



AGENDA

ORMOND BEACH BOARD OF ADJUSTMENT AND APPEALS

March 7, 2012

ORMOND BEACH CITY COMMISSION CHAMBERS

7:00 P.M.

I. ROLL CALL

II. APPROVAL OF THE MINUTES

A. January 4, 2012

III. NEW BUSINESS

A. Case No. 12V-058: 26 Chippingwood Lane, rear yard setback variance.

This is a request for a rear yard variance submitted by Alberta Gura, property owner of 26 Chippingwood Lane. The property at 26 Chippingwood Lane is zoned as R-5 (Multi-Family Medium Density) and Chapter 2, Article II of the Land Development Code, Section 2-18.B.9.b., requires a rear yard setback of a 25' from the property line to the principal structure. The property owner is requesting a 9.56' variance to construct a screen room porch over an existing concrete slab at a setback of 15.44'.

B. Case No. 12V-064: 325 South Atlantic Avenue, side and front yard setback variances.

This is a request for side and front yard setback variances submitted by James S. Morris, Esq. (applicant), representing Jeffrey Martin, property owner of 325 South Atlantic Avenue. The property at 325 South Atlantic Avenue is zoned as R-2 (Single Family Low Density). The applicant requests two variances related to the demolition of the existing structures on-site and the construction of a new single-family house and garage/living area building.

The first variance is a side yard variance related to the construction of a new single-family house. Chapter 2, Article II of the Land Development Code, Section 2-13.B.9.c., requires a minimum side yard setback of 8' totaling 20' for both side yards. The applicant seeks to allow a side yard setback of 7' on the north and south property lines for a total combined side yard setback of 14'. The resulting side yard variance would be 1' for one side yard and 5' for the other side yard and a combined total side yard variance of 6'. The second variance is a front yard variance related to the garage/living area building. Chapter 2, Article II of the Land Development Code, Section 2-13.B.9.a., requires a 30' front yard setback. The applicant seeks to allow a 15' front yard setback, requiring a front yard variance of 15'.

IV. OTHER BUSINESS

V. ADJOURNMENT

MINUTES
BOARD OF ADJUSTMENT

January 4, 2012

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

Steven Spraker, AICP, Senior Planner
S. Laureen Kornel, AICP, Senior Planner
Ann-Margret Emery, Deputy City Attorney
Meggan Znorowski, Minutes Technician

II. ADMINISTRATIVE ITEMS

A. Election of Chairperson.

Mr. Jenner nominated Mr. McNamara for Chairperson. Mr. Lane seconded the motion. Vote was called, and the motion unanimously approved.

B. Election of Vice Chairperson.

Mr. McNamara nominated Mr. Perricelli for Vice Chairperson. Mr. Lane seconded the motion. Vote was called, and the motion unanimously approved.

C. Acceptance of the 2012 BOAA calendar and 2012 Rules of Procedures.

Mr. McNamara stated that there was no date for the December meeting and that July's meeting was scheduled for June 27th.

Steven Spraker, Senior Planner, Planning Department, City of Ormond Beach, stated that the meeting in July was moved to June 27th because the regular meeting would have been July 4th and there would have been only a three week time period until the regularly scheduled meeting on August 1st. Mr. Spraker stated that if it is acceptable to the Board the first Wednesday in December would be December 5th.

Mr. McNamara asked for advanced notice for the June 27th Board meeting for the members.

Mr. Lane moved to approve the calendar as modified and Rules of Procedure as submitted. Mr. Hundredmark seconded the motion. Vote was called, and the motion unanimously approved.

III. APPROVAL OF THE MINUTES

Mr. Jenner moved to approved the September 7, 2011 Minutes as submitted. Mr. Perricelli seconded the motion. Vote was called, and the motion unanimously approved.

IV. OLD BUSINESS

There was no old business to discuss.

V. NEW BUSINESS

A. Case No. 12V-021: 739 Alcazar Avenue, garage addition- side yard setback variance.

Ms. Laureen Kornel, Senior Planner, Planning Department, City of Ormond Beach, stated that this matter is a request for a 2.32' or 5.37' combined variance to the side yard setback requirement of 8' or 20' combined with a resulting setback of 5.68' or 14.63' combined to construct a garage addition. Ms. Kornel explained that the subject property is located at 739 Alcazar Avenue, north of Seville Street; the house was built in 1955 and the garage was enclosed in 1987. Ms. Kornel stated that the applicant purchased the house in July, 1998 and seeks to complete a garage addition which would square off the existing building.

Ms. Kornel explained the layout and orientation of the existing structure. Ms. Kornel stated that the Land Development Code requires that single family residence have a garage; the garage addition would bring this property into compliance with the requirement of a garage making the property more functional for the property owner. Ms. Kornel stated that Staff's opinion is that the approval of the variance would enable the property owner to invest in an older structure, thereby maintaining the residential quality of the neighborhood. Ms. Kornel stated that to her knowledge there have been no objections to the garage addition by the neighbors; there were some inquiries after the property was posted, but no objections.

Ms. Kornel explained that there are two requirements in the Land Development Code under the side yard setback; Section 2-115(9)(c) requires the side yard setback be a minimum of 8' from the property line to the principal structure and a combined side yard setback of 20'. The current principal structure and proposed garage is located 5.68' from the current property line and the applicant requests a 2.32' variance to the side yard setback; the total combined side yard setback is 14.63' and the applicant requests a 5.37'

combined side yard setback under the same variance. Ms. Kornel explained that there is only one request for a variance, but there are two requirements under the Land Development Code; the applicant desires to maintain the existing building plane and the proposed project squares off the current building plane by adding a garage which would be 12' by 23' in size. Ms. Kornel stated that Staff recommends approval of the variance.

Ms. Donna Burch, 739 Alcazar Avenue, Ormond Beach, stated that Ms. Kornel explained the request well; that Ms. Burch would like to square off the house to construct a garage.

Mr. Lane asked for clarification regarding the proposed structure.

Ms. Burch stated that the proposed garage would connect to the structure at the rear of the property and come forward to the front face of the house, even with the front door.

Mr. Lane asked if there had been a garage and it had previously been converted to living space.

Ms. Burch stated that it had been enclosed, but she could not lose that living space.

Mr. McNamara clarified that the front face of the garage would come even with the front of the house not the front of the porch.

Ms. Burch responded yes to the front of the house, not the front of the porch.

Mr. Lane asked that the applicant's neighbor across the street, Mr. Cobb, was neither for nor against the proposed addition.

Ms. Burch replied that Mr. Cobb was all for it.

Mr. Perricelli moved to approve the variance. Mr. Hundredmark seconded the motion. Vote was called, and the motion unanimously approved.

Mr. McNamara stated that the variance has been approved; the applicant has one year to use it or it will expire; and that she should now consult with the Building Department.

VI. OTHER BUSINESS

Mr. Jenner raised the matter of the playhouse from the Board's previous meeting in September, 2011. Mr. Jenner stated he had spoken to the neighbor, and was informed that the City paid to move the structure.

Mr. Spraker responded yes.

Mr. Jenner stated he was trying to understand the reasoning for that.

Mr. Spraker stated that he could not speak for the Planning Director, but his understanding was that the Planning Director believed there was an obligation to correctly permit the structure; it was not permitted correctly and the work was allowed to continue. Therefore the City's permitting had something to do with the continuation of the structure. Therefore the Planning Director made a decision to pay to move the structure. Mr. Spraker explained that the structure has been moved and it meets both the side and rear yard setbacks.

Mr. Jenner inquired as to the cost to move the structure.

Mr. Spraker stated he did not have that information, but could provide it.

Mr. Jenner passed pictures to the Board of the structure and stated that it cannot be undone as it is over with, but wanted to know if there is anything being done as far as the Planning Department to make sure people don't build a house on poles and call it a playhouse.

Mr. Spraker responded that the structure does not have the square footage requirements of a house; and that after this Staff went through the Land Development Code and drafted an amendment that clarified what a playstructure and playground, and what is required to have a permit. Mr. Spraker explained that previously in the Land Development Code there was the thought that these structures were playstructures just like a swing set and that they did not require permits, which was the thought that led to the permitting of the structure, but once you saw it, you could intuitively tell that it was not a playstructure- it was a structure which should meet minimum setbacks.

Mr. Spraker stated that there has been a Land Development Code Amendment which went to the Planning Board in November, 2011, and is going before the City Commission on January 17, 2012, and February 7, 2012. Mr. Spraker explained that he cannot state that the Planning Department and Building Division will never make another mistake, but at some point there is a responsibility that the structure was permitted and the construction was allowed to continue.

Mr. Jenner stated he had talked to the Mayor about this, and they have agreed to disagree. Mr. Jenner stated that this situation was after the fact; when the Planning Department and Building Division became involved the structure was almost complete, but for the window.

Mr. Spraker stated that was not entirely correct; the property owner had started it, the City then issued a permit, and the property owner continued; therefore, some of the responsibility is on the applicant and some on the City. Mr. Spraker stated that it was a management decision of whether or not they would spend the Planning Department budget to correct that error.

Mr. Jenner stated that when someone builds a playhouse it is 2"x4" or 4"x4"; when someone uses telephone poles to build a playhouse it could pose a hazard in the case of a hurricane.

Mr. Spraker stated he would be happy to provide the Board with the new Land Development Code Amendment.

Mr. Jenner asked if the subject window is hurricane proof.

Mr. Spraker responded that they have stepped out of the role of the Board of Adjustment and Appeals into a Land Development Code issue. Mr. Spraker stated he would be happy to provide the new language. At the Planning Board, Board members were concerned that the amendment was over-regulating and imposing on people's individual private property rights. Mr. Spraker explained that there are members of the Planning Board that don't think playstructures should be permitted by the City.

Mr. Jenner stated he understands property rights, but where do the neighbor's property rights start; the question was asked to him if he thought this was reducing property values in the surrounding house, and he believes it is. Mr. Jenner stated he would not buy the house next door. Mr. Jenner stated that when the variance was voted down, he believed the structure would be demolished; that it was up to the property owner to rebuild where it was supposed to be built; he had no idea that the City would actually pay to move the structure.

Mr. Spraker stated that there was never any indication that there was going to be a demolition of the structure; there was always the option of relocation.

Mr. Jenner stated that it was his understanding from being on this Board for twelve years is that when the Board does not grant a variance when it is an after-the-fact variance, the structure is taken down.

Mr. Spraker responded absolutely, if the setback cannot be met, but in this case the structure could be moved to meet the setback and that was one of the key arguments that led to the denial was that there were other practical alternatives. Mr. Spraker stated that yes the homeowner started down the wrong path, but the City allowed them to continue on with construction.

Mr. Jenner stated that he would argue that the City had no responsibility to cover the cost of any expenses or curing after the permit was issued.

Mr. McNamara asked if the applicant obtained a permit for the relocation of the structure.

Mr. Spraker responded originally it was determined that there was no permitted needed; then it was determined that for this type of structure a permit was required based on the size and scope, but setbacks did not need to be met; then there was a determination that

they had to meet the setbacks. Therefore, the permit was allowed to continue in violation of the setbacks.

Mr. Perricelli asked if a permit is required to build a playhouse now.

Mr. Spraker replied that there was an interpretation at the time that no permit was required; then a couple of days later there was a determination that a permit would be required. Mr. Spraker explained that the Land Development Code lists "all accessory structures" at a 7.5' setback which had never been applied to a playground, playhouse, or any playstructure; but once you reviewed the subject structure it became obvious that this was more than just the playstructure. Therefore, there was a determination that they had to meet the setbacks, but the City had already allowed work to continue under the premise that it didn't require a permit.

Mr. Perricelli stated that what concerns him is the liability factor of the City moving this.

Mr. Spraker stated the City paid the contractor to move the structure. There were three quotes obtained. Ultimately the contractor was liable.

Mr. Perricelli asked if the City paid someone to do move the structure.

Mr. Spraker responded that the City did not move the structure; there were three quotes obtained from licensed contractors, the Chief Building Official reviewed the quotes and selected the lowest bid, and the contractor moved the structure. Mr. Spraker stated that the City paid a contractor to move the structure.

Ann-Margaret Emery, Deputy City Attorney, City of Ormond Beach, stated to clarify that the City was not legally required to pay to move the structure; when that permit was issued, even if it should not have been issued, legally it is considered a mutual mistake; therefore, the City would not have been financially responsible for that; in fairness it was determined that the Planning Department wanted to pay for the moving of the structure out of its own budget. Ms. Emery stated that had the City been sued over this issue, it would not have been found liable.

Mr. McNamara asked if the City moved what the resident built to another location.

