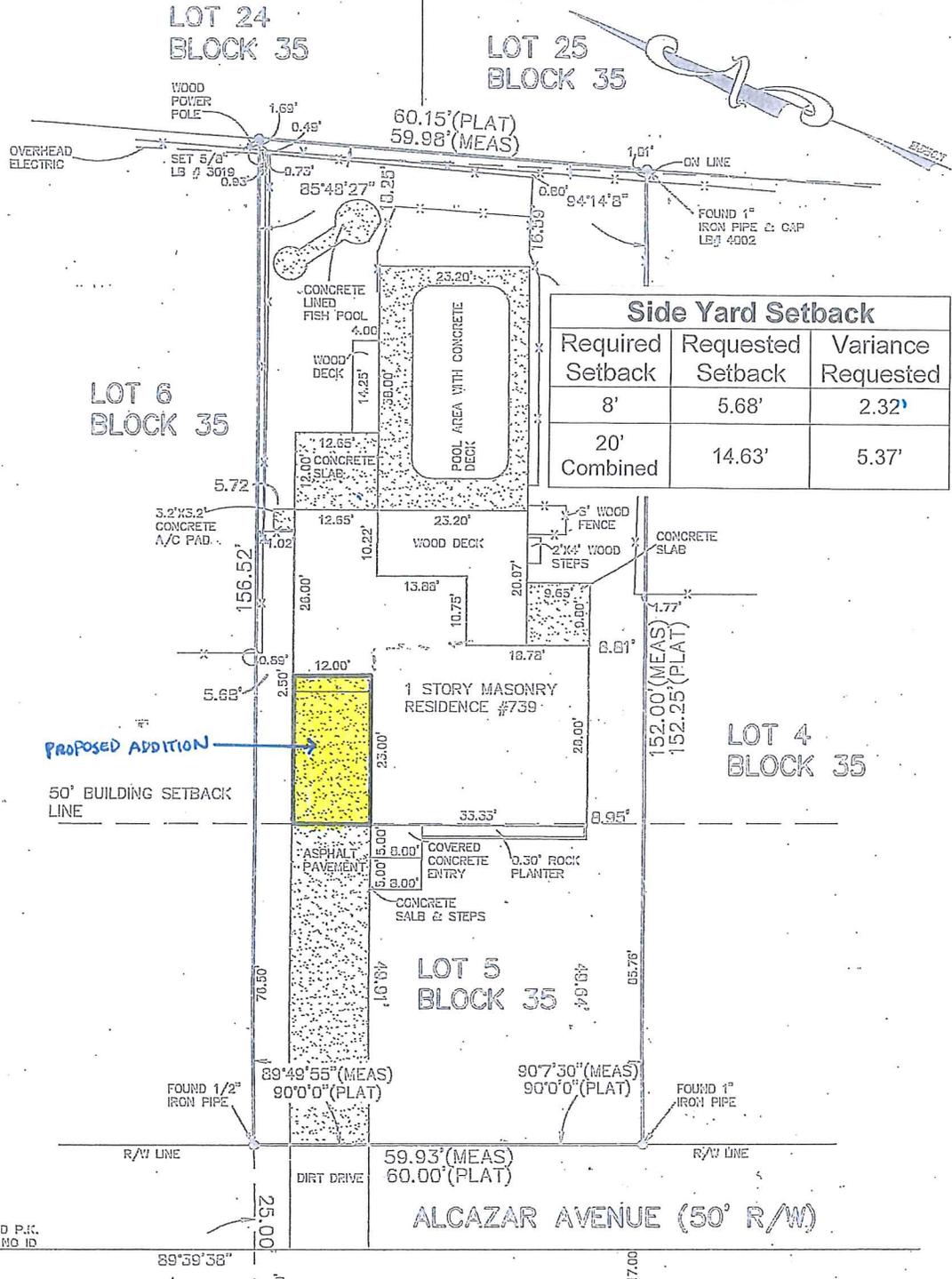
Variance Exhibit



SLIGER & ASSOCIATES, INC.

PROFESSIONAL LAND SURVEYORS

3921 SOUTH NOVA ROAD
 PORT ORANGE, FL 32127
 (904) 761-5385



| Side Yard Setback | | |
|-------------------|-------------------|--------------------|
| Required Setback | Requested Setback | Variance Requested |
| 8' | 5.68' | 2.32' |
| 20' Combined | 14.63' | 5.37' |

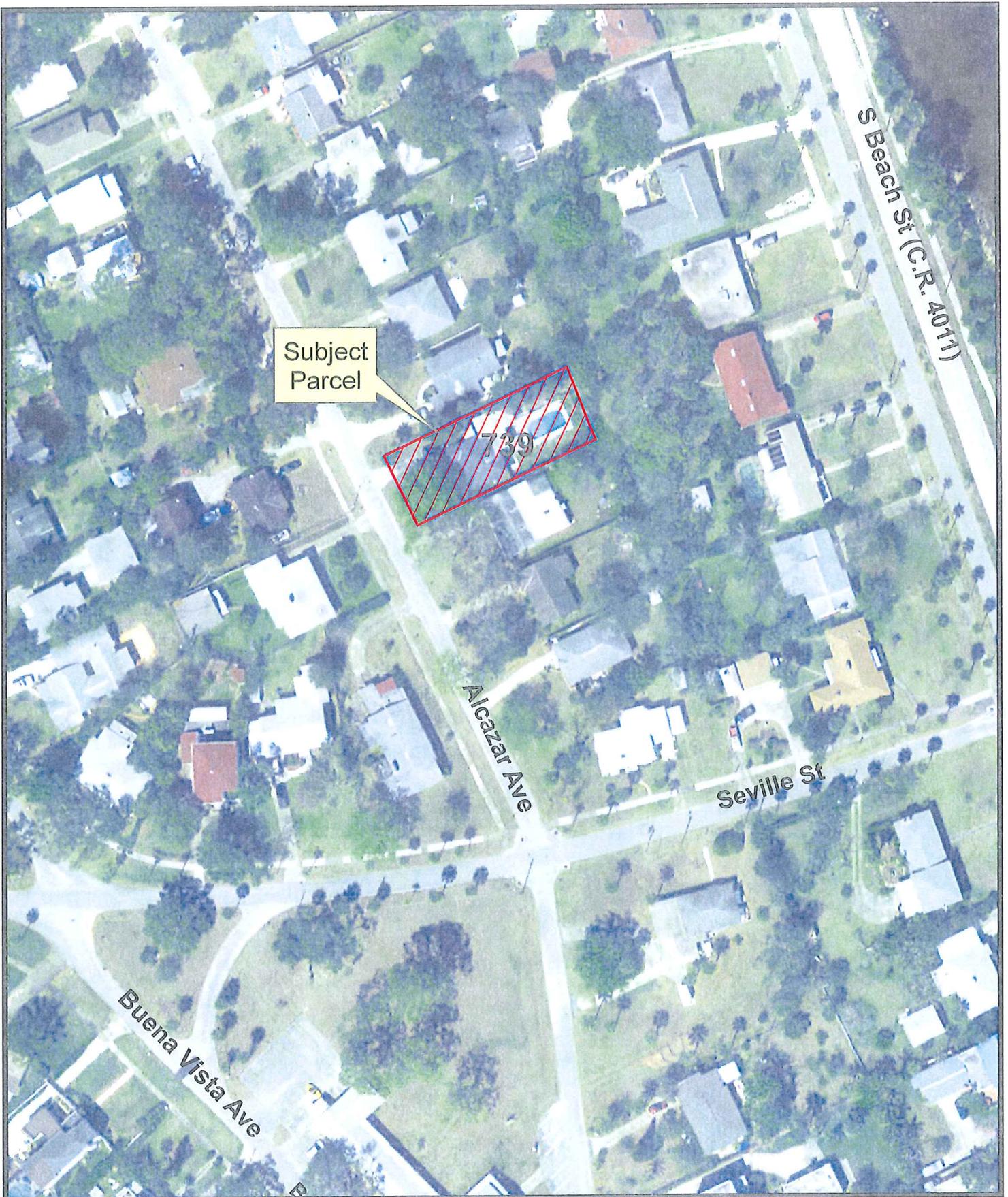
FOR: JIM WARD
 DESCRIPTION: LOT 5, BLOCK 35, RIO VISTA, AS RECORDED IN
 MAP BOOK G, PAGE 25, OF THE PUBLIC RECORDS OF VOLUSIA
 COUNTY, FLORIDA.