Mr. Spraker explained that the homeowner acquired three licensed contractors to bid on the project to move the structure to comply with the setbacks; those quotes were reviewed by the Chief Building Official; and the lowest bid contractor moved the structure; the City paid the bill; the City did not do move the structure.

Mr. McNamara asked if the contractor was paid by the City to move the existing structure.

Mr. Spraker stated he was not sure if the City paid the contractor directly or if the City paid the homeowner who then paid the contractor.

Mr. Perricelli asked who the contractor was.

Mr. Spraker stated he did not have that information in front of him.

Mr. Perricelli stated that when he heard that the City moved it, it concerned him because of the liability factor.

Mr. Spraker replied that a licensed contractor was paid by the City to move the structure either directly or indirectly through the homeowner.

Mr. Jenner stated it was a mistake. Game over. Mr. Jenner stated it is over, but that the City has deep pockets. Mr. Jenner stated his concern is that there is a clear definition of what most people view as a playhouse, which is what you can buy at Lowe's or Sam's, etc. and then there is this type of structure. Mr. Jenner stated he is going to follow this in the future, and he wanted be kept informed of what is being done.

Mr. Spraker stated he would be more than happy to email the proposed amendment to him and if Mr. Jenner has any comments he can provide them to Mr. Spraker and Mr. Spraker would be happy to provide them to the City Commission. Mr. Spraker explained that definitions and types had been created; Type I structure is a typical swing set which does not require a permit, but still has to meet the 7.5' setback; Type II which is higher than 7'. Mr. Spraker stated there was great concern by the Planning Board that now it could be construed as the City regulates everything.

Mr. Perricelli asked how the City knows the structure was moved correctly, and whether it was inspected.

Mr. Spraker responded that the Chief Building Official verified how the contractor moved it and the setbacks before the telephone poles were set; there were a series of inspections.

Mr. Jenner stated that there is some type of roof over the structure.

Mr. Spraker responded that there is a canvas roof on the structure.

Mr. Jenner asked what would happen if the homeowner decided to put a roof on this.

Mr. Spraker stated that as the structure stands today, a hard roof structure would be allowed, just like a shed; so the homeowner could, but what they agreed to was a canvas roof.

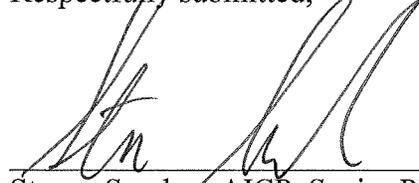
Mr. Perricelli stated that the way it was built was for a hard roof.

Mr. Spraker stated that if the property added a hard roof he would then be in violation of the permit and Code Enforcement would then be involved.

V. ADJOURNMENT

As there was no other business, the meeting was adjourned at 7:26 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.

STAFF REPORT

City of Ormond Beach Department of Planning

DATE: February 22, 2012

SUBJECT: 26 Chippingwood Lane

APPLICANT: Alberta Gura, property owner

FILE NUMBER: V-12-58

PROJECT PLANNER: Steven Spraker, AICP, Senior Planner

INTRODUCTION:

This is a request for a rear yard variance submitted by Alberta Gura, property owner of 26 Chippingwood Lane. The property at 26 Chippingwood Lane is zoned as R-5 (Multi-Family Medium Density) and Chapter 2, Article II of the Land Development Code, Section 2-18.B.9.b., requires a rear yard setback of a 25' from the property line to the principal structure. The property owner is requesting a 9.56' variance to construct a screen room porch over an existing concrete slab at a setback of 15.44'.

BACKGROUND:

The property is designated as "Medium Density Residential" on the City's Future Land Use Map (FLUM) and is zoned R-5 (Multi 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 subject property is a multifamily unit within the Gardens of New Britain. There are five units with the building where the subject property is located. The Gardens of New Britain multi-family development was approved in 1977 by the City Commission with Resolution 77-106 and amended with Resolution 78-104. As show below, the development is bounded by Ormond Shores Drive to the north.



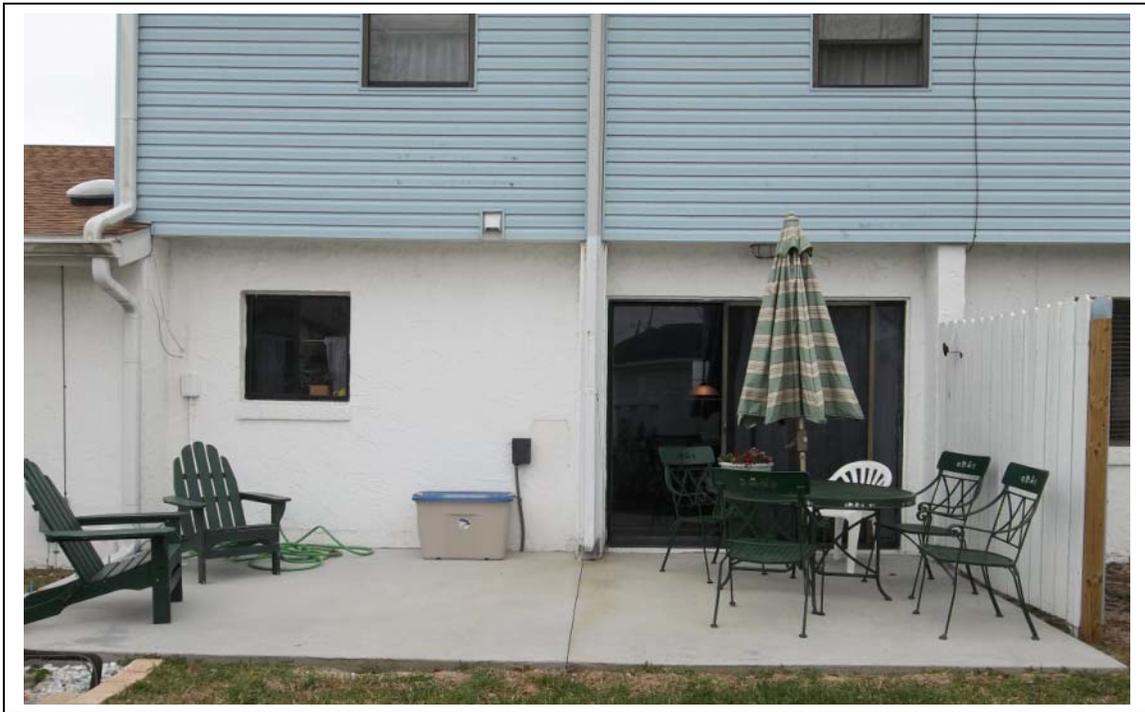
The adjacent land uses and zoning for the surrounding properties are that of the subject property.

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	New Britain multi-family	“Medium Density Residential”	R-5 (Multi Family Medium Density)
East	New Britain multi-family	“Medium Density Residential”	R-5 (Multi Family Medium Density)
West	New Britain multi-family	“Medium Density Residential”	R-5 (Multi Family Medium Density)

The applicant is seeking to construct a sunroom with a hard roof on an existing concrete slab that is 20’ in width and 10’ in depth, as shown below. The resulting setback would be 15.44’. The sunroom additions are common in the development, however, City staff has not been able to determine how these structures have been permitted in the 25’ rear yard setback.

Area of proposed addition:



Examples of existing sunrooms in the project.



Research through the 1977 and 1978 approvals does not indicate the establishment of a rear yard setback for sunroom, other than the zoning district requirements. There have been few building permits over the last 15 years for sunroom additions. Staff did find two permits that allowed the construction of sunrooms at a setback less than 25', however, no documentation exists on how the reduced setback was allowed. The applicant has discussed the matter with the Home Owner's Association and has been unable to determine how alternative setbacks were utilized for the existing sunrooms.

ANALYSIS:

Section 2-18.B.9.b., requires a rear yard setback of a 25' from the property line to the principal structure. The property owners are requesting a 9.56' variance to construct a screen room porch over an existing concrete slab at a setback of 15.44'.

Rear Yard Potential Alternatives:

1. Grant the applicant's request and allow a 15.44' setback on the rear yard, granting a 9.56' variance.
2. Deny the request as presented and not allow the construction of the screen room.

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. **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.**

Argument for the variance: The applicant states in the submittal that a number of units have screen rooms and the building location would not allow the sunroom expansion. An addition special circumstance is that the approving Resolution does not contain any provisions to allow these types of improvements. The additions have been permitted at some point by the City, it is not clear what setbacks were utilized.

Argument against the variance: The Gardens of New Britain development is governed by the R-5 zoning district and 1977 approval does not provide any relief. The HOA could apply to amend the 1977 approval to reduce the setbacks to 15' community wide.

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

Argument for the variance: The Property Appraiser's website shows the applicant as the homeowner since 1998. The applicant did not cause the building location or have a part in the approval of the 1977 approval.

Argument against the variance: None. The applicant has not had any role in the approval of the project.

3. **Literal interpretation of the provisions of these zoning regulations would 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.**

Argument for the variance: The literal application of the regulation would prevent the construction of the sunroom and would cause a hardship. The

sunroom is a common amenity to multiple units within the development and denial of the variance would prevent the property owners from what others currently enjoy.

Argument against the variance: Multiple other properties enjoy a sunroom addition. One could argue that the HOA should apply for amendment to the 1977 development order, but this action is not within the scope of what an individual homeowner can perform.

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.**

Argument for the variance: Based on the building location and required 25' setback, there is no other alternative for the construction of a sunroom.

Argument against the variance: None. There is no other alternative.

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.**

Argument for the variance: The variance is not based exclusively on the desire to reduce the cost of the construction of the project.

Argument against the variance: None. The variance is not based exclusively on the desire to reduce the cost of the construction of the project.

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

Argument for the variance: The request will not increase congestion, fire danger or public hazards.

Argument against the variance: None. The variance will not create any hazards 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.**

Argument for the variance: As shown in the picture above in the staff report and the exhibits, sunrooms within the rear building setback are common in this development. The proposed addition is in character with the development pattern and will not substantially diminish property values in, nor alter the essential character of, the area surrounding the site.

Argument against the variance: None. Sunrooms are a common addition in this development and will not negatively impact any surrounding property owners.

8. **Granting the 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.**

Argument for the variance: The purpose of the variance process is to confer rights that are denied to a particular applicant because of a special condition or unique circumstance for their property. The special condition is related to the location of the existing building and the setback standards applied to the multi-family development.

Argument against the variance: None. The variance process exists to provide property owners relief from land development standards based upon certain conditions.

RECOMMENDATION: It is recommended that the Board of Adjustments and Appeals **APPROVE** a 9.56' rear yard variance to construct a screen room porch over an existing concrete slab at a setback of 15.44'

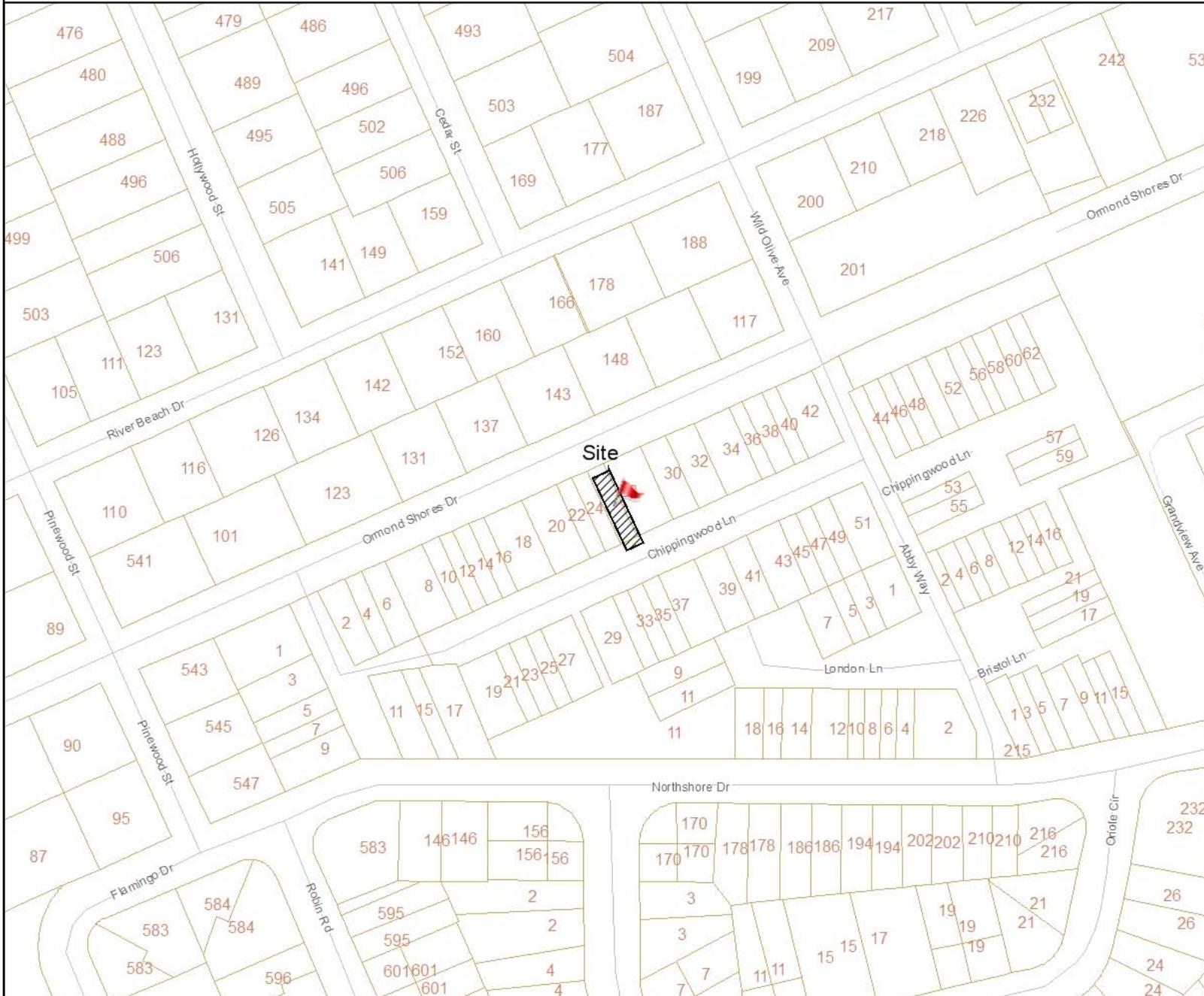
Exhibit A

Variance Exhibit

Exhibit B

- Map and Pictures

26 Chippingwood Location Map



-  Golf Courses
-  Address Points
-  Airport and Railroad
-  AIRPORT
-  RAILROAD
-  City Streets
-  DIRT
-  MAJOR
-  PAVED
-  Water Features
-  Property Lines

178 ft



GIS data is provided on an "as is" basis. The accuracy or reliability of the data is not guaranteed or warranted in any way. The City of Ormond Beach specifically disclaims any warranty either expressed or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular use. The entire risk as to quality and performance of the data is with the end user. In no event will the City, its staff or its representatives be liable for any direct, indirect, incidental, special, consequential, or other damages, including loss of profit, arising out of the use of this data even if the City has been advised of the possibility of such damages.



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

SITE



Chippingwood Ln



Ormond Shores Dr

Ormond Shores Dr

25 feet 10 m

© 2012 Microsoft Corporation Pictometry Bird's Eye © 2010 Pictometry International Corp

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Screen room proposed over existing concrete pad.



Examples of other sunrooms in development



Screen room proposed over existing concrete pad.

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

Date Submitted

VARIANCE TYPE

Please select appropriate application type

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

Address

City, State, Zip Code

Telephone

Email Address

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

PROPERTY OWNER INFORMATION

Name

Address

City, State, Zip Code

Telephone

Email Address

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

PROPERTY DETAILS

Address

Zip Code

Parcel I.D.

Legal Description

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

ABUTTING PROPERTY OWNERS

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

Signature	Street Address	For	Against
<i>Darlene J. Johovic</i>	<i>94 Chippingwood Lane</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>WE HAVE NOT BEEN ABLE TO</i>		<input type="checkbox"/>	<input type="checkbox"/>
<i>CONTACT OUR NEIGHBOR ON</i> <i>THE EAST SIDE OF YOUR UNIT.</i>		<input 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:

AT LEAST 2/3 rds of THE GARDENS HAVE ROOMS SIMILAR TO THE ONE WE PROPOSED. THE EXISTING LOCATION OF OUR HOME DOES NOT ALLOW ME TO PERFORM THE ADDITION.

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

WE WOULD LIKE TO IMPROVE OUR RESIDENCE. DUE TO A CONFLICT OF RECORDS WE HAVE TO APPLY FOR THIS VARIANCE.

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:

BECAUSE OTHERS ARE ENJOYING THE USE OF THEIR SUNROOMS OR ADDITIONS WE FEEL THIS VARIANCE SHOULD BE APPROVED AND THE SETBACKS WOULD CREATE AN UNDO HARDSHIP.

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:

THERE ARE NO OTHER PRACTICAL ALTERNATIVES.

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:

WE ARE NOT APPLYING FOR THIS VARIANCE TO REDUCE THE COST.

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

AGREE TO THE ABOVE

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:

AGREE TO THE ABOVE

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:

WE ARE NOT ASKING FOR SPECIAL PRIVILEGES. THE EXISTING ADDITIONS ARE ENJOYED BY OTHER RESIDENCE IN THE GARDENS OF NEW BRITAIN.

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: Alberta B. Gura Date: 1/24/12

Corporation

STATE OF FLORIDA)
COUNTY OF VOLUSIA) SS

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:

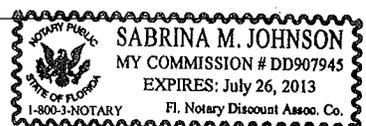
ATTEST: _____

Individual

STATE OF FLORIDA)
COUNTY OF VOLUSIA) SS

The foregoing instrument was acknowledged before me this 24th day of JAN, 2012, by Alberta Gura, who provided NY DL, as identification or is personally known to me.

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



*The Gardens of New Britain
P.O. Box 1527
Ormond Beach, Florida 32175
386-441-0320*

January 25, 2012

Re: 26 Chippingwood Lane

Dear Alberta Gura/City of Ormond Beach,

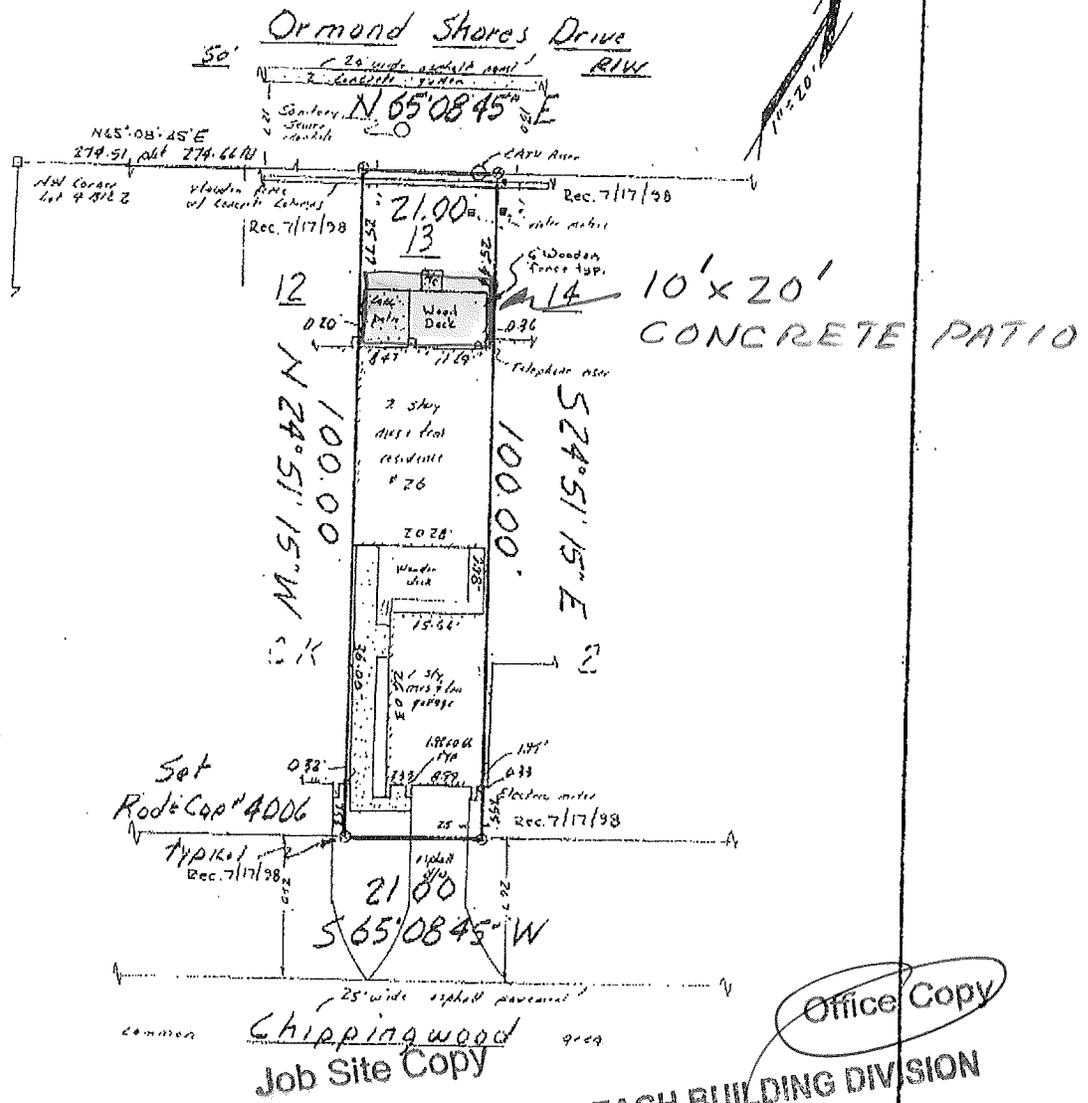
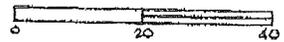
The Board of Directors has approved the drawings for the patio enclosure/sunroom with no gable roof drawings contingent upon the approval of the City Ormond Beach.

Respectfully,

A handwritten signature in black ink, appearing to read 'Mark Paulus', enclosed within a hand-drawn oval.

Mark Paulus, President

BOUNDARY SURVEY
SHEET 1 OF 2



CITY OF ORMOND BEACH BUILDING DIVISION
REVIEW FOR PERMIT

These plans are conditionally approved as reviewed for compliance with applicable building/fire codes and does not waive any other applicable codes not noted in inspector's from other jurisdictions. Approved when issues are noted by inspectors. Plans must be on job site for scheduled inspections.

MICHAEL M. MYER FL. R.L.S. #4006
(not valid unless signed and accompanied by Sheet 2 Survey Report.)

MICHAEL M. MYER
PROFESSIONAL LAND SURVEYOR
BACHELOR OF LAND SURVEYING
UNIVERSITY OF FLORIDA

98278

P.B. 22 PD S, C

1617 RIDGEWOOD AVE.
SUITE B
HOLLY HILL, FLORIDA 32117

Date: 2/25/11

Building: _____

Date: 672-2605

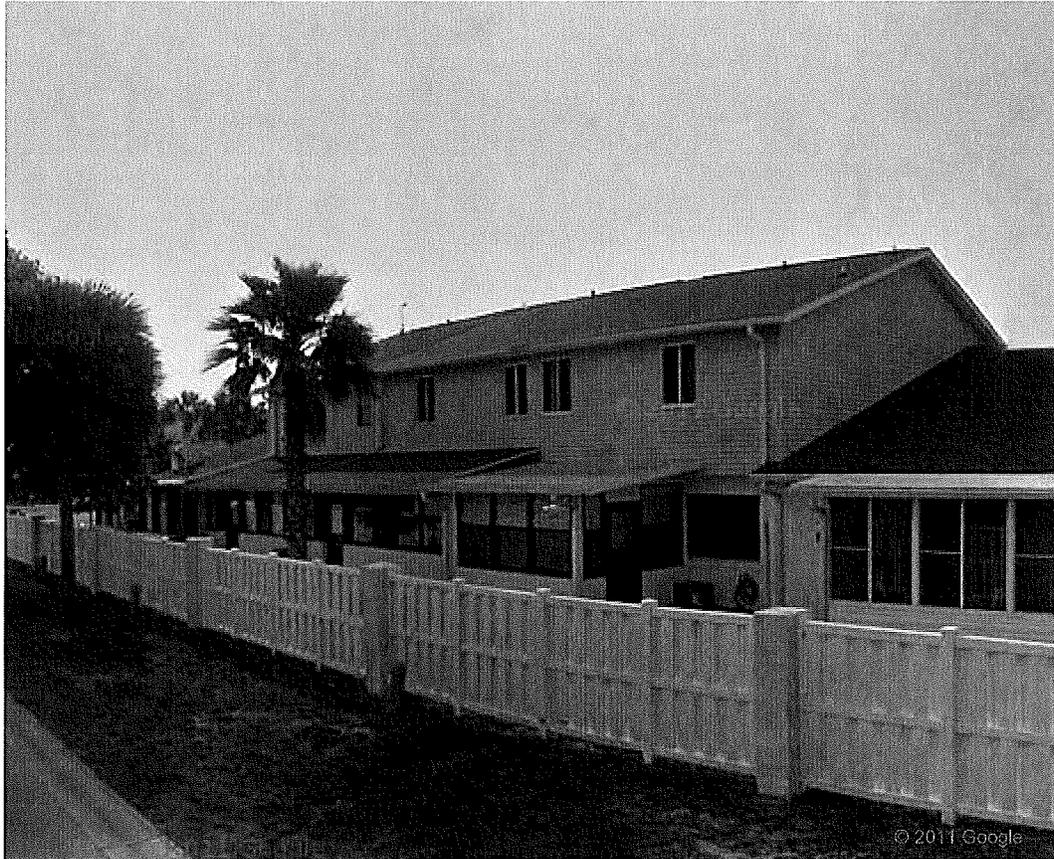
Fire: _____



Address **145 Ormond Shores Drive**

Address is approximate

Save trees. Go green!
Download Google Maps on your phone at google.com/gmm



07/27/1998 11:31
Doc stamps 548.10
(Transfer Amt \$ 78250)

This Instrument Prepared by: Sandra H. Buckley,
An Officer of Associated Land Title Group, Inc. (360),
332 N. Nova Rd., Ormond Beach, Florida 32174,
For Purposes of Title Ins.
File # 360-3185
Parcel ID # 4223-20-02-0130

Instrument # 98137749
Book: 4330
Page: 1039

Warranty Deed

(The terms "grantor" and "grantee" herein shall be construed to include all genders and singular or plural as the context indicates.)