| ABBREVIATIONS | |
|---------------|---|
| A/C | ARC CENTER |
| R/W | RIGHT OF WAY |
| C | CENTERLINE |
| Δ | CENTRAL ANGLE |
| R | RADIUS |
| L | ARC LENGTH |
| CB | CHORD BEARING |
| FLCL CO. | FLORIDA POWER & LIGHT COMPANY |
| N.G.M.D. | NATIONAL GEODETIC VERTICAL DATUM |
| U.S.C. & G.S. | UNITED STATES COAST AND GEODETIC SURVEY |

| SHEET 1 OF 2 | |
|--------------|------------------------------|
| LEGEND | |
| ○ | IRON ROD WITH CAP |
| ○ | IRON PIPE |
| □ | CONCRETE MONUMENT |
| □ | PERMANENT REFERENCE MONUMENT |
| △ | PERMANENT CONTROL POINT |
| (R) | RADIAL LINE |
| (NR) | NON-RADIAL LINE |
| ○ | EXISTING ELEVATION |
| □ | PROPOSED ELEVATION |

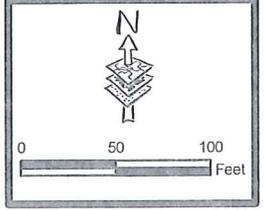
Exhibit B

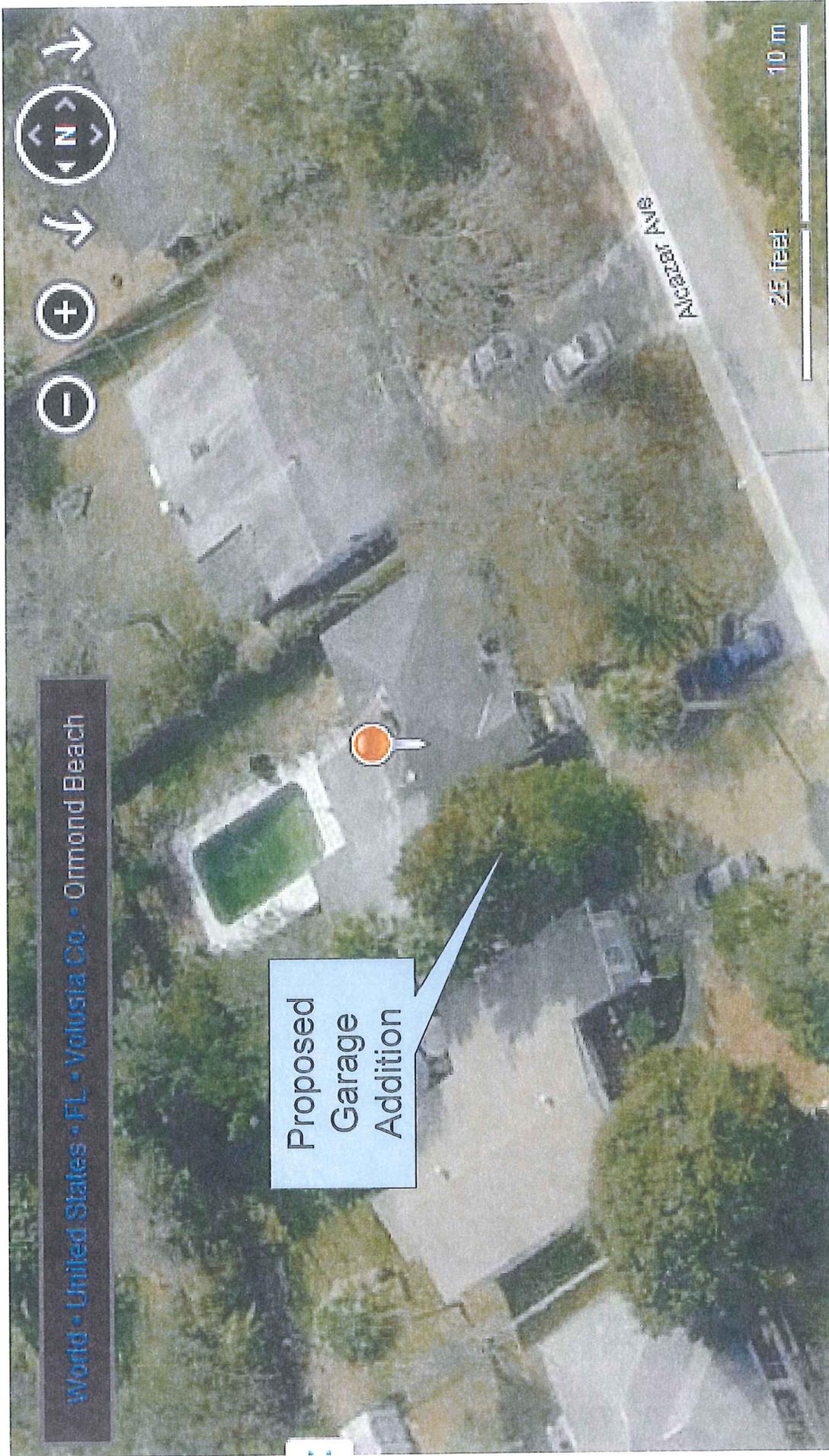
Location Map and
Photos



739 Alcazar Avenue Side Yard Variance

City of Ormond Beach G.I.S. Department
Prepared By: Steve Johnson 12/9/2011





World • United States • FL • Volusia Co. • Ormond Beach

Proposed
Garage
Addition



Area for proposed
Addition

739 Alcazar Avenue – 12.09.11



Request to
maintain
existing
building
plane

739 Alcazar Avenue – 12.09.11

Exhibit C

Applicant Provided
Information



CITY OF ORMOND BEACH

v5.3

Planning Department
22 South Beach Street, Ormond Beach, FL 32174
Tel: (386) 676-3238
www.ormondbeach.org comdev@ormondbeach.org

VARIANCE - APPLICATION

For Planning Department Use

Application Number VAR 12-021 Date Submitted NOV/30/11

VARIANCE TYPE

Please select appropriate application type

Residential

FEES

| | <u>Application</u> | <u>Advisory Board</u> | <u>Commission</u> | <u>Total*</u> |
|----------------------------|--------------------|-----------------------|-------------------|---------------|
| Residential and Commercial | 350 | 354 | N/A | 704 |
| After-the-Fact | 700 | 354 | N/A | 1054 |

*The total is calculated as the Application plus approximate Advisory Board and Commission Public Notification Fees. Depending on the actual costs, Staff shall refund any remaining balance or require additional payment.