Made July 22, 1998, BETWEEN

Donald R. Cobb and Sheri T. Cobb, husband and wife
whose post office address is: Post Office Box 731762, Ormond Beach, Florida 32173
grantor, and

John E. Gura, Sr. and Alberta B. Gura, husband and wife (SS#: [REDACTED] & [REDACTED])
whose post office address is 38 Butternut Circle Orchard Park, NY 14127,
grantee,

WITNESSETH: That the said grantor, for and in consideration of the sum of Ten (\$10.00) Dollars, 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 the said grantee, and grantee's heirs, successors and assigns forever, the following described land, situate, lying and being in Volusia County, Florida to-wit:

Lot 13, Block 2, New Britain Subdivision, Section II, according to the map or plat thereof recorded in Map Book 35, Page 96, Public Records of Volusia County, Florida.

Subject to easements and restrictions of record, if any, which are specifically not extended or reimposed hereby. Subject to 1998 taxes and assessments.

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.

IN WITNESS WHEREOF, Grantor has hereunto set grantor's hand and seal the day and year first above written.

Signed, sealed and delivered in the presence of:

Sandra H. Buckley
WITNESS SIGNATURE

Donald R. Cobb
Donald R. Cobb

Sandra H. Buckley
WITNESS PRINTED NAME

Sheri T. Cobb
Sheri T. Cobb

Cathy H. Pulliam
WITNESS SIGNATURE

Cathy H. Pulliam
WITNESS PRINTED NAME

STATE OF Florida

COUNTY OF Volusia

I HEREBY CERTIFY, that on July 22, 1998, before me personally appeared Donald R. Cobb and Sheri T. Cobb, husband and wife who are personally known to me or have produced the identification identified below, who are the persons described in and who executed the foregoing instrument, and who after being duly sworn say that the execution hereof is their free act and deed for the uses and purposes herein mentioned.

SWORN TO AND SUBSCRIBED before me the undersigned Notary Public by my hand and official seal, the day and year last aforesaid.

() To me personally known (X) Identified by Driver's License () Identified by _____

My Commission Expires: _____

Commission No.: _____

Sandra H. Buckley
Notary Public

PLEASE PRINT OR TYPE NAME AS IT APPEARS



SANDRA H. BUCKLEY
My Comm Exp 10/02/99
Bonded By Service Ins
No. CC499050
[] Personally Known [] Other I.D.

STAFF REPORT

City of Ormond Beach Department of Planning

DATE: February 22, 2012

SUBJECT: 325 South Atlantic Avenue

APPLICANT: James S. Morris, Esq. (applicant), representing Jeffrey Martin, property owner

FILE NUMBER: V-12-64

PROJECT PLANNER: Steven Spraker, AICP, Senior Planner

INTRODUCTION:

This is a request for side and front yard setback variances submitted by James S. Morris, Esq. (applicant), representing Jeffrey Martin, property owner of 325 South Atlantic Avenue. The property at 325 South Atlantic Avenue is zoned as R-2 (Single Family Low Density). The applicant requests two variances related to the demolition of the existing structures on-site and the construction of a new single-family house and garage/living area building.

The first variance is a side yard variance related to the construction of a new single-family house. Chapter 2, Article II of the Land Development Code, Section 2-13.B.9.c., requires a minimum side yard setback of 8' totaling 20' for both side yards. The applicant seeks to allow a side yard setback of 7' on the north and south property lines for a total combined side yard setback of 14'. The resulting side yard variance would be 1' for one side yard and 5' for the other side yard and a combined total side yard variance of 6'. The second variance is a front yard variance related to the garage/living area building. Chapter 2, Article II of the Land Development Code, Section 2-13.B.9.a., requires a 30' front yard setback. The applicant seeks to allow a 15' front yard setback, requiring a front yard variance of 15'.

BACKGROUND:

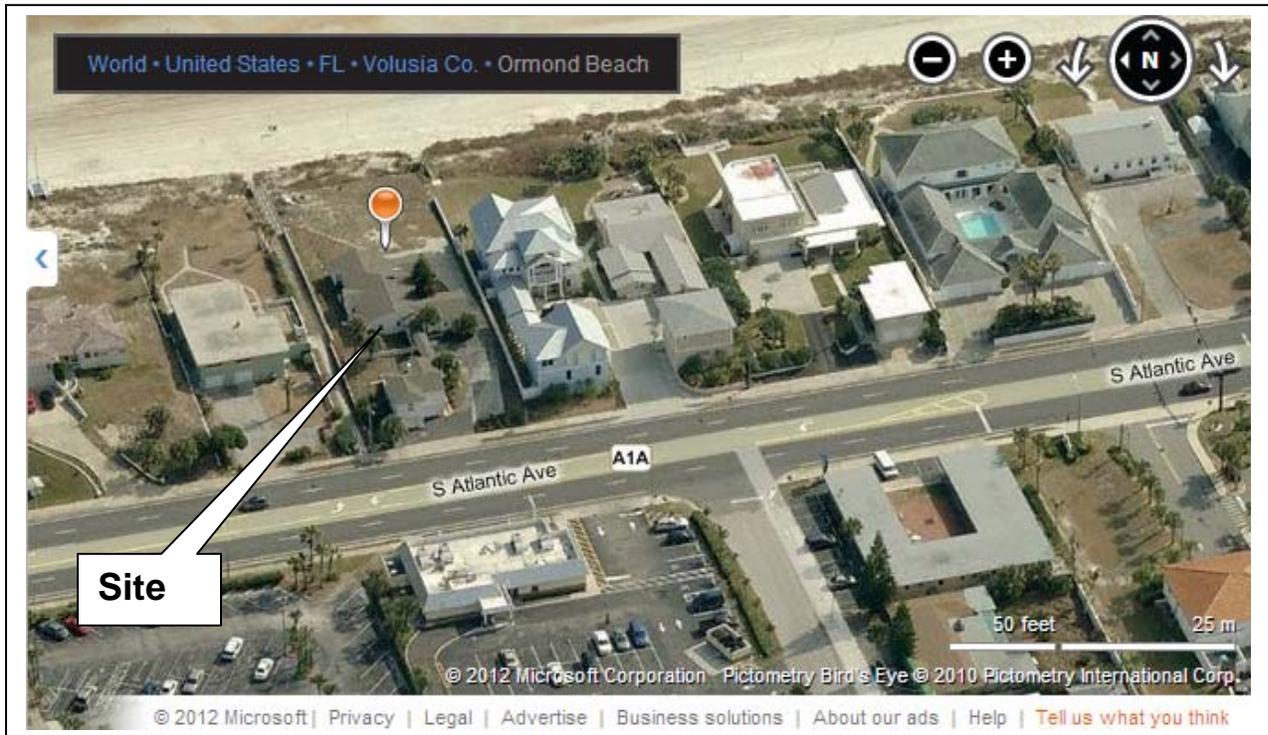
The property is designated as "Low Density Residential" on the City's Future Land Use Map (FLUM) and is zoned R-2 (Single Family Low Density) on the City's Official Zoning Map. The existing use of the property is consistent with the FLUM designation and zoning district. The property currently has a single family house and a detached two story apartment over a garage. The existing house has a 10.66' setback along the north property line and 10.45' along the south property line. The existing two story apartment over a garage currently has an 11.34' front yard setback. The garage is accessed directly from the South Atlantic Avenue right-of-way.

The adjacent land uses and zoning for the surrounding properties are that of the subject property.

Adjacent land uses and zoning:

	Current Land Uses	Future Land Use Designation	Zoning
North	Beach access ramp and Single-Family House	“Low Density Residential”	R-2 (Single Family Low Density)
South	Single-Family House	“Low Density Residential”	R-2 (Single Family Low Density)
East	Beach and Atlantic Ocean	NA	NA
West	Burger King restaurant	“Tourist Commercial”	B-7 (Highway Tourist Commercial)

Area of proposed demolition and construction of new house and garage with living area:



The Volusia County Property Appraiser’s website lists the construction date of the buildings at 325 South Atlantic Avenue as 1949. The structure would be considered historic by age under the City’s Historic Districts and Landmark Land

Development Code section. The property would be required to undergo a review for the demolition of the structures based on their age. The applicant is proposing the demolition of all buildings on-site and the construction of a new single family residence and a garage/living area building.

ANALYSIS:

In the preparation of the variance application, the following items were noted:

1. In 2005, 333 South Atlantic Avenue applied and was granted two variances related to the demolition and reconstruction of a single family house and garage/apartment structure. The first variance was for a side yard setback variance of 7.2' along the south property line for a 4.8' setback. The north side yard setback was approved at 8'. The second variance was for a front yard setback variance of 15' along the south property line for a 15' setback for the garage/apartment.
2. Also in 2005, 335 South Atlantic Avenue was granted a variance to permit a detached two-story garage and accessory apartment with a 15-foot setback encroachment in the front yard and a 3.2-foot setback encroachment in the south side yard. The resulting front yard setback was approved at 15 feet from the west property line and a side yard setback of 4.8 feet from the south property line.
3. There is a 12' beach access easement along the north property boundary with 325 South Atlantic Avenue.
4. The property has a significant slope with a high point elevation 19' just east of the existing house to 11.5' abutting the Atlantic Avenue right-of-way.
5. The Coastal Construction Control Line (CCCL) is approximately in the middle of the property. Construction eastward of the CCCL is generally limited by the State Department of Environmental Protection and requires additional building construction review.
6. The property has a non-conforming lot width of 77' where the R-2 zoning district requires 100'.
7. As shown on the exhibit prepared by Mr. Dodd, architect, the first floor building area of the single-family residence is 3,866 square feet. The exhibit notes that it is a two story residence and assuming that the second floor mimics the first, the total square footage would be approximately 7,732 square feet.
8. As shown on the exhibit prepared by Mr. Dodd, architect, the first floor building area of the garage building is 1,221 square feet. The exhibit notes that it is a two story garage/living area and assuming that the second floor mimics the first, the total square footage would be approximately 2,442 square feet.
9. The two driveways proposed for the redevelopment would need to be approved by the Florida Department of Transportation. Per the City's

Land Development Code, each drive is required to be a minimum of 3' from the property line.

The applicant is requesting two variances:

Side Yard: Chapter 2, Article II of the Land Development Code, Section 2-13.B.9.c., requires a minimum side yard setback of 8' totaling 20' for both side yards. The applicant seeks to allow a side yard setback of 7' on the north and south property lines for a total combined side yard setback of 14' for the single-family house. The resulting side yard variance would be 1' for one side yard and 5' for the other side yard and a combined total side yard variance of 6'. This variance would apply only to the single family house.

Front Yard: Chapter 2, Article II of the Land Development Code, Section 2-13.B.9.a., requires a 30' front yard setback. The applicant seeks to allow a 15' front yard setback, requiring a front yard variance of 15'. This variance would apply only to the garage/apartment structure.

Side Yard Potential Alternatives:

- 1. Grant the applicant's request and allow a 7' setback on the north and south side yards for a total combined setback of 14', granting a 1' variance for one side yard and a 5' variance for the other side yard and a combined total side yard variance of 6'.**

This alternative would allow the construction of the single-family house at a width of 63' as designed by applicant.

- 2. Deny the request as presented and require a setback of 8' on one side yard and 12' on the other.**

This option would reduce the building width of the single-family house to 57' and require conformance to the zoning district setbacks.

- 3. Approve a side yard setback less than the combined 20' required by the zoning district but greater than the 14' requested by the applicant.**

This option would allow the Board to negotiate the required setbacks based upon what is believed to be the minimum relief necessary to make a reasonable use of the property.

Front Yard Potential Alternatives:

- 1. Grant the applicant's request and allow a 15' front yard setback, granting a 15' variance for the front yard setback.**

This alternative would allow the construction of the garage/living unit at a width of 47' by 26' in depth, as designed by applicant.

- 2. Deny the request as presented and require a setback of 30' front yard setback.**

This option would significantly alter the design and location of the detached garage/living unit and would likely result in the garage doors facing South Atlantic Avenue.

3. Approve a front yard setback less than the required 30' setback but greater than the 15' requested by the applicant.

This option would allow the Board to negotiate the required setbacks based upon what is believed to be the minimum relief necessary to make a reasonable use of the property.

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:

SIDE YARD SETBACK REQUEST

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.

Argument for the variance: The applicant states in the submittal that the special condition is the non-conforming lot width of 77' where the zoning district requires 100'. In the submittal, the applicant states that the proposed combined side yard setback is in proportion for a 77' lot as would be applied for a 100' wide lot. A 100' wide lot would require a combined side yard setback of 20' or 20% of the lot width. Additionally, the applicant states the side yard setbacks "are needed in order to construct a single family home on the property in a size and manner consistent with the existing single family homes to the north and south."

Argument against the variance: The City has a number of properties that have the condition of being non-conforming. The size of the lot width determines the width of the house structure and where there is a hardship, a variance is sought. The submittal provides a proportional comparison between a 20' setback on a 100' lot. Using the 20% ratio on a 77' lot, the combined side yard setback would be 15.4'.

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

Argument for the variance: The house is shown as constructed in 1949 and the current property owners purchased the property in 2009. The lot width condition was not caused by the applicant.

Argument against the variance: Once the buildings on a property are demolished, the width of a proposed single family structure is determined by the applicant. The proposed width of the structure is proposed at 63' with a 14' combined side yard setback. The zoning district would allow a 57' house width (77' minus a 20' combined side yard setback). It could be argued that the proposed house size is caused by the applicant's house design. Alternatively, utilizing a 20% side yard building setback on a 77' wide lot, the width of the building would be 61.6'.

3. **Literal interpretation of the provisions of these zoning regulations would 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.**

Argument for the variance: In the application, it is stated that the lot's legal non-conforming size causes the hardship and the side yard variances are needed to allow a reasonable use of the property in general character with the adjacent properties.

Another factor applicable to oceanfront lots is the Coastal Construction Control Line which seeks to place structures as far away from the beach/ocean as possible. On a non-oceanfront lot, a house could be made larger by extending the depth of the structure towards the beach/ocean which is not an option in this application.

Argument against the variance: A key decision point is what would be an undue hardship to the applicant related to the size of the proposed house. The proposed house with a 3,866 square feet first floor building footprint would be the largest residential structure in the immediate area. Reducing the size of the house could achieve a reasonable use of the property and still be in scale with adjoining houses. Without the variance, a structure width of 57' is possible.

Utilizing a 20% ratio of side yard setbacks for a 77' wide lot, the combined yard setback would be 15.4' for a structure width of 61.4'.

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.**

Argument for the variance: The applicant states that the requested side yard variance is the minimum needed to make reasonable use of a single family oceanfront home. The property also abuts a 12' beach walk-over

on the north side which provides additional building setback to the property to the north.

Argument against the variance: One could argue that a building width of 57' is a reasonable use of an oceanfront lot and the additional 6' of building width is not necessary.

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.**

Argument for the variance: The variance is not based exclusively on the desire to reduce the cost of the construction of the project. The redevelopment project represents a substantial investment into the South Atlantic Avenue corridor.

Argument against the variance: None. The variance is not based exclusively on the desire to reduce the cost of the construction of the project.

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

Argument for the variance: The request will not increase congestion, fire danger or public hazards.

Argument against the variance: None. The variance will not create any hazards 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.**

Argument for the variance: The applicant states that the variances are in harmony with the code and will not diminish surrounding property values. It is important to note the building characteristics of the existing single-family homes in this section of South Atlantic Avenue. The properties at 333, 335, and 345 South Atlantic Avenue provide examples of what the application is proposing in terms of the site layout with the house and garage. The project would enhance the residential character of this section of South Atlantic Avenue.

To the north of the property is a 12' beach access ramp that provides additional side yard setback along the north property interface.

Argument against the variance: The redevelopment of the property will be in character with the surrounding properties. Again, the key is consideration is the additional building width of 6' that is being requested by the application.

8. **Granting the 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.**

Argument for the variance: The purpose of the variance process is to confer rights that are denied to a particular applicant because of a special condition or unique circumstance for their property. The special condition is related to the property's width. Additionally, the public access beach walkover will minimize any impacts to the property owner to the north.

Argument against the variance: The width dimensions allowed by the zoning district setbacks are adequate to make reasonable use of the land and the variances should be denied.

FRONT YARD SETBACK REQUEST

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.**

Argument for the variance: The applicant states the "detached garage's proposed location arises from the lot's substandard width combined with a need for substantial visual buffering if the proposed single family home from an existing Burger King fast food restaurant located directly opposite the subject property."

In addition to what the applicant has provided, staff has noted there is a slope based on the lot grades that limit the access to the garage structure and turning radius. This condition was noted on the variances for 333 and 335 South Atlantic Avenue. Another contributing condition, as noted above is the desire for structures to be located westward of the CCCL line.

Argument against the variance: The City has a number of properties that have the condition of being non-conforming. The visual buffering of one use from another is not a special condition related to the lot or buildings on-site.

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

Argument for the variance: The house is shown as constructed in 1949 and the current property owners purchased the property in 2009. The lot width condition was not caused by the applicant. Additionally, the slope of the lot is an existing condition. Replacing the existing garage location, with ingress/egress directly from South Atlantic Avenue, provides a safety upgrade for the property.

Argument against the variance: Once the buildings on a property are demolished the design of the structures on the lot is determined by the property owner and their design professionals.

3. **Literal interpretation of the provisions of these zoning regulations would 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.**

Argument for the variance: In the application, it is stated that the lot's legal non-conforming size causes the hardship and the front yard variance is needed to allow a reasonable use of the property in general character with the adjacent properties. Another factor is the slope of the property and achieving an adequate turning radius to enter/exit the garage.

Argument against the variance: The same issue exists for the front yard variance as does the side yard variance in what is an undue hardship. The garage/ accessory unit could be merged with house or turned and either comply with the setbacks or reduce the front yard encroachment. Both alternatives would not shield the house from the restaurant use across the street.

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.**

Argument for the variance: The applicant states that the requested front yard variance is the minimum needed to make reasonable use of a single family oceanfront home. While there may be other alternatives, such as combining the house and the garage, they are not reasonable and would reduce the function and use of the property. The design as planned is in use with multiple residential properties along South Atlantic Avenue, including the abutting property at 333 South Atlantic Avenue.

Another factor against other alternatives is the required turning radius to enter the garage from South Atlantic Avenue. Shifting the garage location would impact how vehicles enter/exit the garage and could have safety impacts.

Argument against the variance: The garage is proposed as a 2,442 square feet and appears larger than the garage structures on abutting properties. The garage could be merged or turned from a north-south orientation to an east-west orientation.

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.**

Argument for the variance: The variance is not based exclusively on the desire to reduce the cost of the construction of the project.

Argument against the variance: None. The variance is not based exclusively on the desire to reduce the cost of the construction of the project.

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

Argument for the variance: The request will not increase congestion, fire danger or public hazards.

Argument against the variance: None. The variance will not create any hazards 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.

Argument for the variance: The applicant states that the front yard variance is in harmony with the code and will not diminish surrounding property values. It is important to note where detached garages have been placed along South Atlantic Avenue. The properties at 333, 335, and 345 South Atlantic Avenue provide examples of what the application is proposing and display the functional nature of the proposed design. The project would enhance the residential character of this section of South Atlantic Avenue.

Argument against the variance: The redevelopment of the property will be in character with the surrounding properties.

8. Granting the 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.

Argument for the variance: The purpose of the variance process is to confer rights that are denied to a particular applicant because of a special condition or unique circumstance for their property. The special condition is related to the property's width. Additional factors impacting site development include the CCCL line and the slope of the property. Other properties in the immediate area have been granted similar variances.

Argument against the variance: The width dimensions allowed by the zoning district setbacks are adequate to make reasonable use of the land. The cause of the setback encroachments is the size of the proposed building and the front yard variance should be denied.

RECOMMENDATION: Development and redevelopment along oceanfront lots have multiple challenges that include making use of oceanfront property, the Coastal Construction Control Line, lot grading, access from a major state roadway. Staff concurs that the lot width of the property is a condition that impacts site development for the subject property. Additional factors include the slope of the property and the fact that the CCCL line pushes building construction away from the beach and ocean. Past variance applications have established development patterns that appear to be functional, safe, aesthetically beneficial, and have not demonstrated any negative impacts to surrounding property owners. The subject property also has a beach access walk over that provides additional setbacks to the property owner to the north.

It is recommended that the Board of Adjustments and Appeals **APPROVE** the variances as follows:

Side Yard Variances – for the single family house structure only as shown on Exhibit A:

1. Allow a south side yard setback of 7', requiring a 1' variance.
2. Allow a north yard setback of 7', requiring a 5' variance.
3. Allow a combined yard setback of 14', requiring a 6' variance.

Alternative – meeting the south yard setback of 8' and having a 6' on the north side abutting the beach walkover ramp.

1. Require a south side yard setback of 8', requiring no variance.
2. Allow a north yard setback of 6', requiring a 6' variance.
3. Allow a combined yard setback of 14', requiring a 6' variance.

Front Yard Variance – for the garage/living area structure only as shown on Exhibit A:

Allow a front yard setback of 15', requiring a variance of 15'.

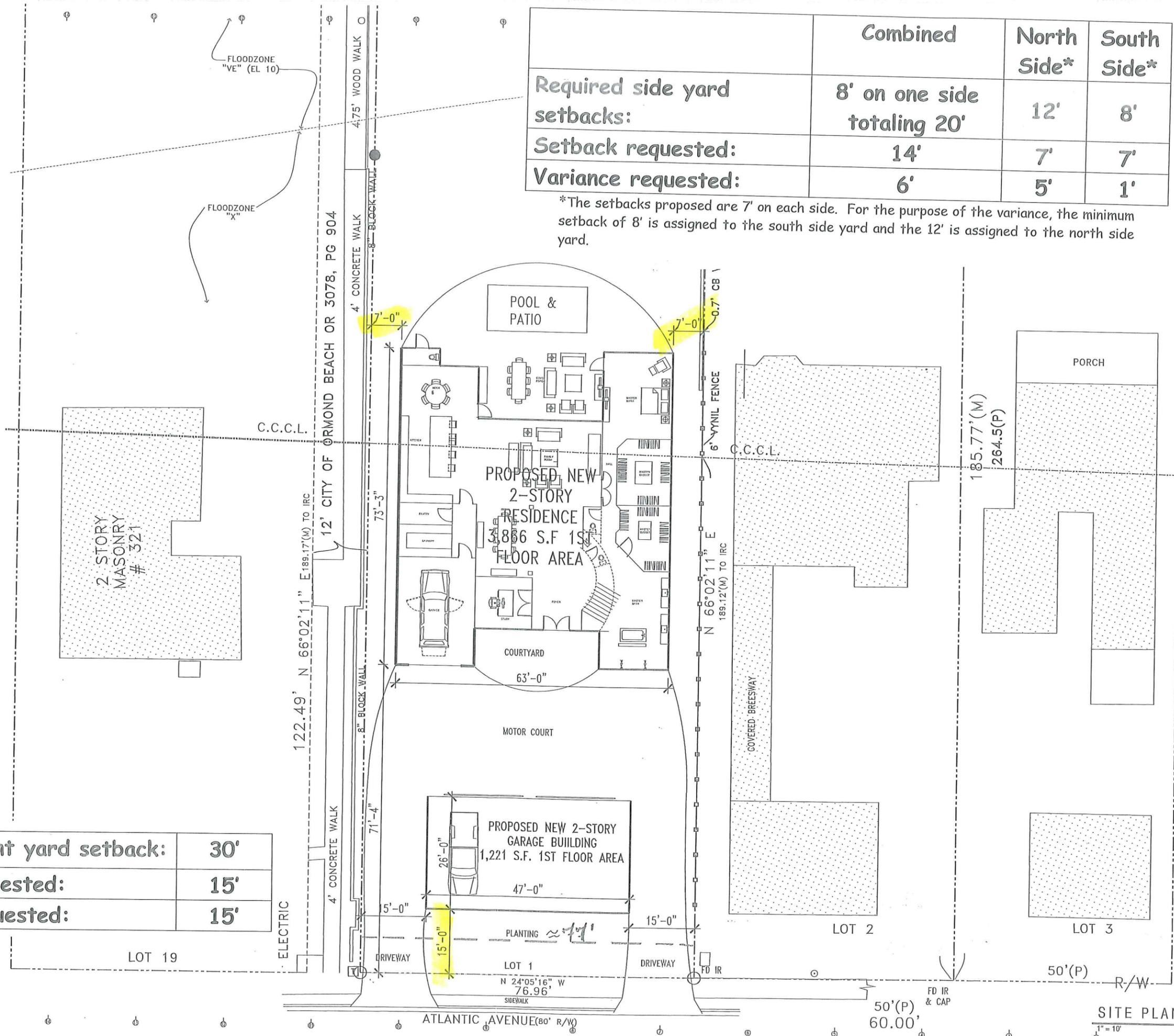
Exhibit A

Variance Exhibit

Required front yard setback:	30'
Setback requested:	15'
Variance requested:	15'