APPLICANT INFORMATION

This application is being submitted by Property Owner Agent, on behalf of Property Owner

Name Donna Burch
Address 739 Alcazar Ave
City, State, Zip Code Ormond Beach, FL 32174
Telephone 386-795-0363
Email Address dburch@cfl.rr.com

If this application is being submitted by person other than the property owner, please provide the following Property Owner Information.

PROPERTY OWNER INFORMATION

Name Donna Burch
Address 739 Alcazar Ave
City, State, Zip Code Ormond Beach, FL 32174
Telephone 386-795-0363
Email Address dburch@cfl.rr.com

If the property owner does not reside on the property for which the application refers, please provide the following Property Details.

PROPERTY DETAILS

Address 739 Alcazar Ave Ormond Beach, FL 32174
Zip Code 32174
Parcel I.D. 42-14-32-20-35-0050
Legal Description LOT 5 BLK 35 RIO VISTA MB 6 PG 25 PER OR 4323 PG 1399

REQUEST

For the Board of Adjustment and Appeals to grant a variance, there must be special conditions or circumstances existing which are peculiar to a particular piece of land, structure or building. The variance should not request special privilege denied to other lands, buildings or structures, and must prove deprivation of rights commonly enjoyed by other property owners in the subject property area that results in an unnecessary hardship. The request should be the minimum possible to make reasonable use of the land and, if granted, should not be injurious to the area or materially diminish the value of the surrounding properties, alter the essential characteristics of the neighborhood or otherwise be detrimental to the public welfare or create a public nuisance. A purely financial hardship does not, except under extreme circumstances, constitute sufficient grounds for hardship.

Request

Adding a garage to square off the existing structure.