	Combined	North Side*	South Side*
Required side yard setbacks:	8' on one side totaling 20'	12'	8'
Setback requested:	14'	7'	7'
Variance requested:	6'	5'	1'

*The setbacks proposed are 7' on each side. For the purpose of the variance, the minimum setback of 8' is assigned to the south side yard and the 12' is assigned to the north side yard.



Issue	Date	Progress	Prints*
Issue	12-11-14	0%	0
Issue	12-11-14	0%	0
Issue	12-11-14	0%	0

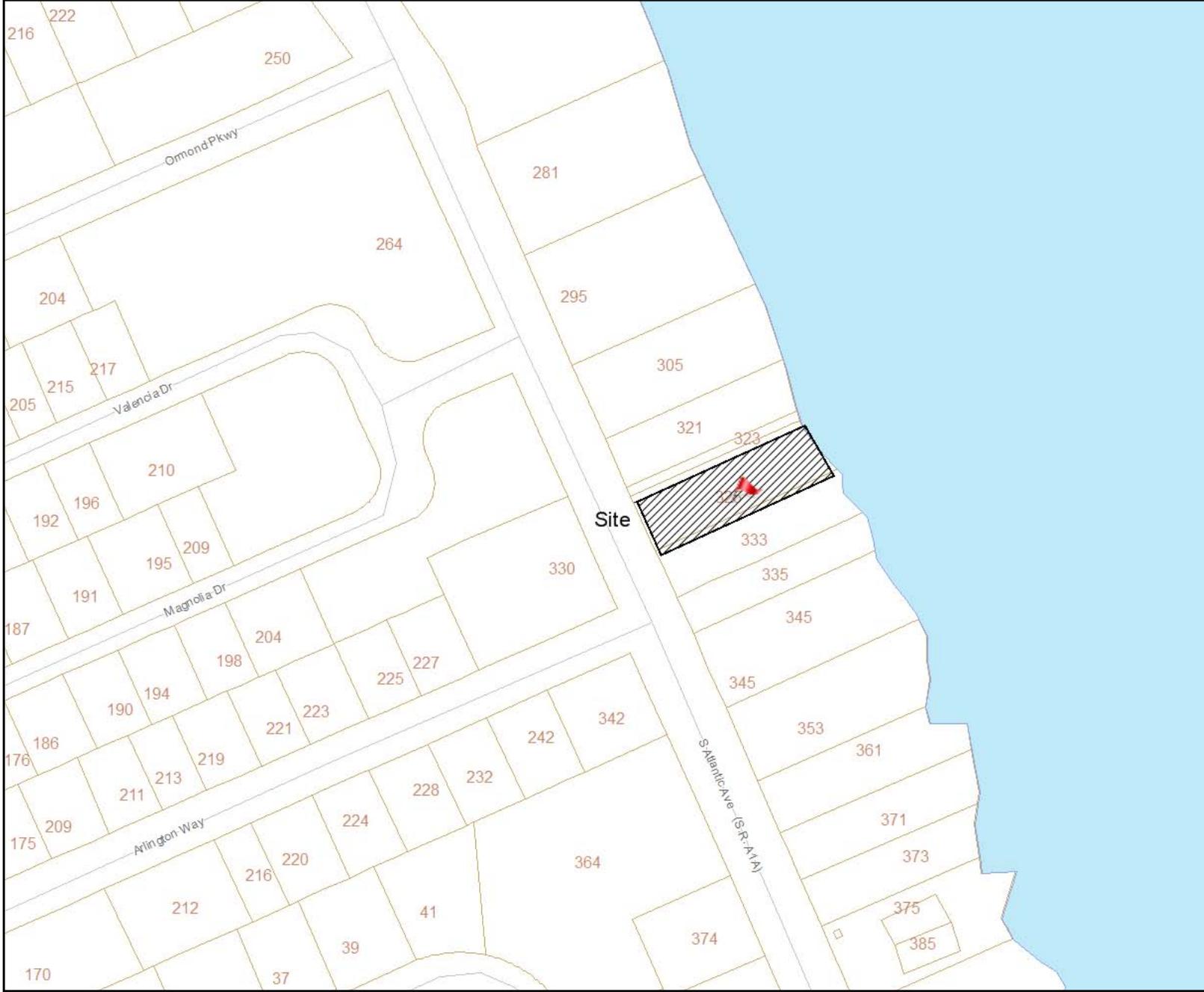
MARTIN RESIDENCE
 325 SOUTH ATLANTIC AVENUE, ORMOND BEACH
 FLORIDA

SITE PLAN
 North / Elev Key Sheet
 1" = 10'
 50' 40' 30' 20' 15' 10' 5' 0'

Exhibit B

- Map and Pictures

325 South Atlantic Avenue



-  Golf Courses
-  Address Points
-  Airport and Railroad
-  AIRPORT
-  RAILROAD
-  City Streets
-  DIRT
-  MAJOR
-  PAVED
-  Water Features
-  Property Lines

178 ft



GIS data is provided on an "as is" basis. The accuracy or reliability of the data is not guaranteed or warranted in any way. The City of Ormond Beach specifically disclaims any warranty either expressed or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular use. The entire risk as to quality and performance of the data is with the end user. In no event will the City, its staff or its representatives be liable for any direct, indirect, incidental, special, consequential, or other damages, including loss of profit, arising out of the use of this data even if the City has been advised of the possibility of such damages.



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

305

321

325

333

335

345

353

S Atlantic Ave

A1A

S Atlantic

50 feet

25 m

© 2012 Microsoft Corporation Pictometry Bird's Eye © 2010 Pictometry International Corp. © 2010 NAVTEQ. © Harris Corp. Earthstar

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Aerial of existing structures at 325 South Atlantic Avenue



Existing setback of 11' and front access to garage

Note slope of lot



325

333

335



Rear yard of 325 South Atlantic Avenue

325

321

**12' Beach
Access
Walkway**



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

Date Submitted

VARIANCE TYPE

Please select appropriate application type

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

Address

City, State, Zip Code

Telephone

Email Address

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

PROPERTY OWNER INFORMATION

Name	Jeffrey Martin
Address	8 Lockwind Ln
City, State, Zip Code	Ormond Beach, FL 32176
Telephone	786-368-9524
Email Address	rz500jeff@yahoo.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	325 S Atlantic Avenue, Ormond Beach, FL
Zip Code	32174
Parcel I.D.	4223-01-05-0010
Legal Description	*see attached.

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	<ol style="list-style-type: none">1) Variance to allow side yard setback of seven (7') feet (north side yard) and seven (7') feet (south side yard) for a total combined side yard setback of fourteen (14') feet in lieu of required minimum of eight (8') feet/twenty (20') feet combined total;2) Variance to allow front yard setback of fifteen (15') feet in lieu of required thirty (30') feet.
---------	---

ABUTTING PROPERTY OWNERS

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

Signature	Street Address	For	Against
<input type="text"/>	<input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>	<input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>	<input type="text"/>	<input 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:

*See attached Exhibit "A".

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

*See attached Exhibit "A".

- 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:

*See attached Exhibit "A".

- 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:

*See attached Exhibit "A".

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:

N/A

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:

N/A

- 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:

N/A

- 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:

N/A

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

N/A

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

N/A

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: James S. Morris Date: 2/1/12
Attorney for owner

Corporation

STATE OF FLORIDA)
COUNTY OF VOLUSIA) SS

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.

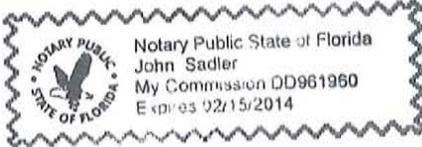
Notary Public
State of Florida
My Commission Expires:

ATTEST: _____

Individual

STATE OF FLORIDA)
COUNTY OF VOLUSIA) SS

The foregoing instrument was acknowledged before me this 1st day of FEBRUARY, 2012 by JAMES S. MORRIS, who provided _____, as identification or is personally known to me.



Notary Public
State of Florida
My Commission Expires:

JAMES S. MORRIS
ATTORNEY AND COUNSELOR AT LAW

February 1, 2012

Mr. Steve Spraker, Senior Planner
Planning & Building Department
City of Ormond Beach
22 South Beach Street
Ormond Beach, FL 32174

Re: Variance Request – 325 S Atlantic Avenue

Dear Mr. Spraker:

I have the pleasure of representing Mr. Jeffrey Martin, the owner of property located at 325 South Atlantic Avenue near the intersection of South Atlantic and Arlington Way. The property is currently configured for multifamily use with a triplex residential/parking compound constructed in 1949. Mr. Martin wishes to redevelop the subject property for placement of a new single family home with detached garage. Variances are required for the proposed redevelopment to occur. Accordingly, enclosed with this letter please find a complete variance application submittal with application fee check in the amount of \$704.00 Dollars.

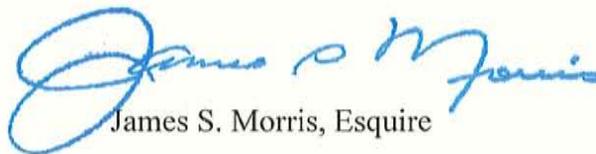
The following variances are being requested as part of the enclosed application:

1. Variance to allow side yard setbacks of 7 feet (north side yard) and 7 feet (south side yard) for a combined total side yard setback of 14 feet in lieu of required 8 feet / 20 feet total;
2. Variance to allow a 15 foot front yard setback in lieu of required 30 feet.

Thank you and please do not hesitate to contact my office with any comments, questions or additional information you may need to process this application.

Sincerely,

JAMES S. MORRIS, P.A.



James S. Morris, Esquire

JSM/jfs
Cc: client
John Dodd, architect

JAMES S. MORRIS, P.A. ♦ 420 SOUTH NOVA ROAD ♦ DAYTONA BEACH, FL 32114
386-238-8383, EXT 19 ♦ 386-238-0988, FAX ♦ JIM@JAMESMORRISPA.COM

PAGE 1 OF 1

D2 2/1/12 JSM

Exhibit "A"

Responses to Land Development Code Variance Criteria

Section 1-16.D.3 of Ormond Beach's Land Development Code provides the following criteria for consideration of variance requests:

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:*

The owner is proposing to redevelop the subject property for placement of a single family home and detached garage. The property is zoned Single Family Low Density Residential (R-2A). The current use of the property is a legal nonconforming multifamily use with an existing triplex residential complex. The structures were built in 1949.