ABUTTING PROPERTY OWNERS

Please provide abutting property owner signatures or provide letters indicating position toward the request.

| Signature | Street Address | For | Against |
|--------------------|-----------------------------------|-------------------------------------|--------------------------|
| <i>Laurel Dobb</i> | 742 ALCAZAR AV ORMOND BEACH 32174 | <input type="checkbox"/> | <input type="checkbox"/> |
| | 745 ALCAZAR AV ORMOND BEACH 32174 | <input type="checkbox"/> | <input type="checkbox"/> |
| <i>Jan H Seal</i> | 733 ALCAZAR AV ORMOND BEACH 32174 | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

CRITERIA: CONFORMING

Section 1-16.D.3 of the Land Development Code requires that the Board of Adjustment and Appeals make a finding based on substantial competent evidence on each of the following 8 criteria. Additional pages, photographs, surveys, plot plans or other materials may be attached as exhibits.

NOTE: If the existing structure or property is nonconforming, complete the nonconforming criteria (page 4).

1. 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:

2. The special conditions and circumstances do not result from the actions of the applicant:

3. Literal interpretation of the provisions of these zoning regulations deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these zoning regulations and would work unnecessary and undue hardship on the applicant:

4. No practical alternative exists and the variance, if granted, is the minimum variance that will make possible the reasonable use of the land, building or structure:

CRITERIA: CONFORMING (continued)

5. The variance request is not based exclusively upon a desire to reduce the cost of developing the site. Financial disadvantages or physical inconvenience to the applicant shall not in and of themselves constitute conclusive proof of unnecessary hardship:

6. The proposed variance will not substantially increase congestion on surrounding streets, or the danger of fire or other hazard to the public:

7. The effect of the proposed variance is in harmony with the general intent of this Code and the specific intent of the relevant subject area(s) of the Code and will not substantially diminish property values in, nor alter the essential character of, the area surrounding the site:

8. Granting this variance requested will not confer on the applicant any special privilege that is denied by this Code to other lands, buildings or structures in the same zoning district:

CRITERIA: NONCONFORMING

Section 1-16.D.4 of the Land Development Code establishes separate criteria for the expansion of an existing nonconforming structure or portion of that structure. The Code requires that the Board of Adjustment and Appeals make a finding based on substantial competent evidence on each of the following 6 criteria. Additional pages, photographs, surveys, plot plans or any other materials may be attached as exhibits.

1. The property where the structure is located meets the minimum lot area standard for the zoning district, as specified in Chapter 2, Article II:

CRITERIA: NONCONFORMING (continued)

2. There are no other ways of altering the structure that will not result in increasing the nonconforming cubic content of the structure:

3. The proposed expansion will be consistent with the use of the structure and surrounding structures, given the use is permitted by right, conditional use or special exception in the zoning district within which the structure is located:

4. The proposed expansion effectively "squares-off" an existing building, or does not extend beyond the furthest point of an adjacent building on the site:

5. The proposed expansion is in scale with adjacent buildings:

6. The proposed expansion will not impact adjacent properties by limiting views or increasing light and/or noise:

CERTIFICATION

By submitting this application, I hereby certify that the information provided above is true and correct to the best of my knowledge and that I am aware of the application submittal requirements and review process for this application. I hereby authorize City of Ormond Beach Staff to place legal notice on my property and to take pictures pertaining to my request. I am aware of the required pre-application meeting and am aware that if all the submittal requirements are not provided, my application will be continued to the next regularly scheduled meeting.

Signed By: Donna Burch

Date: 11-30-11

Corporation

STATE OF FLORIDA) SS
COUNTY OF VOLUSIA)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, in their capacity as the _____, of _____ who is personally known to me or has provided identification.

Notary Public
State of Florida
My Commission Expires: _____

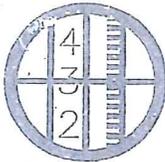
ATTEST: _____

Individual

STATE OF FLORIDA) SS
COUNTY OF VOLUSIA)

The foregoing instrument was acknowledged before me this 30 day of Nov, 2011, by Donna Burch, who provided FLDL, as identification or is personally known to me.

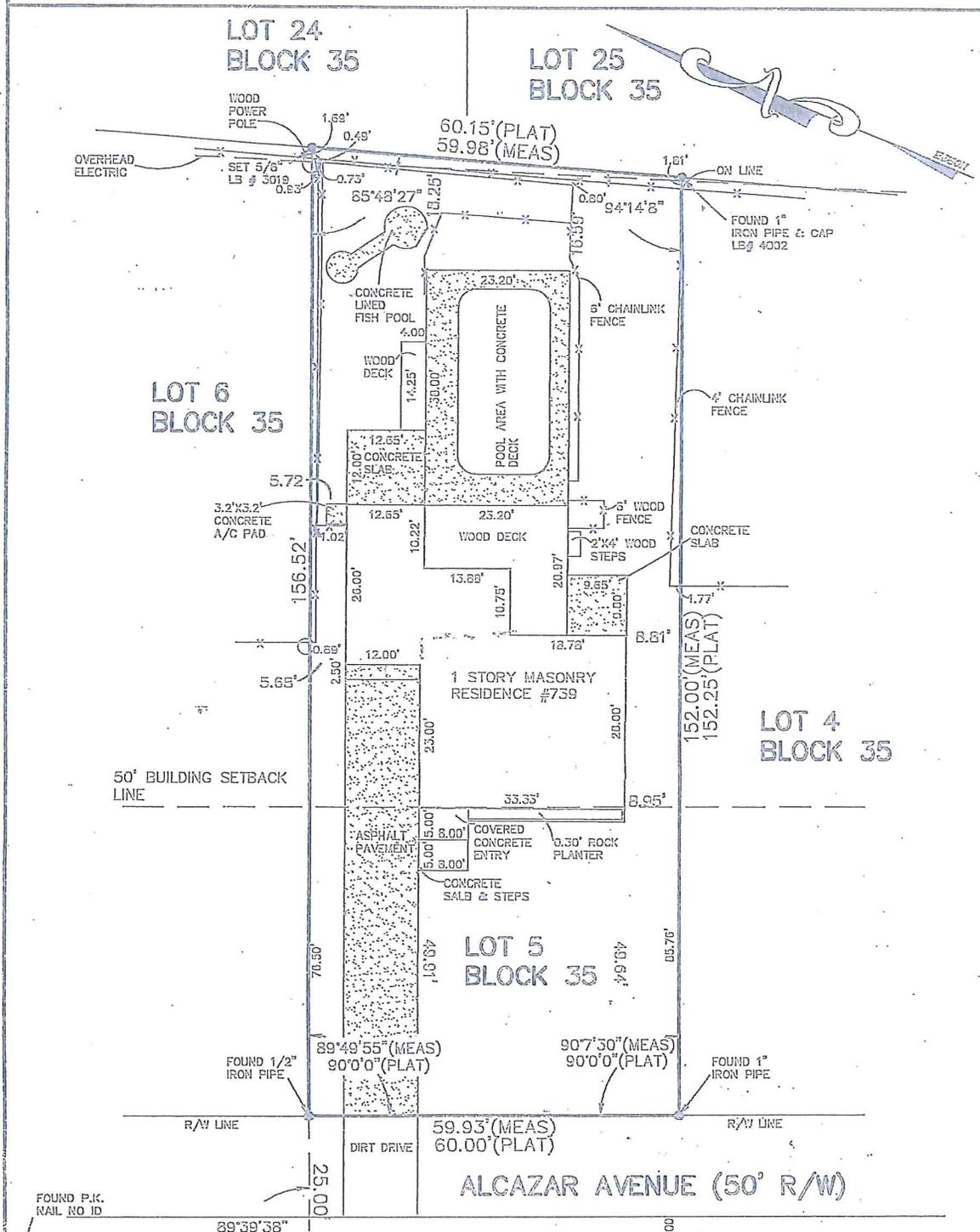
Sabrina M. Johnson
Notary Public
State of Florida
My Commission Expires: _____



SLIGER & ASSOCIATES, INC.

PROFESSIONAL LAND SURVEYORS

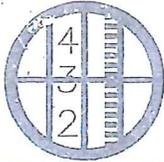
3921 SOUTH NOVA ROAD
PORT ORANGE, FL 32127
(804) 761-5365



FOR: JIM WARD
DESCRIPTION: LOT 5, BLOCK 35, RIO VISTA, AS RECORDED IN
MAP BOOK 6, PAGE 25, OF THE PUBLIC RECORDS OF VOLUSIA
COUNTY, FLORIDA.