The subject property is approximately 75 feet wide. It does not meet the required minimum lot width of 100 feet as prescribed in the City's R-2 zoning standards. It is a legal, nonconforming lot. The side yard setback variances requested would allow a combined side yard setback total of 14 feet (7 feet north; 7 feet south) in lieu of the required 20 foot combined total. Proportionally, side yard setbacks totaling 14 feet on a 75 foot wide lot compute to approximately 19 percent of the lot's width. In comparison, a total side yard setback of 20 feet as required by R-2 zoning and applied to a 75 foot wide lot means the setbacks would account for approximately 27 percent of the lot's width. The current structures are set back 10.66 feet from the north property line and 10.45 feet from the south property line for a total combined side yard set back of 21.11 feet. The side yard setbacks of 7 feet (14 feet total) are needed in order to construct a single family home on the property in a size and manner consistent with existing single family homes to the north and south.

A variance to allow a front yard setback of 15 feet in lieu of the required 30 feet is also requested to allow placement of a detached garage on the western portion (street side) of the lot. The current front yard setback is 11.34 feet. The detached garage's proposed location arises from

Exhibit "A"

the lot's substandard width combined with a need for substantial visual buffering of the proposed single family home from an existing Burger King fast food restaurant located directly opposite the subject property on the west side of South Atlantic. Additionally, approval of a 15 foot front yard setback will allow placement of the detached garage at approximately the same distance from South Atlantic as the westerly garage/residential unit currently existing on the subject property.

2. *The special conditions and circumstances are not the result of actions of the applicant:*

They are not. Please see response in paragraph 1 above.

3. *Literal interpretation of the provisions of these zoning regulations deprives 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:*

It would. The applicant is seeking a reduction in intensity of use by redeveloping the property from its current multifamily use into a single family home. Redevelopment for single family use will bring the property into conformance with its R-2 zoning and make the site more compatible with the adjacent single family homes to the north and south. Due to the lot's legal, nonconforming size, setback variances are needed to allow a reasonable use of the property as a single family home in keeping with the general character of the adjacent properties to the north and south.

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:*

The variances requested are the minimum variances required to make reasonable use of the subject property for a zoning permitted use: to wit, a single family oceanfront home. Please see response in paragraph 1 above.

Exhibit "A"

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:*

The requested variances arise from the existing conditions and development of the subject property. Financial circumstances do not play a role in the request. The objective is reasonable redevelopment of the property.

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

It will not. Vehicular traffic to and from the subject property will be reduced as a result of redeveloping the property from its current multifamily use into a lower intensity single family use. Public hazards including risk of fire will not be increased.

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:*

The proposed variances are in harmony with the Code. The proposed variances will not diminish surrounding property values and will not alter the character of surrounding properties. Rather, the granting of the requested variances will bring the use and character of the subject property into conformance with the Code and increase its compatibility with the adjacent properties to the north and south.

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:*

It will not. Granting the requested variances will simply allow the Owner to develop and use the property in the manner intended by the City's R-2 zoning and in a configuration and size compatible with the adjacent properties to the north and south.

325 S. Atlantic Avenue, Ormond Beach

LEGAL DESCRIPTION:

Lot 1, except the Southerly 10 feet, Block 5, Arlington Park Subdivision, according to the map or plat thereof as recorded in Plat Book 6, Page 133, Public Records of Volusia County, Florida, and the Southerly 20 feet of Lot 19, lying Easterly of Atlantic Avenue, Assessor's Subdivision of Ormond Beach, according to the map or plat thereof as recorded in Plat Book 3, Page 108, of the Public Records of Volusia County, Florida, less and except any portion lying within state road right-of-way.

Parcel ID#4223-01-05-0010



325 S Atlantic Ave, Ormond Beach, FL

69 ft

© 2011 Google

Google earth

Google earth

feet
meters



200
60





Address 329 Florida A1A

Address is approximate

325 S Atlantic Avenue, Ormond Beach, FL 32176



© 2011 Google

11/06/2009 12:23 PM
Doc stamps 4207.00
(Transfer Amt \$ 601000)
Instrument# 2009-208064 # 1
Book : 6414
Page : 4718

Prepared By and Return To:
Lighthouse Title of East Florida
104 LaCosta Lane Suite 100
Daytona Beach, FL 32114



Parcel No. 4223-01-05-0010

WARRANTY DEED

THIS WARRANTY DEED dated October 30, 2009 by **James Bradley Bailey**, hereinafter called the grantor, to Jeffrey W. Martin, whose post office address is 8 Lochwind Lane, Ormond Beach, FL 32174, hereinafter called the grantee:

(Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives, assigns of individuals, and the successors and assigns of corporations)

WITNESSETH, that the said grantor, for and in consideration of the sum of \$601,000.00, and other valuable consideration, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys, and confirms unto the grantee, all the certain land situated in the County of Volusia, State of Florida, viz:

Lot 1, except the Southerly 10 feet, Block 5, Arlington Park Subdivision, according to the map or plat thereof as recorded in Plat Book 6, Page 133, Public Records of Volusia County, Florida, and the Southerly 20 feet of Lot 19, lying Easterly of Atlantic Avenue, Assessor's Subdivision of Ormond Beach, according to the map or plat thereof as recorded in Plat Book 3, Page 108, of the Public Records of Volusia County, Florida, less and except any portion lying within state road right-of-way.

Parcel ID#4223-01-05-0010

This is not the constitutional homestead of the Grantor who resides at 1008 Putnam Avenue North Las Vegas, Nevada

Subject to easements, restrictions, reservations and limitations of record, if any.

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining.

TO HAVE AND TO HOLD the same in Fee Simple forever.

AND the grantor hereby covenants with said grantee that grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to: December 31, 2009.

WARRANTY DEED
(Continued)

Instrument# 2009-208064 # 2
Book : 6414
Page : 4719
Diane M. Matousek
Volusia County, Clerk of Court

IN WITNESS WHEREOF, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:

WITNESSETH:

[Signature]
(Witness Signature)
K Johnson
(Print Name of Witness)

[Signature]
James Bradley Bailey

• [Signature]
(Witness Signature)
• Cynthia R. Yankasky
(Print Name of Witness)

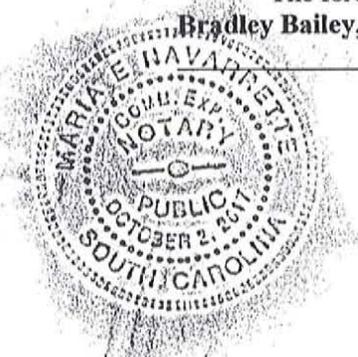
1008 Putnam Avenue
North Las Vegas, NV 89030

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

The foregoing instrument was acknowledged before me this 29 day of October, 2009, by **James Bradley Bailey**, who is / are personally known to me or who has / have produced CA DL CD 423230 as identification and who did take an oath.

[Signature] My Commission Expires
Notary Public October 2, 2017



STATE OF FLORIDA, VOLUSIA COUNTY
HEREBY CERTIFY the foregoing is a true copy of the original filed in this office. This 10 day of April, 2012
Clerk of Circuit and County Court
By [Signature]
Deputy Clerk

Notarized Authorization of Owner

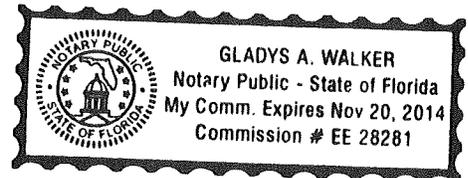
I, Jeffrey Martin, as the sole fee simple title holder of the following property: 325 South Atlantic Avenue, Ormond Beach 32176; Parcel Number: 5340-05-06-0140, hereby authorize James S. Morris, Esquire to act as my agent in seeking variance(s) on the above referenced property.

Sign: *Jeffrey W. Martin*
Print: Jeffrey W. Martin
Date: 2/8/2012

State of Florida
County of Volusia

The foregoing instrument was acknowledged before me this 8th day of February, 2012 by Jeffrey Martin, who [] is personally known to me or [] has produced a Florida Driver's License as identification and who did not take an oath.

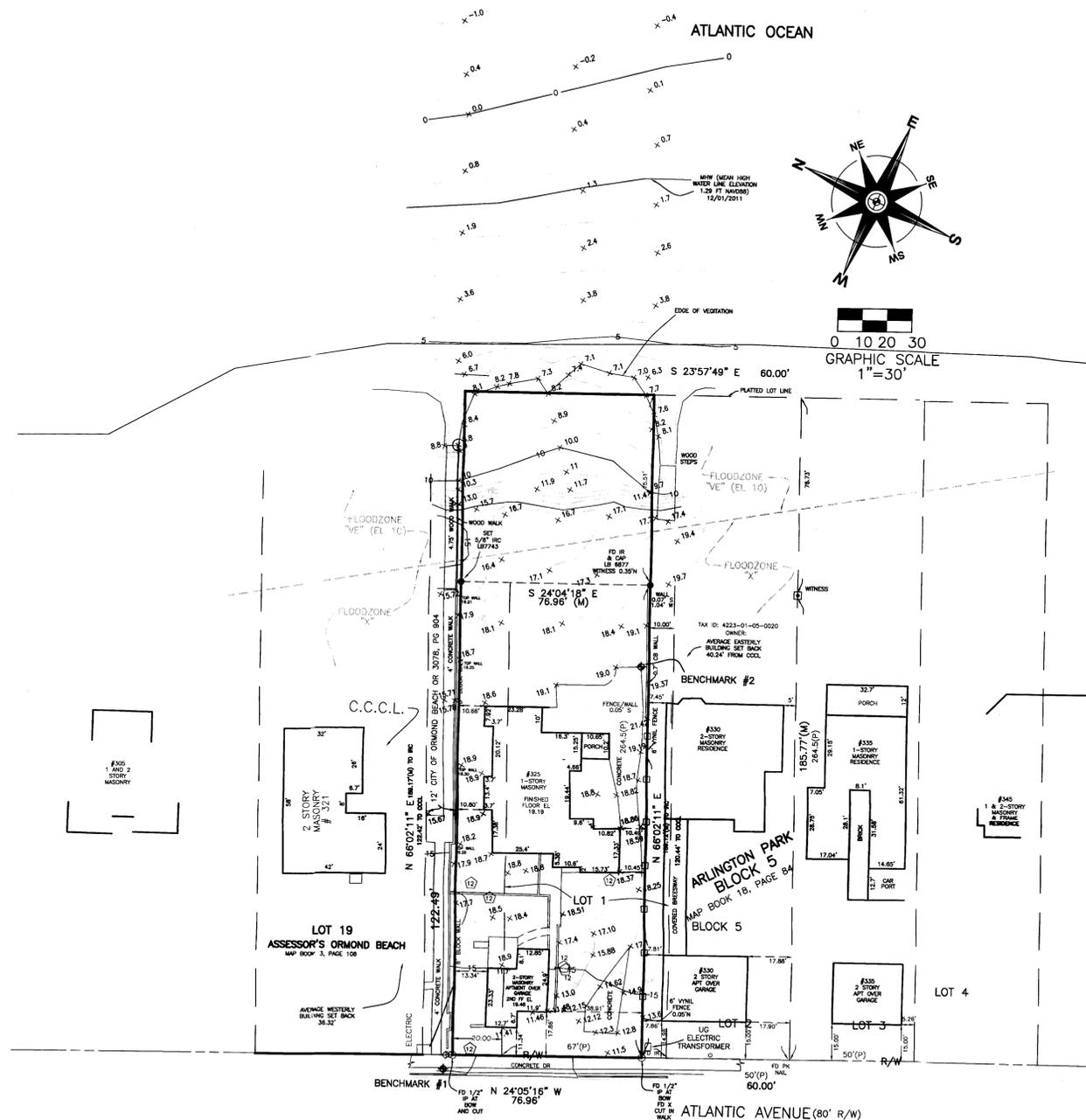
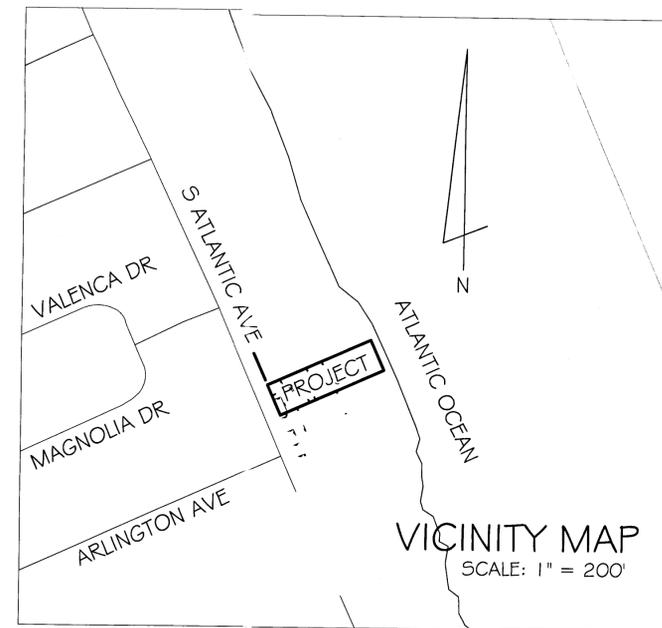
Gladys A. Walker
Notary Public, State of Florida
Type or Print Name:
Gladys A. Walker



LEGAL DESCRIPTION

LOT 1, EXCEPT THE SOUTHERLY 10 FEET, BLOCK 5, ARLINGTON PARK SUBDIVISION, ACCORDING TO MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 6, PAGE 133, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, AND THE SOUTHERLY 20 FEET OF LOT 19, LYING EASTERLY OF ATLANTIC AVENUE, ASSESSOR'S SUBDIVISION OF ORMOND BEACH, ACCORDING TO MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 3, PAGE 108, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, LESS AND EXCEPT ANY PORTION LYING WITHIN STATE ROAD RIGHT-OF-WAY.

THE ABOVE PARCEL CONTAINS 23,395 SQ FT AND/OR 0.468 ACRES MORE OR LESS.

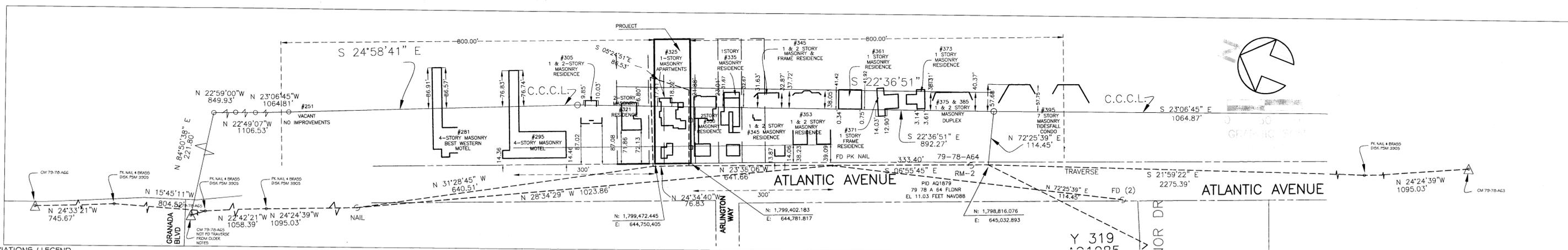


GENERAL NOTES:

1. BEARING STRUCTURE (N 23°10'31" E) BASED ON A LINE BETWEEN FOUR MONUMENT 79-78-A66 AND 79-78-A64, FLORIDA STATE PLANE COORDINATES SYSTEM, EAST ZONE TRANSVERSE MERCATOR GRID NAD 1927 DATUM PER CONSTAL CONSTRUCTION CONTROL LINE. COORDINATES SHOWN ON NAD83 (1990).
2. LEGAL DESCRIPTION NOT PROVIDED BY CLIENT.
3. RECORD DIMENSIONS ARE SHOWN IN PARENTHESES (), WHEN DIFFERS FROM MEASURED.
4. FLOOD PLANE CERTIFICATION ACCORDING TO THE FEMA (FEDERAL EMERGENCY MANAGEMENT AGENCY) F.I.R.M. (FEDERAL INSURANCE RATE MAP), COMMUNITY ORMOND BEACH, NUMBER 125136, PANEL NUMBER 121270216 H, DATED: 02/19/2003. STRUCTURE APPEARS TO BE FLOOD ZONE 'X'.
5. ACCURACY STATEMENT THE EXPECTED CLOSURE FOR THIS PROPERTY SHOULD BE AT A MINIMUM OF HIGH RISK LINEAR 1:10,000. THE CLOSURE OF THE TRAVERSE FOR THIS PROJECT WAS 1:25,723.
6. MEASUREMENT METHODS: HORIZONTAL AND VERTICAL MEASURES MADE BY ONE OR MORE OF THE FOLLOWING INSTRUMENTS: TOPCON INSTRUMENTS GPT-3003W, AT-G2, LUFKIN STEEL TAPE, CST STEEL TAPE, STEEL HIGHWAY CHAIN, CST LUFKIN HERGLASS TAPE FOR DIMENSIONS FOR BUILDINGS.
7. HISTORY REFERENCE TO PREVIOUS SURVEY OR HELPER SURVEYS: UPHAM SURVEY FILE: 238-135, DATED 5/30/2005 AND FILE 238-133 DATED 02/17/2000.
8. LINEAGE OF DATA HORIZONTAL DATA REFERENCES, DATE OF ORIGINAL PLAT, ARLINGTON PARK RECORDED IN MAP BOOK 6, PAGE 133 IS ALSO RECORDED IN MAP BOOK 18, PAGE 84, FEB 1924, NO ASSESSMENTS SHOWN ON PLAT OF RECORD. PLAT OF ASSESSOR'S ORMOND BEACH MAP BOOK 3, PAGE 108 IS ALSO RECORDED IN MAP BOOK 21, PAGE 196, DATES 1899. STATE ROAD 1A (OCEAN SHORE BLVD) ESTABLISHED PER FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP SECTION NO. 7908-2509.

1. LIMITATIONS

- A) ALL INSTRUMENTS OF RECORD REFLECTING EASEMENTS, RIGHT-OF-WAY AND OR OWNERSHIP WERE FURNISHED TO THIS SURVEYOR, PER FIRST AMERICAN TITLE INSURANCE COMPANY. THERE MAY BE ADDITIONAL RESTRICTIONS AND/OR OTHER MATTERS THAT ARE NOT SHOWN ON THIS PLAT OF SURVEY THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THIS COUNTY. NO UNDERGROUND INSTALLATIONS OR IMPROVEMENTS HAVE BEEN LOCATED EXCEPT AS SHOWN. IF LOCATION OF EASEMENTS OR RIGHT-OF-WAY OF RECORD, OTHER THAN THOSE ON RECORD PLATS, IS REQUIRED, THIS INFORMATION MUST BE FURNISHED TO THE SURVEYOR AND MAPPER. PER FLORIDA STATUTES RULE SJ-17.05(2)(2)(6)(4).
- B) IT IS UNDERSTOOD TO BE THE PROFESSIONAL OPINION OF THIS SURVEYOR AND THE FIRM, FROM WHICH IS FORMULATED ON HIS BEST KNOWLEDGE, INFORMATION AND BELIEF, AND AS SUCH, DOES NOT CONSTITUTE A GUARANTEE OR WARRANTY, EITHER EXPRESSED OR IMPLIED. FURTHERMORE, THIS SURVEYOR AND FIRM, DOES NOT ASSUME RESPONSIBILITY AND SHALL NOT BE LIABLE FOR CLAIMS ARISING FROM ERRONEOUS OR INCORRECT INFORMATION FURNISHED BY THE OWNER, LENDER, OR OWNERS CONTRACTORS OR OTHERS, WHICH IS USED AS A BASIS TO FORMULATE THIS SURVEYORS OPINION.
- C) ADDITIONS OR DELETIONS TO SURVEY MAPS OR REPORTS BY OTHER THAN THE SIGNING PARTY IS PROHIBITED WITHOUT WRITTEN CONSENT OF THE PARTY. PER FLORIDA STATUTES CHAPTER RULE SJ-17.05 (3)(b)(6).
- D) THE ACCEPTANCE OF THIS SURVEY AS CERTIFIED FOR THE EXCLUSIVE USE OF NAMES SHOWN HEREON SHALL CONSTITUTE FULFILLMENT OF MY CONTRACTUAL OBLIGATION. ADDITIONAL SEALED ORIGINALS MAY BE PURCHASED UP TO SIX MONTHS AFTER THE DATE OF THE INVOICE. 'ORIGINAL' AS DEFINED HEREON REFERS TO THE SIGNED AND SEALED GRAPHIC REPRESENTATION OF THE FIELD SURVEY. CAD FILES ARE NOT THE SURVEY AND THERE WILL BE A SURCHARGE FOR THEM.
- E) TAX PARCEL IDENTIFICATION NUMBERS, ADJACENT OWNERS NAMES AND ADDRESS WHEN SHOWN SHOWN IS EITHER SUPPLIED BY CLIENT AND/OR TAKEN FROM COUNTY APPRAISERS INTER NET WEB PAGE AND MAY NOT BE THE MOST CURRENT.
- F) SPECIAL PURPOSE SURVEYS WHEN IDENTIFIED AS TYPE OF SURVEY
 1. WHEN TREES AS SHOWN ON THE SURVEY IT IS FOR THE LOCATION OF THE TREES 6" INCHES DIAMETER AND ABOVE TREES TAKEN APPROXIMATELY 4 TO 4-1/2 FEET ABOVE GROUND LEVEL. TREE IDENTIFICATION OTHER THAN LOCATION AND SIZE, SEE AN ARBORIST.
 2. JURISDICTIONAL WETLANDS WHEN SHOWN WERE LOCATED FROM FLAGSMARKS BY OTHERS AND THE DETERMINATION OF WETLANDS ARE OUT OF THE EXPERTISE OF THIS SURVEYOR AND MAPPER.
 3. ARCHAEOLOGICAL FEATURES WHEN SHOWN WERE LOCATED FROM OBJECTS IDENTIFIED BY OTHERS AND THE DETERMINATION OF WHAT CONSTITUTES A ARCHAEOLOGICAL FEATURES IS OUT OF THE EXPERTISE OF THIS SURVEYOR AND MAPPER.
 4. WILDLIFE CORRIDORS OR HABITATS WHEN SHOWN WERE LOCATED FROM OBJECTS IDENTIFIED BY OTHERS AND THE DETERMINATION OF WHAT CONSTITUTES A WILDLIFE CORRIDORS OR HABITATS IS OUT OF THE EXPERTISE OF THIS SURVEYOR AND MAPPER.



ABBREVIATIONS / LEGEND

- | | | | | |
|-----------------------|------------------|---|---|-----------------------------------|
| AC... AIR CONDITIONER | FAX... FACSIMILE | HC... HANDICAP | PT... POINT OF TANGENCY | PC... COMMUNICATIONS PEDESTAL |
| BF... BASE FLOOD | FL... FLORIDA | NAD 83 (1983)... NORTH AMERICAN DATUM OF 1983 | P.S.M... PROFESSIONAL SURVEYOR & MAPPER | RC... FIRE CONNECTION |
| BO... BACK OF WALK | FD... FLOOD | NAD 83 (1983)... NORTH AMERICAN DATUM OF 1983 | R... RADIUS | TOB... POINT OF BEGINNING |
| CA... CENTER LINE | FD... FLOOD | NAD 83 (1983)... NORTH AMERICAN DATUM OF 1983 | R.O.W... RIGHT-OF-WAY | IC... CALCULATED |
| CH... CHORD DISTANCE | FD... FLOOD | NAD 83 (1983)... NORTH AMERICAN DATUM OF 1983 | R.O.W... RIGHT-OF-WAY | FF... FINISHED FLOOR |
| CH... CHORD DISTANCE | FD... FLOOD | NAD 83 (1983)... NORTH AMERICAN DATUM OF 1983 | R.O.W... RIGHT-OF-WAY | TRAV... TRAVERSE POINT / WITHNESS |
| CH... CHORD DISTANCE | FD... FLOOD | NAD 83 (1983)... NORTH AMERICAN DATUM OF 1983 | R.O.W... RIGHT-OF-WAY | TRAV... TRAVERSE POINT / WITHNESS |
| CH... CHORD DISTANCE | FD... FLOOD | NAD 83 (1983)... NORTH AMERICAN DATUM OF 1983 | R.O.W... RIGHT-OF-WAY | TRAV... TRAVERSE POINT / WITHNESS |

THIS MAP IS INTENDED TO BE DISPLAYED AT A SCALE OF 1"=30' OR SMALLER ANY USE OF THIS FILE AT A SCALE LARGER THAN STATED SHALL BE AT YOUR RISK.

CERTIFIED for the exclusive use of:
 -- JEFFREY WILLIAM MARTIN

SURVEY TYPE
BOUNDARY

325 S ATLANTIC AVE.
 ORMOND BEACH, FL
 32174
 TAX ID: 4223-01-02-0010

PROJECT #111103
 FIELD BOOK 3, PG 25

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THE FOREGOING PLAT IS CERTIFIED TO MEET THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS PER CHAPTER 31-17, EFFECTIVE DATE 05/10/2011, 2009, FLORIDA ADMINISTRATIVE CODE, AS APPLICABLE TO SECTION 472, FLORIDA STATUTES.

William A. Harts 12/10/2011
 NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER. F5M 3905
 WILLIAM A. HART

SURVEY MAP & REPORT