| ABBREVIATIONS | |
|---------------|---|
| A/C | AIR CONDITIONER |
| R/W | RIGHT OF WAY |
| CL | CENTERLINE |
| Δ | CENTRAL ANGLE |
| R | RADIUS |
| L | ARC LENGTH |
| CS | CHORD BEARING |
| FP&L CO. | FLORIDA POWER & LIGHT COMPANY |
| N.S.G.D. | NATIONAL GEODETIC VERTICAL DATUM |
| U.S.C. & G.S. | UNITED STATES COAST AND GEODETIC SURVEY |

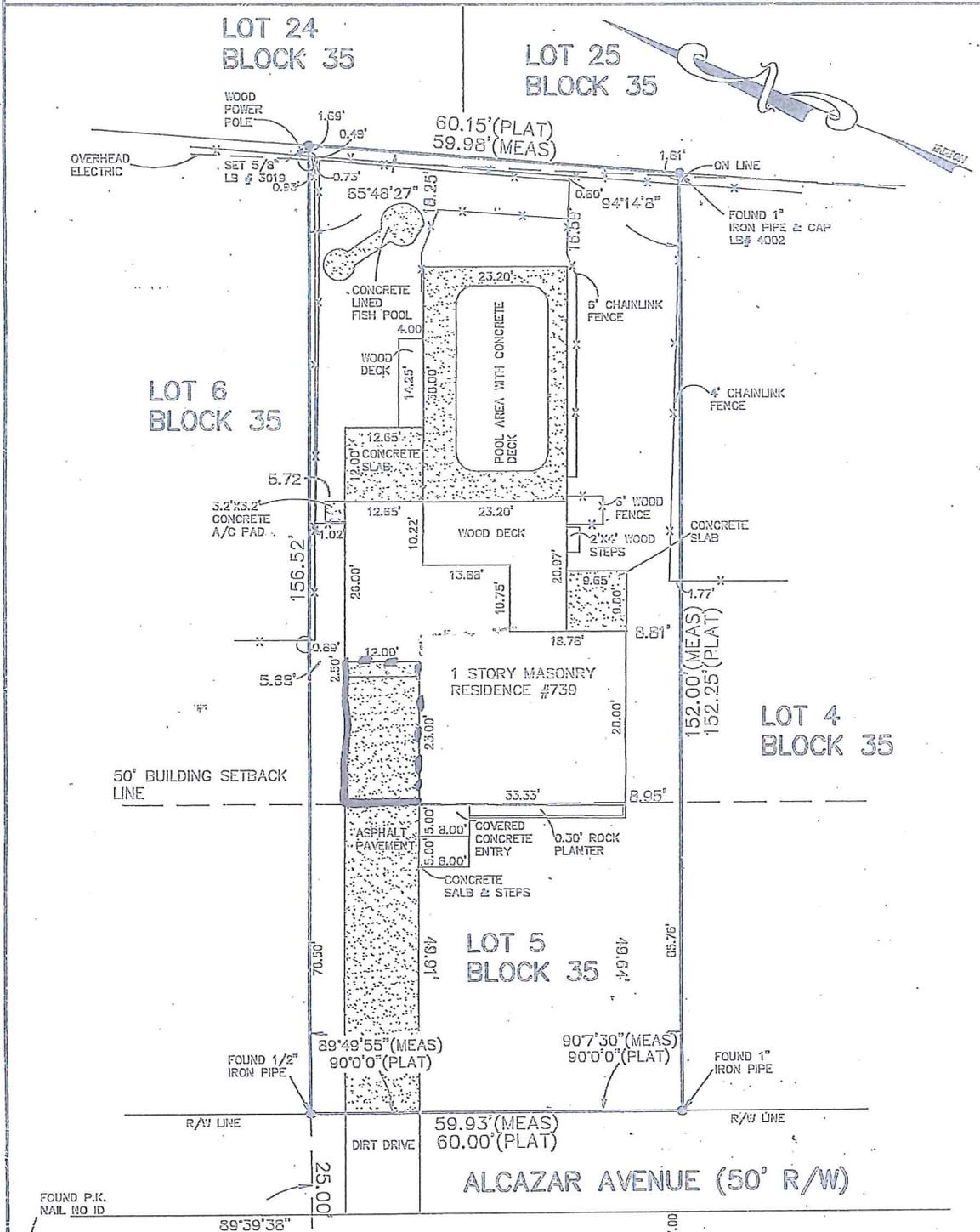
| SHEET 1 OF 2 | |
|--------------|------------------------------|
| LEGEND | |
| ○ | IRON ROD WITH CAP |
| ○ | IRON PIPE |
| □ | CONCRETE MONUMENT |
| ■ | PERMANENT REFERENCE MONUMENT |
| Δ | PERMANENT CONTROL POINT |
| (R) | RADIAL LINE |
| (NR) | NON-RADIAL LINE |
| ○ | EXISTING ELEVATION |
| □ | PROPOSED ELEVATION |



SLIGER & ASSOCIATES, INC.

PROFESSIONAL LAND SURVEYORS

3921 SOUTH NOVA ROAD
PORT ORANGE, FL 32127
(904) 731-5335



FOR: JIM WARD

DESCRIPTION: LOT 5, BLOCK 35, RIO VISTA, AS RECORDED IN
MAP BOOK 6, PAGE 25, OF THE PUBLIC RECORDS OF VOLUSIA
COUNTY, FLORIDA.

JOB# 92-2262

SCALE: 1"=20' FIELD BOOK B54 PAGE 14

| ABBREVIATIONS | | SHEET 1 OF 2 | |
|---------------|---|---------------|------------------------------|
| A/C | AIR CONDITIONER | LEGEND | |
| R/W | RIGHT OF WAY | ○ | IRON ROD WITH CAP |
| ⊙ | CENTERLINE | ○ | IRON PIPE |
| Δ | CENTRAL ANGLE | □ | CONCRETE MONUMENT |
| R | RADIUS | □ | PERMANENT REFERENCE MONUMENT |
| L | ARC LENGTH | △ | PERMANENT CONTROL POINT |
| CB | CHORD BEARING | (R) | RADIAL LINE |
| FLCL CO. | FLORIDA POWER & LIGHT COMPANY | (NR) | NON-RADIAL LINE |
| N.E.V.D. | NATIONAL GEODETIC VERTICAL DATUM | ○ | EXISTING ELEVATION |
| U.S.C. & G.S. | UNITED STATES COAST AND GEODETIC SURVEY | □ | PROPOSED ELEVATION |

07/08/1998 14:16
Doc stamps 455.00
(Transfer Amt \$ 65000)
Instrument # 98122706
Book: 4323
Page: 1399



PREPARED BY AND RETURN TO:
NICHOLAS A. GEORGE
Ossinsky & George
500 N. Oleander Ave.
Daytona Beach, FL 32118

Parcel No: 424220350050

Grantees S.S. No. _____

WARRANTY DEED (Statutory Form - Section 689.02, F.S.)

This Indenture, made this *1st* day of July, 1998, Between

TOM GEGAJ

whose post office address is 125 Ormond Parkway, Ormond Beach, FL 32176, of the County of Volusia, State of Florida, grantor*, and

DONNA LEIGH BURCH

whose post office address is 739 Alcazar, Ormond Beach, FL 32174. of the County of Volusia, State of Florida, grantee*,

Witnesseth that said grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable considerations to said grantor in hand paid by said grantee, the receipt whereof is hereby acknowledged, has granted, bargained and sold to said grantee, and grantee's heirs and assigns forever, the following described land, situate, lying and being in Volusia County, Florida, to-wit:

Lot 5, Block 35, Section "A", Rio Vista, according to the map or plat thereof as recorded in Plat Book 6, Page 25, of the Public Records of Volusia County, Florida.

Grantor herein confirms that the property being conveyed herein does not constitute his homestead, and that he resides at 125 Ormond Parkway, Ormond Beach, Florida.

Subject to easements and restrictions of record, if any; however, reference thereto shall not serve to reimpose the same.

and said grantor does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

*"Grantor" and "Grantee" are used for singular or plural, as context requires.

In Witness Whereof, grantor has hereunto set grantor's hand and seal
the day and year first above written.

Signed, sealed and delivered
in our presence:

N.A. George
Witness
NICHOLAS A. GEORGE
Print Name of Witness

Tom Gegaj
TOM GEGAJ

R. Michael Kennedy
Witness
R. Michael Kennedy
Print Name of Witness

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 1st
day of July, 1998, by TOM GEGAJ
who is personally known to me or who has produced _____
as identification.

N.A. George
Notary Public

Printed Name of Notary Public

My commission expires:

