



AGENDA

ORMOND BEACH BOARD OF ADJUSTMENT AND APPEALS

May 2, 2012

ORMOND BEACH CITY COMMISSION CHAMBERS

7:00 P.M.

- I. ROLL CALL
- II. APPROVAL OF THE MINUTES
- III. NEW BUSINESS

A. **Case No. 12V-077: 176 Woodland Avenue, pool screen enclosure variance.**

This is a request from David and Kathleen Thompson (applicants) is requesting two variances to locate a pool screen enclosure over an existing pool and deck along the rear and side interior lot line. The variances are as follows:

Rear Yard Variance: Section 2-50.X.1.c.(2) of the Land Development Code requires a 10' setback for a pool screen enclosure to the rear property line. The applicants are requesting an 8.42' variance to the pool screen enclosure standard with a resulting setback of 1.58' to the rear property line.

Side Yard Variance: Section 2-50.X.1.d.(2) of the Land Development Code requires a 7.5' setback for a pool screen enclosure to the interior side yard property line. The applicants are requesting a 5.75' variance to the pool screen enclosure standard with a resulting setback of 1.75' to the side yard property line.

B. **Case No. 12V-079: 90 Raintree Lane, pool and deck variances.**

This is a request from Fred Hudson III (applicant) for variances to allow a constructed pool and deck to remain at a setback of 2.9' from the rear yard property line abutting the Tomoka River. The variances are as follows:

Pool Variance: Section 2-50.X.3 of the Land Development Code requires a calculated setback for pools located on waterfront lots which is 54.17' and a minimum of 15' from the edge of the deck to the normal water line. The applicant is requesting a 51.27' variance to the pool standard with a resulting setback of 2.9' to the rear property line. The applicant also requests a 12.1' variance to the required 15' setback from the edge of deck to the normal water line, with a resulting setback of 2.9' to the rear property line.

Deck Variance: Section 2-50.W of the Land Development Code requires a 5' setback for a deck. The applicant is requesting a 2.1' variance to the deck standard with a resulting setback of 2.9' to the rear yard property line.

- IV. OTHER BUSINESS
- V. ADJOURNMENT

STAFF REPORT

City of Ormond Beach Department of Planning

DATE: April 25, 2012

SUBJECT: 176 Woodland Avenue

APPLICANT: David & Kathleen Thomas, Property owners

FILE NUMBER: V12-77

PROJECT PLANNER: Steven Spraker, AICP, Senior Planner

INTRODUCTION:

The applicant is requesting two variances to locate a pool screen enclosure over an existing pool and deck along the rear and side interior lot line. The variances are as follows:

Rear Yard Variance: Section 2-50.X.1.c.(2) of the Land Development Code requires a 10' setback for a pool screen enclosure to the rear property line. The applicants are requesting an 8.42' variance to the pool screen enclosure standard with a resulting setback of 1.58' to the rear property line.

Side Yard Variance: Section 2-50.X.1.d.(2) of the Land Development Code requires a 7.5' setback for a pool screen enclosure to the interior side yard property line. The applicants are requesting a 5.75' variance to the pool screen enclosure standard with a resulting setback of 1.75' to the side yard property line.

BACKGROUND:

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

Table 1: Adjacent land uses and zoning:

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

Table 2: Site Aerials



The subject property is 90' wide by 105' deep and is a conforming lot of record. According to the Volusia County Property Appraiser, the house, pool and deck was constructed in 1979. The applicants purchased the home in 1984 and have lived at this address for 28 years.

The applicants desire to place a pool screen enclosure over the existing pool for several reasons which include:

1. The trees on their property and on abutting properties have become more mature and have produced more droppings of leaves and branches.
2. There is a desire to not impact the trees in the area of the pool though pruning or removal.
3. The lack of the pool screen enclosure has lead to consistent and escalating pool maintenance.
4. To prevent small animals from entering into the pool.
5. To increase the enjoyment and ability to use the pool.

When the pool screen setback is applied to this property, the screen would be in the waters of the pool.

ANALYSIS:

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.**

Case for the variances: The special condition relates to the location of the existing pool and deck that was constructed in 1979. The location of the pool and deck does not allow the opportunity to construct a screen enclosure that can meet a 10' setback.

Case against the variances: Alternatively, one may argue that the location of the pool and deck is not a special condition and is common through out the City. The existing pool and deck is non-conforming and the screen enclosure should not be permitted.

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

Case for the variances: The applicants purchased the property after the pool and deck had been constructed. The special conditions did not result from the actions of the applicant.

Case against the variances: None.

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.**

Case for the variances: The literal interpretation of the zoning regulations would prevent the construction of the pool screen enclosure. Meeting the 10' screen enclosure setback would require the enclosure to be located entirely in the pool water and is not possible. This condition is a direct cause of the location of the 1979 location of the pool and deck. Pool screen enclosures are commonly enjoyed by other properties in the same neighborhood and zoning district.

Case against the variances: The Land Development Code establishes standards for screen enclosure setbacks and based on individual properties, not all sites can have pool screen enclosures.

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.**

Case for the variances: There is no practical alternative if a screen enclosure is to be allowed. As stated previously, applying the setback would require the pool screen enclosure in the water of the pool. The request is the minimum necessary in order to allow the construction of the screen enclosure. Staff has not received any objections or correspondence against the variance request. All surrounding property owners have provided a signature for the variance application.

Case against the variances: As stated in criteria 3, property owners do not have an absolute right to screen enclosures at less than 10' to the property line. One alternative is to reduce the deck within the rear yard setback and place the screen enclosure at a 4' to 5' setback. The existing deck is approximately 5' to 6' in width, with the pool water being located at 7' to the rear property line. In the past, one primary consideration of variance applications has been the impact to neighboring properties.

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.**

Case for the variances: The variance is not sought to reduce the cost of the construction of the pool screen enclosure.

Case against the variances: None.

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

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

Case against the variances: None.

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.**

Case for the variances: The request will not diminish property values or alter the character of the surrounding area. One purpose of the variance process is to measure the impact of the improvement subject to the variance on adjoining properties. Staff has not received any objections and believes that the screen enclosure would not alter the character of the neighborhood.

Case against the variances: None.

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.**

Case for the variances: 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.

Case against the variances: One can argue that granting the variance requests will lead to multiple applications for screen enclosures for pools with less than a 10' setback. Staff would state that there have been requests in the past for these types of situation, most recently 2 Springwood Trail, 24 Queen Ann Court, and 146 Wildwood Avenue. Each application is a unique situation that must be reviewed independently based on the variance criteria, input from the required notification, and testimony at the public hearing.

RECOMMENDATION: It is recommended that the Board of Adjustments and Appeals **APPROVE** the following variances to allow the construction of a pool screen enclosure:

Rear Yard Variance: Section 2-50.X.1.c.(2) of the Land Development Code requires a 10' setback for a pool screen enclosure to the rear property line. The applicants are requesting a 8.42' variance to the pool screen enclosure standard with a resulting setback of 1.58' to the rear property line.

Side Yard Variance: Section 2-50.X.1.d.(2) of the Land Development Code requires a 7.5' setback for a pool screen enclosure to the interior side yard property line. The applicants are requesting a 5.75' variance to the pool screen enclosure standard with a resulting setback of 1.75' to the side yard property line.

Exhibit A

Variance Exhibit

BOUNDARY SURVEY OF:

The North 105 feet of the West 10 feet of Lot 23 and the North 105 feet of Lot 24, McNARY SUBDIVISION, according to the plat thereof as recorded in Plat Book 4, Page 32, of the Public Records of Volusia County, Florida.

FLOOD CERTIFICATION:

This is to certify that I have consulted the National Flood Insurance Flood Hazard Boundary Map and found the subject property is not within a special flood hazard area, according to Map No. 12127C 0212H, dated 02/19/2003. (ZONE X)

THIS SURVEY IS CERTIFIED TO:

DAVE THOMAS

PROPERTY ADDRESS:

176 WOODLAND AVE., ORMOND BEACH, FL 32174

PROPERTY SERVED BY CITY WATER

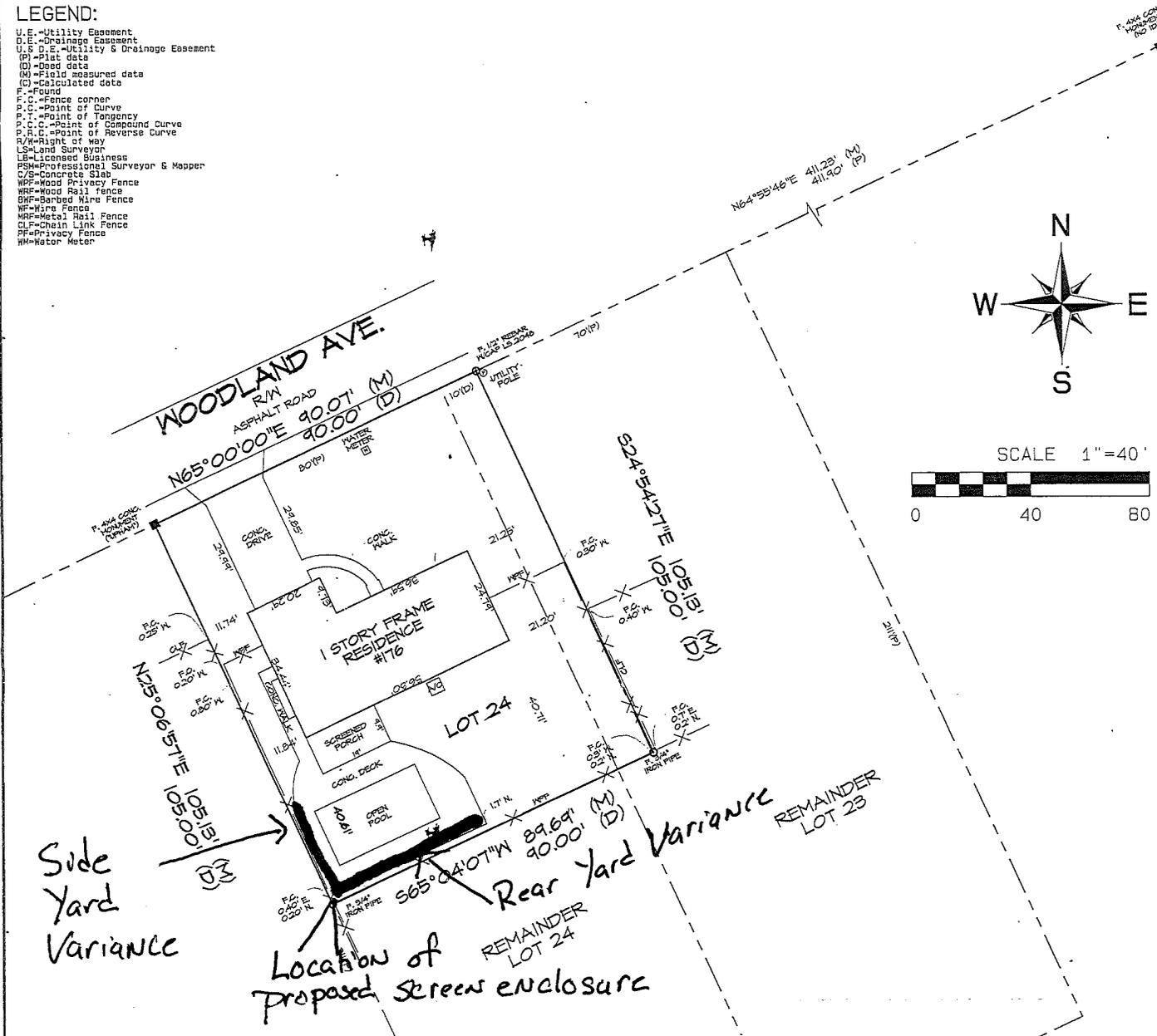
BEARINGS BASED ON ASSUMED DATUM--The Northerly line of subject property being N.65°00'00"E.

NOTES:

- 1) Subject to restrictions, reservations, easements and rights-of-way, if any, appearing of record.
- 2) Survey performed without the benefit of a title search.
- 3) Underground utilities and other below ground features, not located, other than shown.

LEGEND:

- U.E.-Utility Easement
- D.E.-Drainage Easement
- U.S.D.E.-Utility & Drainage Easement
- (P)-Plat data
- (D)-Deed data
- (M)-Field measured data
- (C)-Calculated data
- F.-Found
- F.C.-Fence corner
- P.C.-Point of Curve
- P.T.-Point of Tangency
- P.C.C.-Point of Compound Curve
- P.R.C.-Point of Reverse Curve
- R/W-Right of Way
- L.S.-Land Surveyor
- L.B.-Licensed Business
- P.S.M.-Professional Surveyor & Mapper
- C/S-Concrete Slab
- W.P.F.-Wood Privacy Fence
- W.R.F.-Wood Rail fence
- B.W.F.-Barbed Wire Fence
- W.F.-Wire Fence
- W.P.F.-W.P.F. Rail Fence
- C.L.F.-Chain Link Fence
- P.F.-Privacy Fence
- M.-Water Meter



Rear Yard Pool Screen Enclosure		
Setback Required	Setback Requested	Variance Requested
10'	1.58'	8.42'

Side Yard Pool Screen Enclosure		
Setback Required	Setback Requested	Variance Requested
7.5'	1.75'	5.75'

This survey is certified to and prepared for the exclusive benefit of the entities and/or individuals shown herein, valid on the most current date shown, and shall not be relied upon by any other entity or individual whatsoever.

There may be additional restrictions and/or other matters of record not shown on this survey that may be found in the Public Records of the County or contained within the Title Commitment.

THIS DRAWING IS THE SOLE PROPERTY OF LANGFORD SURVEYING C.F.L. INC. AND CANNOT BE REPRODUCED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF LANGFORD SURVEYING C.F.L. INC. OTHER THAN THE ORIGINAL CLIENT. REPRODUCTIONS OF THIS SKETCH ARE NOT VALID WITHOUT THE EXPRESSED WRITTEN PERMISSION OF LANGFORD SURVEYING C.F.L. INC. ©

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 5415 Lake Howell Rd. #160
 Winter Park, FL 32792
 407-332-7202 Fax 800-654-2339
 www.langfordsurveying.com
 jim@langfordsurveying.com

NOTE: Date of survey may differ from date of signature. If so, the date of survey is the applicable date.

DATE SIGNED: 3/20/2012
 James P. Langford, P.L.S. 3992 LB7803
 VALID ONLY WITH AN AUTHENTICATED ELECTRONIC OR EMBOSSED SURVEYOR'S SEAL & SIGNATURE

Date of Survey: 03/19/2012	Drawn by: RCL	Checked by: JPL	Scale: 1"=40'	File name/no. 12-03/26
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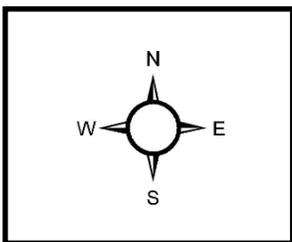
Exhibit B

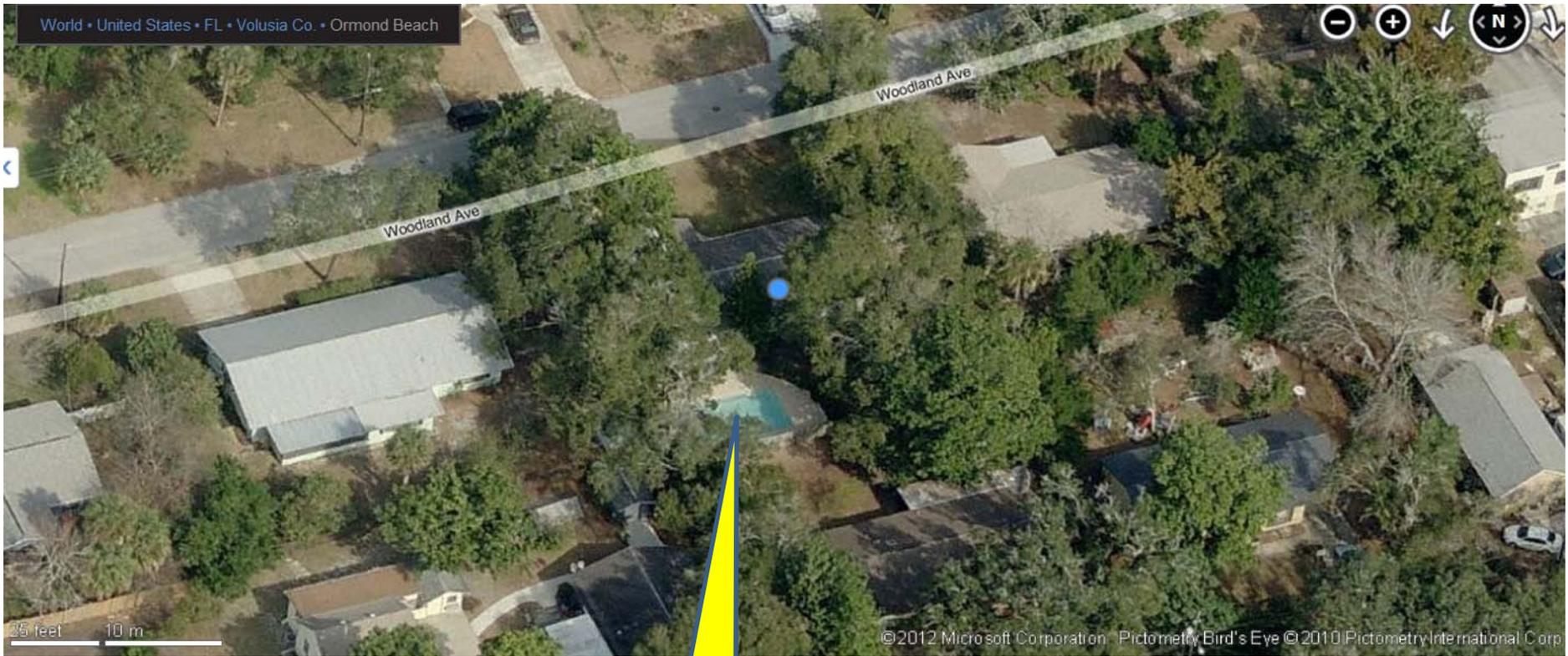
Maps and Pictures



LOCATION MAP
176 Woodland Avenue Location Map

 The City of Ormond Beach
 Planning Department
 Prepared by: April 13, 2012





Location of
pool and deck





Requested pool enclosure







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

Residential

FEES

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

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

APPLICANT INFORMATION

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

Name

S. David & Kathleen Thomas

Address

176 Woodland Avenue

City, State, Zip Code

Ormond Beach, Florida 32174-5633

Telephone

[REDACTED]

Email Address

[REDACTED]

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

PROPERTY OWNER INFORMATION

Name	same
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	176 Woodland Avenue
Zip Code	32174
Parcel I.D.	
Legal Description	See attached survey

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	1st Variance: Pool screen enclosure to be at 19' instead of 10', which is an 8'5" variance. 2nd Variance: Pool screen enclosure to be at 21' instead of 7.5' is a 6 (+ -) variance.
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ABUTTING PROPERTY OWNERS

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

Signature	Street Address	For	Against
<i>Jessica Meisner</i>	174 Woodland ave	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Mildred E. Taylor Wickless</i>	190 Woodland Ave	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Gregory Stoker</i>	179 Dix Ave. Cement Blk	<input checked="" type="checkbox"/>	<input type="checkbox"/>

CRITERIA: CONFORMING

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

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

1. Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district:

The special condition is the location of the existing pool which was built in 1979 (+ -). making the required setback would place the enclosure in the water. The lack of screening has caused increased maintenance such as pool and deck resurfacing that coast \$7,000.00. The pool is surrounded by trees and the lack of screening has decreased the enjoyment of the pool.

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

We purchased the house in 1984 after construction of the pool and did not cause the special condition. Be able to enjoy pool w/o insects or tree leaves, etc.

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:

Literal interpretation would cause pool screen enclosure to be located in the pool water. Lack of screening causes additional maintenance and pool deck issue causing costly repairs. Pool screen enclosures are typical in single family neighborhoods. All abutting property owners have agreed to the application.

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 is no practical alternative for the pool screen enclosure. Meeting the required set backs would place the enclosure in the water of the pool.

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:

The variance is not sought to reduce the cost of the screen enclosure.

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

No. All surrounding property owners have agreed to the variance requested and will not be impacted.

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 pool screen enclosure will not diminish property value and will actually increase the value of the property. In addition it will make the pool more enjoyable.

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:

Pool screen enclosure are typical and increase the enjoyment by property owners. Granting the variance would not confer any special privilege.

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: S. David Thomas Date: 4/3/12

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.

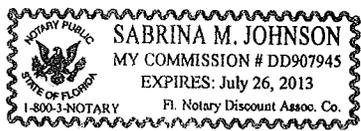
 Notary Public
 State of Florida
 My Commission Expires:

ATTEST: _____

Individual

STATE OF FLORIDA)
 COUNTY OF VOLUSIA) SS

The foregoing instrument was acknowledged before me this 3rd day of April, 2012, by S. David Thomas, who provided FLDL, as identification or is personally known to me.

 _____
 Notary Public
 State of Florida
 My Commission Expires:

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: Kathleen E. Thomas

Date: 04/03/2012

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.

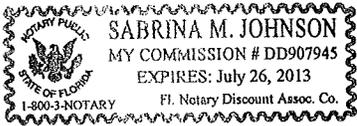
 Notary Public
 State of Florida
 My Commission Expires:

ATTEST: _____

Individual

STATE OF FLORIDA)
COUNTY OF VOLUSIA) SS

The foregoing instrument was acknowledged before me this 3rd day of April, 2012, by Kathleen E. Thomas, who provided FL DL, as identification or is personally known to me.

 _____
 Notary Public
 State of Florida
 My Commission Expires:

Thomas'
176 Woodland Avenue
Ormond Beach, Fl. 32174

April 2, 2012

To the Board of Adjustment and Appeals:

We have lived in Ormond Beach for the past 49 years. We enjoy the outdoors and trees that surround our home.

Having our pool enclosed would be a blessing. In the past years, we have had to resurface our pool and deck which was costly. We have had problems with leaves and debris clogging the pool lines and having to have a pool company come out and unclog the lines, which is costly.

Since we purchased the house in 1984 with the existing pool, the trees have gotten bigger and the upkeep of the pool has become more maintenance and costly to maintain. It would be nice to have the pool enclosed, that way we could spend more time enjoying the pool then cleaning it.

S. David Thomas
Kathleen Thomas

26081962



WARRANTY DEED

26081962

This Warranty Deed Made this 20th day of September, 1984, DONNIE S. BARNES and ELIZABETH S. BARNES, his wife,

hereinafter called the grantor, to

S. DAVID THOMAS and KATHLEEN THOMAS, his wife, whose postoffice address is 176 Woodland Avenue, Ormond Beach, Florida 32074 hereinafter called the grantee;

Witnesseth: That the grantor and in consideration of the sum of \$10.00 and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, alien, releases, conveys and confirms unto the grantee, all that certain land situate in Volusia County, Florida, viz:

The Northerly 105 feet of Lot 24, also the Westerly 10 feet of the Northerly 105 feet of Lot 23, all in McNarys Subdivision of River Lots 8 and 8-1/2, as recorded in Map Book 4, Page 32, of the Public Records of Volusia County, Florida.

REC FEE \$ 5.00 DOC ST \$ 236.30 INT TAX \$ REC CHG \$ REFUND \$

REC'D PAYMENT AS DEPOSIT FOR CLASS OF DEEDS & DOC

Clerk Circuit Court Volusia Co. Florida

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same in fee simple forever.

And the grantor hereby covenants with said grantee that the 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 the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 1983, and that certain Mortgage in favor of Security First Federal Savings and Loan Association recorded in Official Records Book 2053, Page 1542, and Additional Advance Agreement thereto recorded in Official Records Book 2086, Page 422, of the Public Records of Volusia County, Florida, which Grantee herein assumes and agrees to pay.

In Witness Whereof, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in our presence: Janet E. Burkhead Cindy Flowers

Donnie S. Barnes Elizabeth S. Barnes

STATE OF FLORIDA COUNTY OF VOLUSIA

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared

DONNIE S. BARNES and ELIZABETH S. BARNES, his wife,

to me known to be the persons described in and who executed the foregoing instrument and they acknowledged before me that they executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this 20th day of September, A. D. 1984

Janet E. Burkhead Notary Public, State of Florida

This instrument prepared by: JANET E. BURKHEAD LAWYERS TITLE GROUP, INC. Representing Lawyers Title Insurance Corp.

SPACI BELOW FOR RECORDERS USE. 089953. FREE FOR RECORD RECORD VERIFIED. Sep 21 11 08 AM '84. My Commission expires: NOTARY PUBLIC, STATE OF FLORIDA

BOUNDARY SURVEY OF:

The North 105 feet of the West 10 feet of Lot 23 and the North 105 feet of Lot 24, McNARY SUBDIVISION, according to the plat thereof as recorded in Plat Book 4, Page 32, of the Public Records of Volusia County, Florida.

FLOOD CERTIFICATION:

This is to certify that I have consulted the National Flood Insurance Flood Hazard Boundary Map and found the subject property is not within a special flood hazard area, according to Map No. 12127C 0212H, dated 02/19/2003. (ZONE X)

THIS SURVEY IS CERTIFIED TO:

DAVE THOMAS

PROPERTY ADDRESS:

176 WOODLAND AVE., ORMOND BEACH, FL 32174

PROPERTY SERVED BY CITY WATER

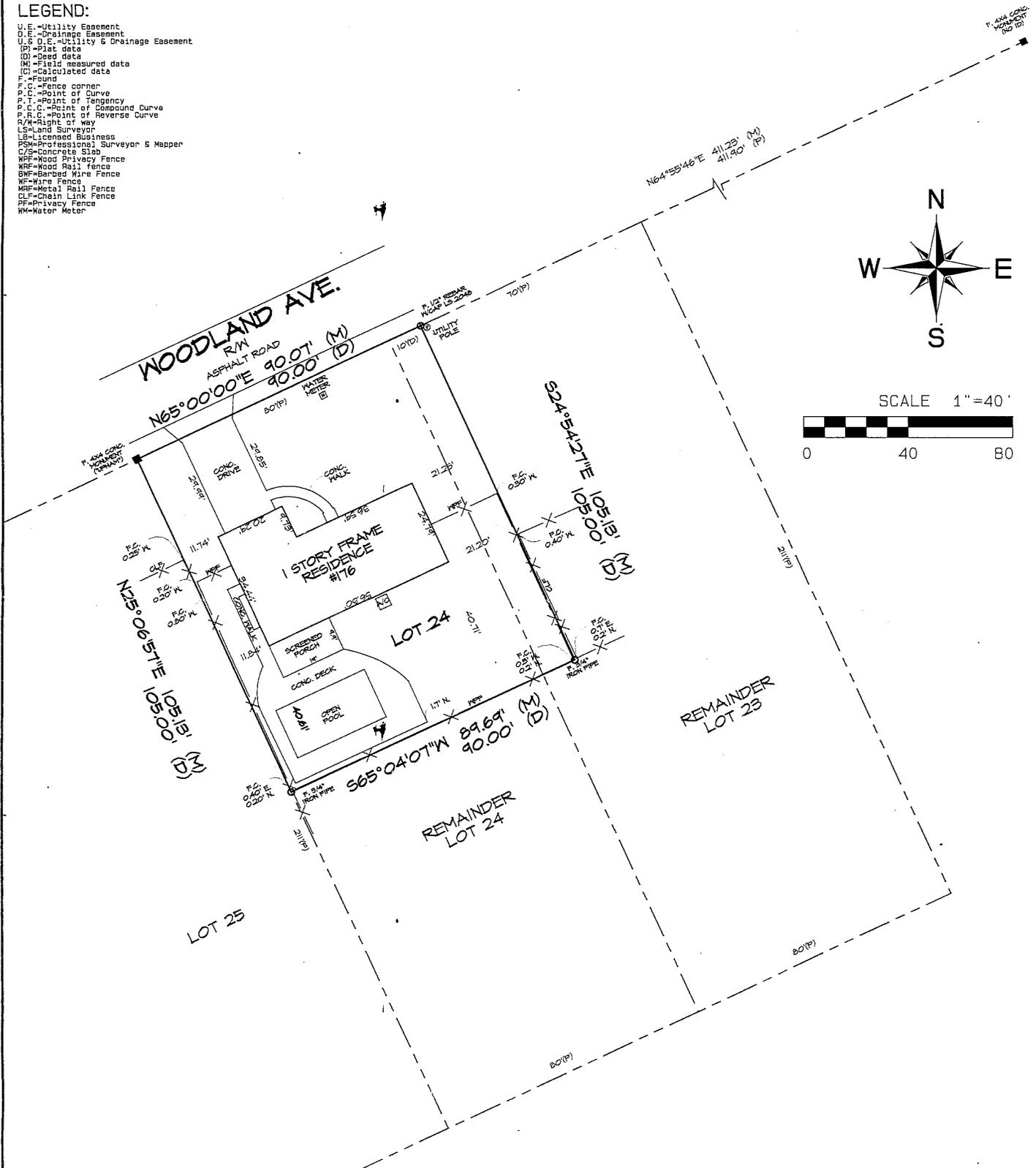
BEARINGS BASED ON ASSUMED DATUM--The Northerly line of subject property being N.65°00'00"E.

NOTES:

- 1) Subject to restrictions, reservations, easements and rights-of-way, if any, appearing of record.
- 2) Survey performed without the benefit of a title search.
- 3) Underground utilities and other below ground features, not located, other than shown.

LEGEND:

- U.E.-Utility Easement
- D.E.-Drainage Easement
- U. & D.E.-Utility & Drainage Easement
- (P)-Plat data
- (D)-Deed data
- (M)-Field measured data
- (C)-Calculated data
- F.-Found
- F.C.-Fence corner
- P.C.-Point of Curve
- P.T.-Point of Tangency
- P.C.C.-Point of Compound Curve
- P.R.C.-Point of Reverse Curve
- R/W-Right of way
- LS-Land Surveyor
- LB-Licensed Business
- PSM-Professional Surveyor & Mapper
- C/S-Concrete Slab
- MPF-Wood Privacy Fence
- MF-Wood Rail Fence
- SWF-Separated Wire Fence
- WF-Wire Fence
- MPF-Metal Rail Fence
- CLF-Chain Link Fence
- PF-Privacy Fence
- WM-Water Meter



This survey is certified to and prepared for the exclusive benefit of the entities and/or individuals shown hereon, valid on the most current date shown, and shall not be relied upon by any other entity or individual whatsoever.

There may be additional restrictions and/or other matters of record not shown on this Survey that may be found in the Public Records of the County or contained within the Title Commitment.

THIS DRAWING IS THE SOLE PROPERTY OF LANGFORD SURVEYING C.F.L. INC. AND CANNOT BE COPIED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF LANGFORD SURVEYING C.F.L. INC. OTHER THAN THE ORIGINAL CLIENT. REPRODUCTIONS OF THIS SKETCH ARE NOT VALID WITHOUT THE EXPRESSED WRITTEN PERMISSION OF LANGFORD SURVEYING C.F.L. INC. ©

Langford Surveying CFL, Inc.
 5415 Lake Howell Rd. #160
 Winter Park, FL 32792
 407-332-7202 Fax 800-654-2339
 www.langfordsurveying.com
 jim@langfordsurveying.com

NOTE:
 Date of survey may differ from date of signature. If so, the date of survey is the applicable date.

DATE SIGNED: 3/20/2012
 James P. Langford, P.L.S. 3992 LB7803
 VALID ONLY WITH AN AUTHENTICATED ELECTRONIC OR EMBOSSED SURVEYOR'S SEAL & SIGNATURE

Date of Survey: 03/19/2012	Drawn by: RCL	Checked by: JPL	Scale: 1"=40'	File name/no. 12-03/26
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STAFF REPORT

City of Ormond Beach Department of Planning

DATE: April 25, 2012

SUBJECT: 90 Raintree Lane

APPLICANT: Fred Hudson, Property owner

FILE NUMBER: V12-79

PROJECT PLANNER: Steven Spraker, AICP, Senior Planner

INTRODUCTION:

This is a request from Fred Hudson III (applicant) for variances to allow a constructed pool and deck to remain at a setback of 2.9' from the rear yard property line abutting the Tomoka River. The variances are as follows:

Pool Variance: Section 2-50.X.3 of the Land Development Code requires a calculated setback for pools located on waterfront lots which is 54.17' and a minimum of 15' from the edge of the deck to the normal water line. The applicant is requesting a 51.27' variance to the pool standard with a resulting setback of 2.9' to the rear property line. The applicant also requests a 12.1' variance to the required 15' setback from the edge of deck to the normal water line, with a resulting setback of 2.9' to the rear property line.

Deck Variance: Section 2-50.W of the Land Development Code requires a 5' setback for a deck. The applicant is requesting a 2.1' variance to the deck standard with a resulting setback of 2.9' to the rear yard property line.

BACKGROUND:

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

Table 1: Adjacent land uses and zoning:

	Current Land Uses	Future Land Use Designation	Zoning
North	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	Single Family House	"Low Density Residential"	R-2 (Single Family Low Density)
West	Single Family House, across River	"Low Density Residential" & "open Space/Conservation"	RR (Rural Residential)

Table 2: Site Aerials



The Volusia County Property Appraiser lists the house at 90 Raintree Lane as constructed in 1997 and an addition constructed in 2005. The house addition received a variance from the Board of Adjustments and Appeals, case number 04-05, for an encroachment into the rear yard setback of 43' with a final setback of 60'.

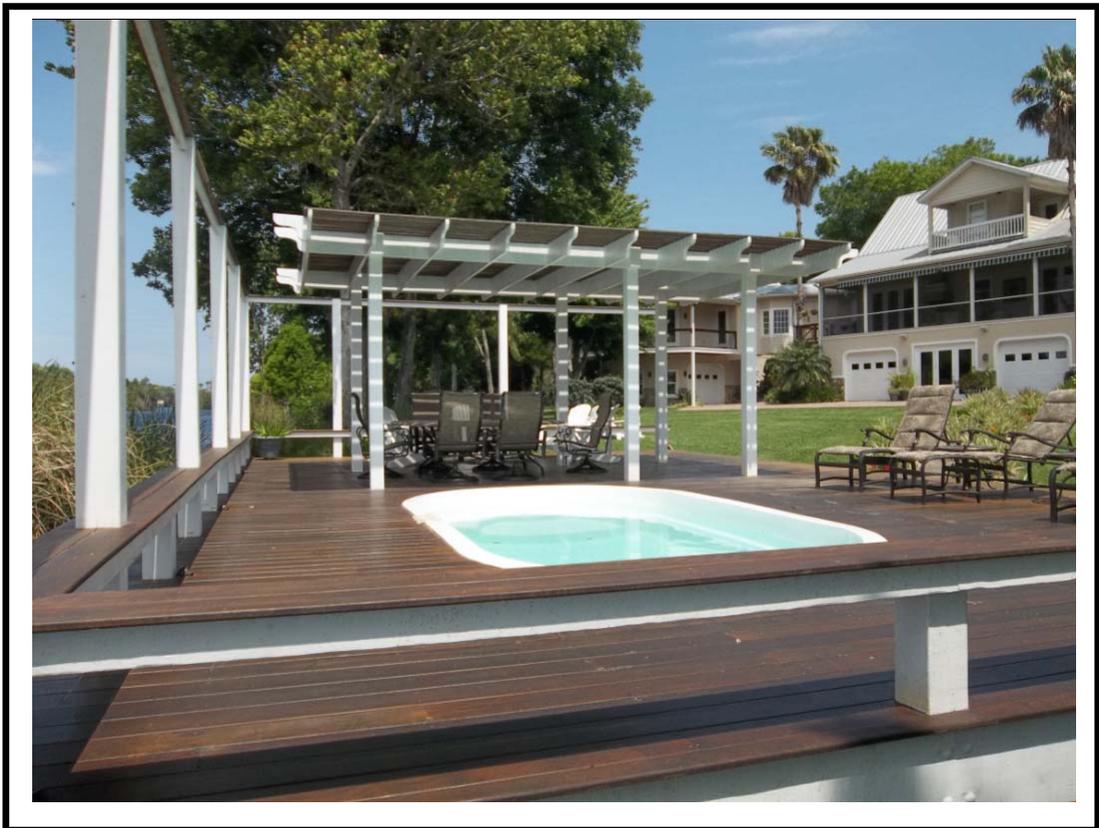
The applicant has constructed the deck and pool without permits and seeking to allow the improvements to stay at their existing location. As shown on the survey, the deck is 26.4' by 44' or 1,162 square feet. The pool is level with the deck. The deck does have trellis features, however, there is no hard roof on the structure.

Below is a summary of the code enforcement action to date on this property:

Table 3: Code enforcement action summary:

Date	Action
June 2, 2011	Building staff notified Neighborhood Improvements Division (NID) that they received a call about a pool being constructed and there were no permits at this address.
June 3, 2011	Notice of Violation (NOV) issued.
June 3, 2011	Department of Environmental Protection (DEP) was notified on June 03, 2011 for possible setback violations, wetland encroachment, dock permitting.
July 25, 2011	DEP emails NID staff that the pool/deck appears to be out of the wetland and the dock is under 500 sq. feet--complaint closed.
July 25, 2011	Property owner, Mr. Hudson contacted Building Department Plans Examiner about obtaining construction permits.
August 23, 2011	Citation was issued for construction without permit (citation was paid).
September 26, 2011	At the Special Master hearing it was judged that the property owner had until October 15th to obtain permits or a fine of \$50 would be imposed starting the 16 th .
November 28, 2011	At the Special Master hearing it was judged that a fine of \$2200 be paid (44 days of non-compliance) within 10 days and the \$50/day fine continue until compliance is achieved.
January 26, 2012	A lien was recorded for the \$2200 plus case costs of \$6.03.
April 10, 2012	Property owner applied for variance to allow existing deck and pool remain as constructed.

Below are pictures of the deck structure and pool:



There have been no building or electrical permits issued for the pool and deck. After the Board of Adjustment and Appeal decision, the applicant shall be required to obtain all applicable permits.

Deck Variance: The Land Development Code requires a 5' setback for all decks. Many properties along the Tomoka River have wetland areas between the house and the river which prevents the construction of decks and allows only walkways to docks. This property has no wetlands between the house and the river and the deck was constructed at the edge of the water. The applicant has provided a letter from the Florida Department of Environmental Protection stating no additional actions are required from this agency and the improvement is acceptable.

Pool Variance: The Land Development Code states the following:

“Waterfront Lots. On waterfront lots (excluding oceanfront), pools and screen enclosures shall be set back 10 feet from the rear lot line except that where the rear yard requirement is greater than 30 feet, one (1) additional foot of setback for each two feet (2') of required rear yard in excess of 30 feet is required. There shall be a minimum of 15' from edge of deck to normal water line.”

There are two standards for pool setbacks on waterfront lots. The first standard is the calculated setback which for this property is 54.17'. The second standard requires pools be located 15' from the normal water line.

ANALYSIS:

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.”

In considering the application, there are three variance requests:

1. The deck variance;
2. The calculated pool setback; and
3. The minimum setback of 15' from the normal water line.

While the three variances are separate, they are inter-related and have been analyzed together below.

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 proposed variances:

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.**

Case for the variances: The applicant has stated that the land is so irregular in shape this is the only place the deck could be done and the only place we could use an above ground pool. The applicant has also stated that the location of the deck allows a view of the grandchildren while playing in the Tomoka River. Staff concurs that the shape of the lot is irregular running from the northern lot line to the southern.

Case against the variances: While the lot does have an irregular shape, it does not impact the potential location of the deck or pool. The location of deck is at a 2.9' setback and geographic shape of lot would have no impact if the deck were located at 5'. For the pool, there is approximately 100' of area between the property line and the house structure which would allow the re-location of a pool.

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

Case for the variances: The applicant has stated that there was a previous concrete deck and that the deck constructed would be a similar type of improvement.

Case against the variances: Table 3 of the background section details the history of the project to date. The construction and location of the deck and pool are directly related to the actions of the applicant. Had the scope of work been detailed to City staff, the improvements would have been located in the correct setbacks or a variance sought prior to construction. The hardship was created by performing the work without permits.

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.**

Case for the variances: The applicant stated, that they are restricted by the water set back, for a pool, and it is their opinion that the code regulation do not account for an above ground pool.

Case against the variances: The deck is currently at a 2.9' setback where 5' is required. The literal enforcement of the deck setback would not impact the size of the deck.

The pool is small in size and is an above ground pool. As stated previously, there is adequate space to locate a pool and meet the calculated setback and the 15' minimum for the normal water line.

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.**

Case for the variances: The applicant stated, "There is no other logical place the deck and pool could go. The shape and the slope of the lot prevent it from going any where else".

Case against the variances: The deck can be relocated to meet a 5' setback and other alternatives exist. Similarly, the pool can be relocated to meet the required

setbacks. One alternative is to remove the above ground pool and relocate the deck to a 5' setback.

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.**

Case for the variances: The applicant stated, "The request for this variance is not based on a financial decision. It is strictly the esthetics and practicality of the lot".

Case against the variances: Staff does not believe that the applicant is seeking the variance for financial reasons. It is believed that the location of the deck and pool were designed to make maximum use of the River view corridors.

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

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

Case against the variances: None.

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.**

Case for the variances: The applicant has stated, "This will in no way effect property values, negatively. It will increase property values because of the way it was built. It also will just improve the character of the surrounding sites".

Case against the variances: The general intent of setbacks along the Tomoka River is to push back the principal and accessory buildings with larger average setbacks. While staff has not received any written information from the abutting neighbor, the improvement is clearly forward of their house and pool, and may cause a diminish view of the river.

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.**

Case for the variances: 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.

Case against the variances: Staff does not believe that the application has met the criteria for a variance and the application should be denied.

CONCLUSION: The Board could deny the variances, approve the variances as submitted by the applicant, or reduce the required setbacks. The applicant requests the following variances:

Pool Variance: Section 2-50.X.3 of the Land Development Code requires a calculated setback for pools located on waterfront lots which is 54.17' and a minimum of 15' from

the edge of the deck to the normal water line. The applicant is requesting a 51.27' variance to the pool standard with a resulting setback of 2.9' to the rear property line. The applicant also requests a 12.1' variance to the required 15' setback from the edge of deck to the normal water line, with a resulting setback of 2.9' to the rear property line.

Deck Variance: Section 2-50.W of the Land Development Code requires a 5' setback for a deck. The applicant is requesting a 2.1' variance to the deck standard with a resulting setback of 2.9' to the rear yard property line.

RECOMMENDATION: It is recommended that the Board of Adjustments and Appeals **DENY** the requested variances to allow a constructed pool and deck to remain at a setback of 2.9' from the rear yard property line abutting the Tomoka River. The improvements would be required to meet the applicable setbacks of the Land Development Code.

Exhibit A

Variance Exhibit

Rear Yard Pool Setback Variance		
Setback Required	Setback Requested	Variance Requested
54.17'	2.9'	51.27'
15' from the edge of deck to the normal water line	2.9'	12.1'

LEGEND:
 FD Found Nail
 N/D Nail
 IR Iron Rod
 IP Iron Pipe
 (P) Plat Bearing & Distance

Deck Variance		
Setback Required	Setback Requested	Variance Requested
5'	2.9'	2.1'

DESCRIPTION: PARCEL 1

A PORTION OF LOTS 38, 39 AND 40, BLOCK "T", TOMOKA PARK, AS PER MAP OR PLAT, RECORDED IN MAP BOOK 7, PAGE 96, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, TOGETHER WITH A PORTION OF THE NORTHERLY 1/2 OF THE SOUTH EAST 1/4 OF SECTION 19, TOWNSHIP 14 SOUTH, RANGE 32 EAST, VOLUSIA COUNTY FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

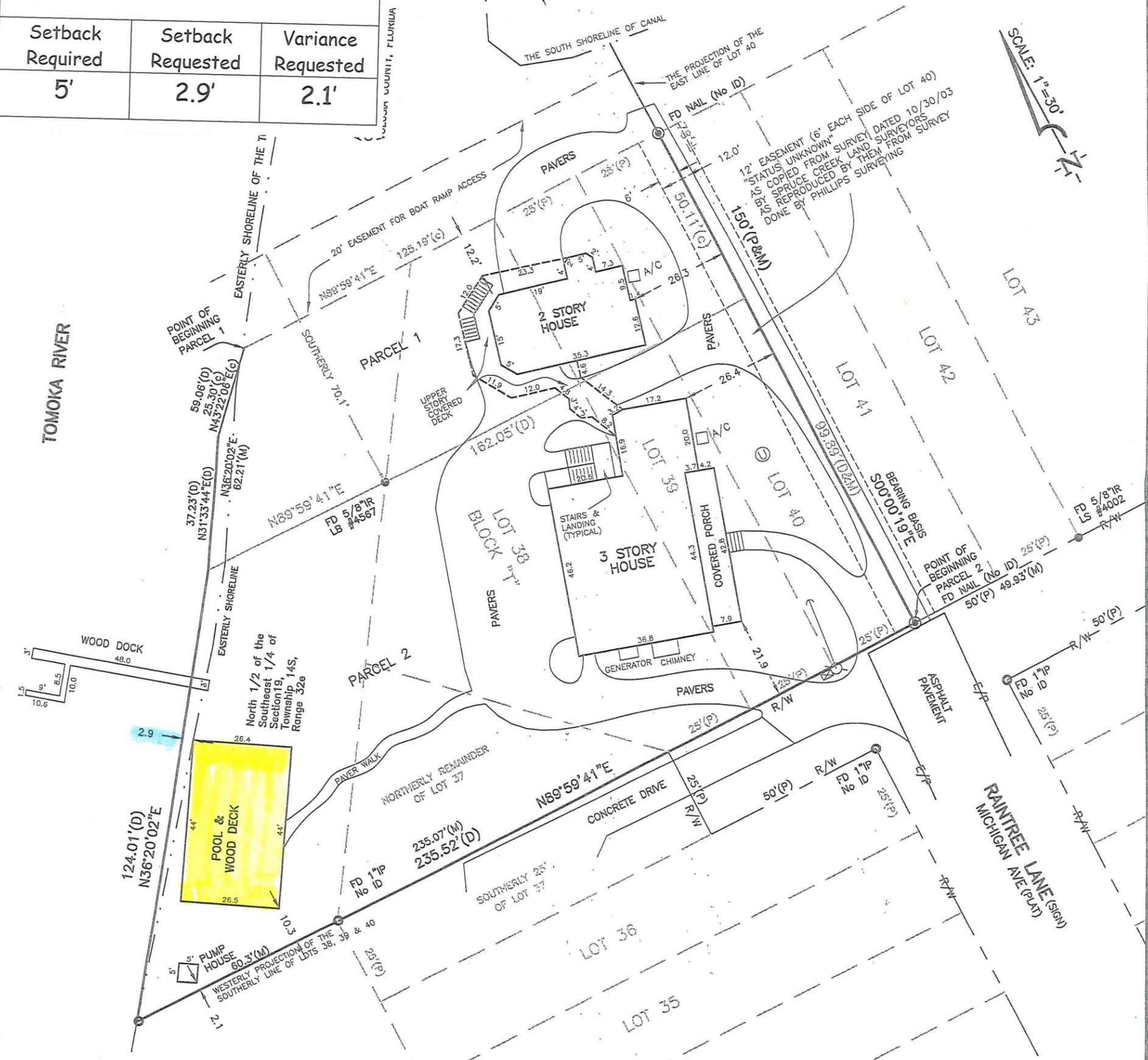
AS A POINT OF BEGINNING COMMENCE AT THE INTERSECTION OF THE WESTERLY PROJECTION OF THE NORTHERLY LINE OF SAID LOT 38 WITH THE EASTERLY SHORLINE OF THE TOMOKA RIVER; THENCE NORTHERLY ALONG THE EASTERLY SHORLINE OF THE TOMOKA RIVER A DISTANCE OF 270 FEET MORE OR LESS; THENCE EASTERLY, SOUTHERLY AND EAST ALONG THE MEANDERINGS OF THE SHORELINE OF A CANAL TO A POINT THAT IS THE INTERSECTION OF THE SOUTH SHORELINE OF A CANAL AND THE PROJECTION OF THE EAST LINE OF LOT 40, TRACT "T", TOMOKA PARK; THENCE SOUTHERLY ALONG THE EAST LINE OF LOT 40 A DISTANCE OF 78 FEET MORE OR LESS TO A POINT THAT IS 99.89 FEET NORTH OF THE SOUTHERNLY LINE OF LOT 40; THENCE WESTERLY AND PARALLEL TO THE NORTH LINE OF LOTS 38, 39 AND 40, BLOCK "T", TOMOKA PARK, A DISTANCE OF 162.05 FEET MORE OR LESS TO A POINT ON THE THE EASTERLY SHORELINE OF THE TOMOKA RIVER; THENCE N.31°33'44"E, A DISTANCE OF 37.23 FEET; THENCE NORTHEASTERLY ALONG THE MEANDERINGS OF SAID EASTERLY SHORELINE A DISTANCE OF 59.06 FEET TO THE POINT OF BEGINNING.

BEING SUBJECT TO AN EASEMENT FOR BOAT RAMP ACCESS OVER AND UPON THE NORTHERLY 20.00 FEET OF THE SOUTHERLY 70.11 FEET OF THE ABOVE DESCRIBED PROPERTY.

PARCEL 2

A PORTION OF LOTS 37, 38, 39 AND 40, BLOCK "T", TOMOKA PARK, AS PER MAP OR PLAT OF RECORD IN MAP BOOK 7, AT PAGE 96 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, AND A PORTION OF THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 14 SOUTH, RANGE 32 EAST, VOLUSIA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

AS A POINT OF BEGINNING COMMENCE AT THE SOUTHEASTERLY CORNER OF SAID LOT 40; THENCE WESTERLY ALONG THE SOUTHERLY LINE OF SAID LOTS 38, 39 AND 40 AND A WESTERLY PROJECTION THEREOF, 235.52 FEET MORE OR LESS TO A POINT ON THE EASTERLY SHORE OF THE TOMOKA RIVER; THENCE N.36°20'02"E ALONG THE MEANDERINGS OF THE EASTERLY SHORE OF SAID TOMOKA RIVER, 124.01 FEET MORE OR LESS; THENCE N.89°59'41"E, PARALLEL TO THE NORTHERLY LINE AND/OR SOUTHERLY LINE OF SAID LOTS 38, 39 AND 40, 162.05 FEET MORE OR LESS; THENCE SOUTH ALONG THE EASTERLY LINE OF SAID LOT 40, 99.89 FEET TO THE POINT OF BEGINNING.



PREPARED FOR:
 --- C FRED HUDSON III

EAST COAST LAND SURVEYING

11 Coolidge Ave, Suite-J, Ormond Beach FL 32174
 PHONE (386) 672-3633 FAX (386) 672-3635

THE FOREGOING PLAT MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS AS PER CHAPTER 61G17-6, FLORIDA ADMINISTRATIVE CODE, AS PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

OFFICE WORK BY : ACS
 DATE: 12/29/11

FIELD WORK BY: AS-PR
 DATE: 10/23/11

WO# 1201001

A Sanzone

12/29/11

BOUNDARY SURVEY

ANTHONY SANZONE, PSM# 6309

LB #7382

Not valid without the signature and the original raised seal of a Florida Licensed surveyor and mapper.

Exhibit B

Maps and Pictures

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

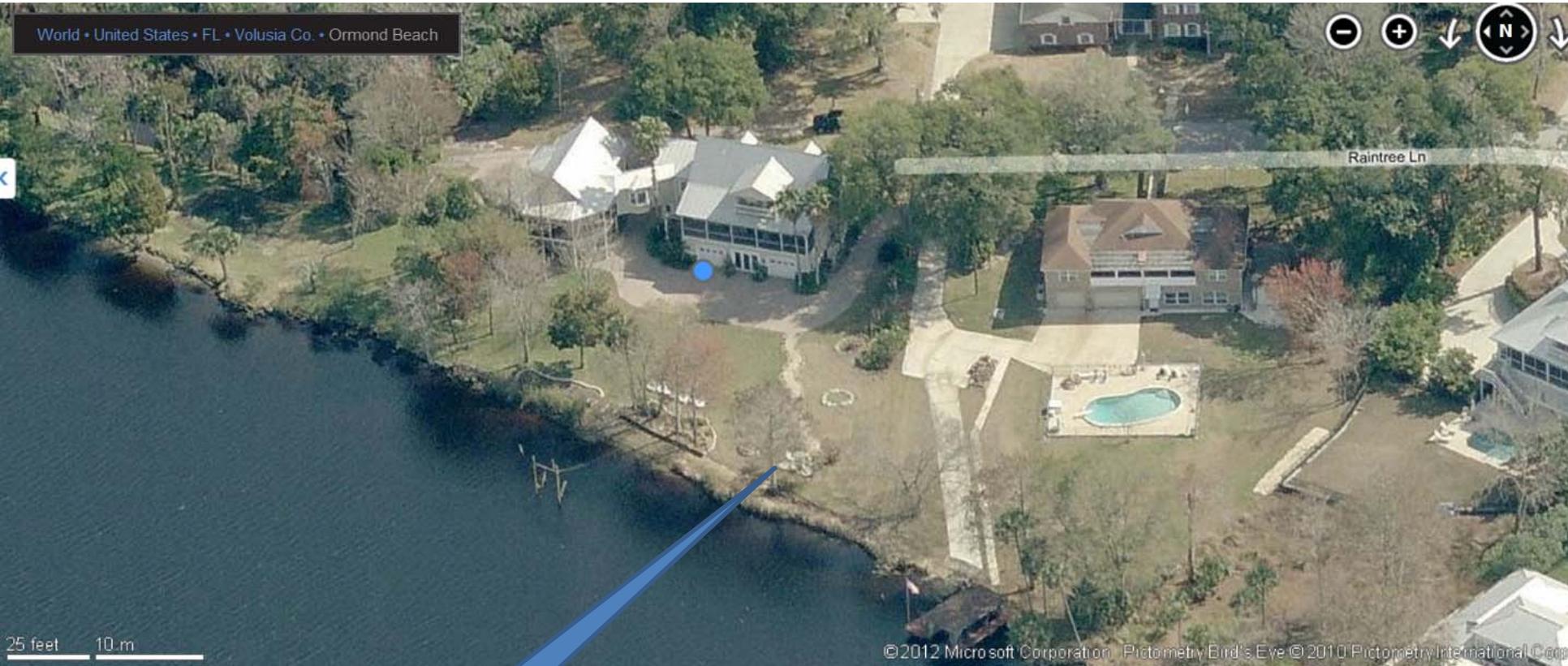


Raintree Ln

25 feet 10 m

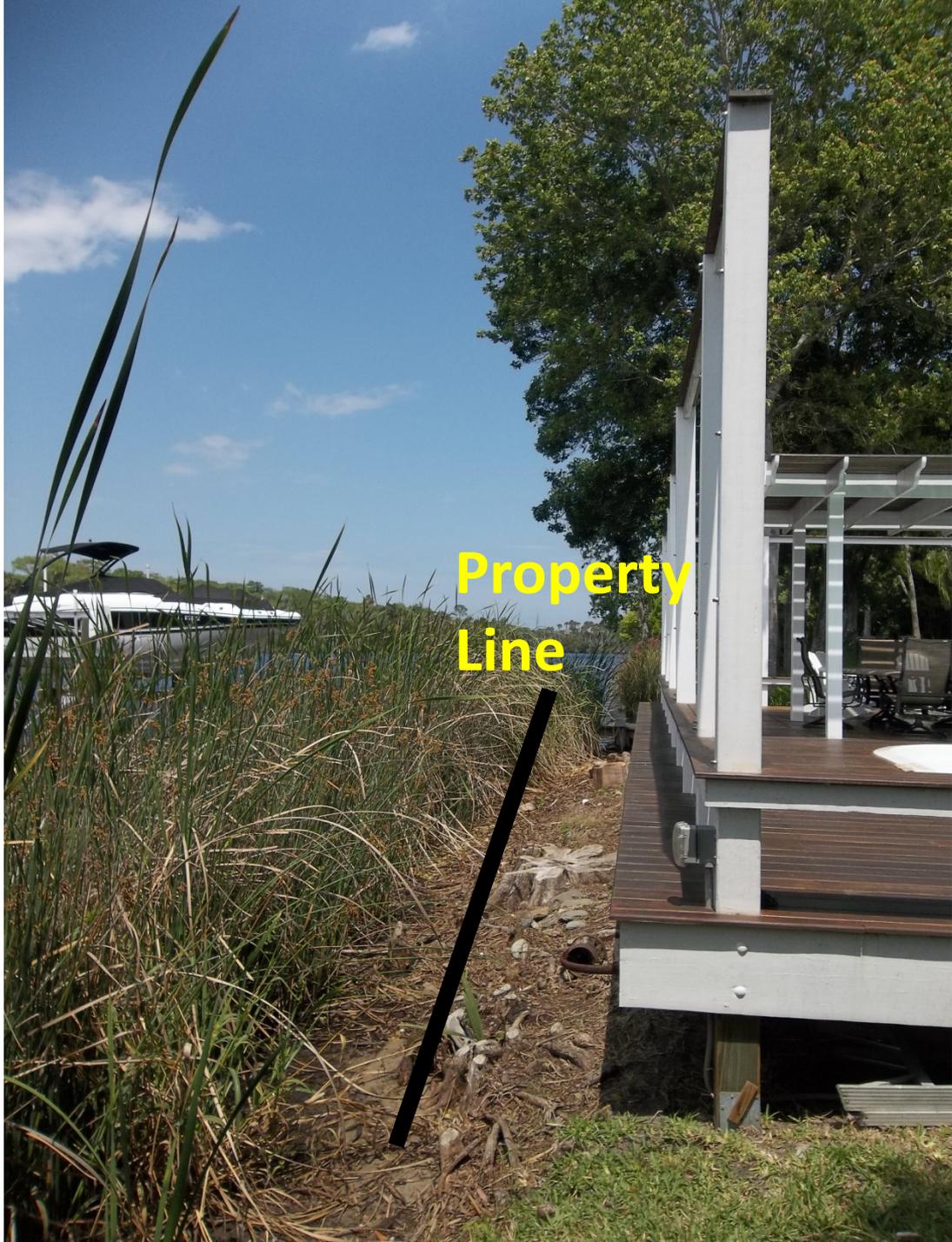
© 2012 Microsoft Corporation. Pictometry Bird's Eye © 2010 Pictometry International Corp.

**Deck &
pool
location**





**Deck &
pool
location**



Property
Line









**Neighbors pool location – 90' +/-
from property line and River**

Exhibit C

Applicant Provided Information



CITY OF ORMOND BEACH

Planning Department

22 South Beach Street, Ormond Beach, FL 32174

Tel: (386) 676-3238

www.ormondbeach.org

comdev@ormondbeach.org

12-79 v5.3

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.

Spraker, Steven

From: Fred Hudson [fhudson@hudsonsfurniture.com]
Sent: Tuesday, April 10, 2012 11:21 AM
To: Spraker, Steven
Subject: 90 Raintree Ln

Steve thanks for being extremely professional and helpful.

Here is my request:

The deck was put in the only spot where we can observe our Grandchildren when they are swimming in the Tomoka, which I am sure you know there is a slight worry about alligators.

There was a concrete deck with a jacuzzi where we built the larger wood deck and an above ground pool (the pool is about the same size as the old jacuzzi). The lot has a very irregular shape so this was the only logical spot to put the deck. In the last 20 years I have pulled more than 21 permits, I in no way was trying to avoid paying a permit fee. I honestly thought removing an impervious concrete deck and putting in a wooden, pervious deck would not need a permit. You can also see that we built it with materials that will be esthetically positive to everyone near us and on the river. I have included letters from all of my neighbors, who have a view of my deck and they all consider it an improvement which helps all our properties. The deck variance needed is 2.1'. The pool variance needed is 53.6'. That is because 2 of my neighbors have wetland issues, I do not.

Under Criteria: Conforming

1 The land is so irregular in shape this is the only place the deck could be done and the only place we could use an above ground pool. It also allowed a view of the grandchildren.

2 The fact that there was already a concrete deck there and we felt like removing it would be a positive impact not in any way negative.

3 I am restricted by the water set back, for a pool, which I don't think they meant an in the deck but above ground pool.

4 There is no other logical place the deck and pool could go. The shape and the slope of the lot prevent it from going any where else.

5 The request for this variance is not based on a financial decision. It is strictly the esthetics and practicality of the lot.

6 This request wil not affect the congestion in the neighborhood or create any public danger or hazard.

7 This will in no way effect property values, negatively. It will increase property values because of the way it was built. It also will just improve the character of the surrounding sites.

8 I totally understand, if this variance is granted it does not apply to anything else I own.

--

Fred Hudson

www.HudsonSfurniture.com

3290 W St Rd 46

Sanford, FL 32771

407-323-9644

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:

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

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

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

CRITERIA: NONCONFORMING

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

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

CRITERIA: NONCONFORMING (continued)

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

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

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

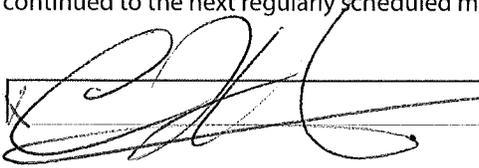
- 5. The proposed expansion is in scale with adjacent buildings:

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

CERTIFICATION

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

Signed By:



Date:

4-10-2012

Corporation

STATE OF FLORIDA)
COUNTY OF VOLUSIA) SS

The foregoing instrument was acknowledged before me this 10th day of April, 2012 by C. Fred Hudson, in their capacity as the _____, of _____ who is personally known to me or has provided identification.

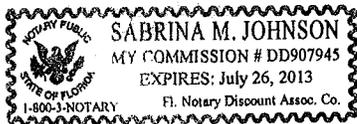
Notary Public
State of Florida
My Commission Expires:

ATTEST: _____

Individual

STATE OF FLORIDA)
COUNTY OF VOLUSIA) SS

The foregoing instrument was acknowledged before me this 10th day of April, 2012 by C. Fred Hudson, who provided X X X, as identification or is personally known to me.





Notary Public
State of Florida
My Commission Expires:



Florida Department of Environmental Protection

Central District
3319 Maguire Boulevard, Suite 232
Orlando, Florida 32803-3767

Rick Scott
Governor

Jennifer Carroll
Lt. Governor

Herschel T. Vinyard, Jr.
Secretary

Fred Hudson III
90 Raintree Lane
Ormond Beach, FL 32174

OCD-ERP-11-0242

Volusia County - ERP
RE: Parcel #19-14-32-01-20-0370/ 90 Raintree Lane, Ormond Beach
Case Closed

Dear Mr. Hudson:

This is to inform you that the Department's complaint against you has been closed. You have satisfied the requirements discussed during our site inspection on June 20, 2011.

Should you have any questions regarding the above, please contact Lauren Staly at 407/897-2957 or at the letterhead address.

Thank you for your cooperation in resolving this case.

Sincerely,

Pamela Ammon
Environmental Manager
Compliance and Enforcement
Submerged Lands and Environmental
Resources Program

June 29 2011

Date

js
PA/ls/df

cc: John Bouck, City of Ormond Beach (Bouck@ormondbeach.org)

EAST COAST



LAND SURVEYING

24 11 Coolidge Ave, Ormond Beach, FL. 32174

Phone: (386) 672-3633 ~ Fax: (386) 672-3635

April 4, 2012

To Mr. Fred Hudson:

Per your request, East Coast Land Surveying used Google Maps (4/4/2012) to scale the distances from houses and pool decks to the shore of the Tomoka River. As best ascertained using significant digits the following distances.

1st house 50' south= 130'±, Pool deck 80'±

2nd house 200' south= 180'±, Pool deck 150'±

3rd house 270' south= 60'±, Pool deck 40'±

Best regards,

Anthony Sanzone
Professional Land Surveyor 6309
East Coast Land Surveying, Inc.

Mimi Correll Cerniglia
55 Raintree Lane
Ormond Beach, FL 32174

April 16, 2012

City of Ormond Beach
22 South Beach Street
Ormond Beach, FL 32174

RE: Variance at 90 Raintree Lane

I do not know why the Variance sign is in front of this residence. There is very little street frontage.

Anyone who is on the river and goes by this lovely house and yard can only exclaim how wonderful such well-maintained property is in Ormond Beach and along the Tomoka River.

The complaint regarding this residence should not be recognized.

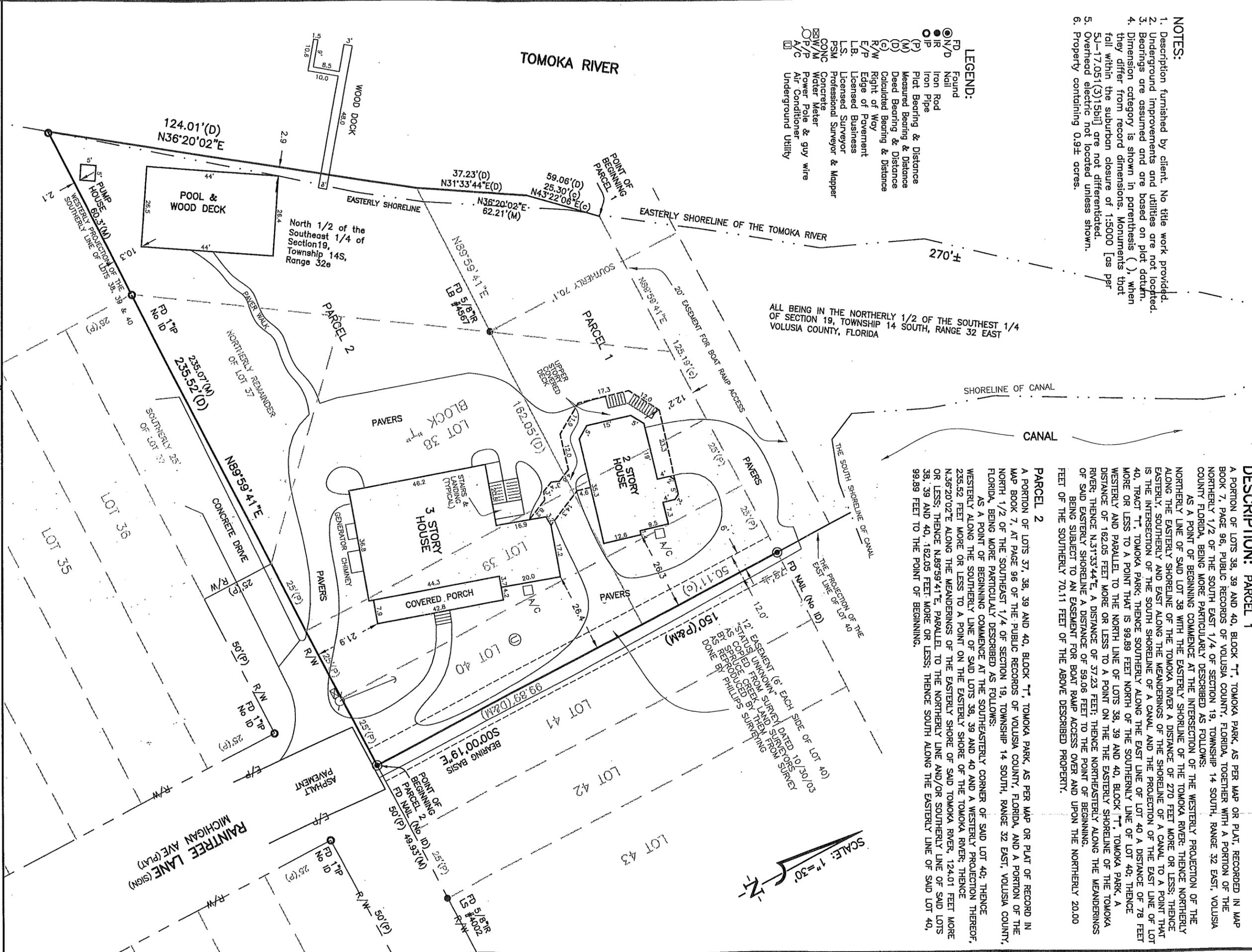
Sincerely,

Mimi C. Cerniglia

Mimi C. Cerniglia

- NOTES:**
1. Description furnished by client. No title work provided.
 2. Underground improvements and utilities are not located.
 3. Bearings are assumed and are based on plat datum.
 4. Dimension category is shown in parenthesis (), when they differ from record dimensions. Monuments that fall within the suburban closure of 1:5000 [as per 5J-17.051(3)15bl] are not differentiated.
 5. Overhead electric not located unless shown.
 6. Property containing 0.9± acres.

- LEGEND:**
- FD Found
 - N/D Nail
 - IR Iron Rod
 - RP Rod
 - (P) Plat Bearing & Distance
 - (M) Measured Bearing & Distance
 - (D) Deed Bearing & Distance
 - (C) Calculated Bearing & Distance
 - (R/W) Right of Way
 - (E/P) Edge of Pavement
 - (L.B.) Licensed Business
 - (L.S.) Licensed Surveyor & Mapper
 - (P.S.M.) Professional Surveyor & Mapper
 - CONC Concrete
 - W/M Water Meter
 - R/P Power Pole & guy wire
 - A/C Air Conditioner
 - U Underground Utility



ALL BEING IN THE NORTHERLY 1/2 OF THE SOUTHWEST 1/4 OF SECTION 19, TOWNSHIP 14 SOUTH, RANGE 32 EAST VOLUSIA COUNTY, FLORIDA

DESCRIPTION: PARCEL 1

A PORTION OF LOTS 38, 39 AND 40, BLOCK T, TOMOKA PARK, AS PER MAP OR PLAT, RECORDED IN MAP BOOK 7, PAGE 96, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, TOGETHER WITH A PORTION OF THE NORTHERLY 1/2 OF THE SOUTH EAST 1/4 OF SECTION 19, TOWNSHIP 14 SOUTH, RANGE 32 EAST, VOLUSIA COUNTY FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

AS A POINT OF BEGINNING COMMENCE AT THE INTERSECTION OF THE WESTERLY PROJECTION OF THE NORTHERLY LINE OF SAID LOT 38 WITH THE EASTERLY SHORELINE OF THE TOMOKA RIVER; THENCE NORTHERLY ALONG THE EASTERLY SHORELINE OF THE TOMOKA RIVER A DISTANCE OF 270 FEET MORE OR LESS; THENCE EASTERLY, SOUTHERLY AND EAST ALONG THE MEANDERINGS OF THE SHORELINE OF A CANAL TO A POINT THAT IS THE INTERSECTION OF THE SOUTH SHORELINE OF A CANAL AND THE PROJECTION OF THE EAST LINE OF LOT 40, TRACT T, TOMOKA PARK; THENCE SOUTHERLY ALONG THE EAST LINE OF LOT 40 A DISTANCE OF 78 FEET MORE OR LESS TO A POINT THAT IS 99.89 FEET NORTH OF THE SOUTHERLY LINE OF LOT 40; THENCE WESTERLY AND PARALLEL TO THE NORTH LINE OF LOTS 38, 39 AND 40, BLOCK T, TOMOKA PARK, A DISTANCE OF 182.05 FEET MORE OR LESS TO A POINT ON THE THE EASTERLY SHORELINE OF THE TOMOKA RIVER; THENCE N.31°33'44"E, A DISTANCE OF 37.23 FEET; THENCE NORTHEASTERLY ALONG THE MEANDERINGS OF SAID EASTERLY SHORELINE A DISTANCE OF 59.06 FEET TO THE POINT OF BEGINNING.

BEING SUBJECT TO AN EASEMENT FOR BOAT RAMP ACCESS OVER AND UPON THE NORTHERLY 20.00 FEET OF THE SOUTHERLY 70.11 FEET OF THE ABOVE DESCRIBED PROPERTY.

PARCEL 2

A PORTION OF LOTS 37, 38, 39 AND 40, BLOCK T, TOMOKA PARK, AS PER MAP OR PLAT OF RECORD IN MAP BOOK 7, AT PAGE 96 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, AND A PORTION OF THE NORTHERLY 1/2 OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 14 SOUTH, RANGE 32 EAST, VOLUSIA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

AS A POINT OF BEGINNING COMMENCE AT THE SOUTHEASTERLY CORNER OF SAID LOT 40; THENCE WESTERLY ALONG THE SOUTHERLY LINE OF SAID LOTS 38, 39 AND 40 AND A WESTERLY PROJECTION THEREOF, 235.52 FEET MORE OR LESS TO A POINT ON THE EASTERLY SHORE OF THE TOMOKA RIVER; THENCE N.36°20'02"E ALONG THE MEANDERINGS OF THE EASTERLY SHORE OF SAID TOMOKA RIVER, 124.01 FEET MORE OR LESS; THENCE N.89°59'41"E, PARALLEL TO THE NORTHERLY LINE AND/OR SOUTHERLY LINE OF SAID LOTS 38, 39 AND 40, 182.05 FEET MORE OR LESS; THENCE SOUTH ALONG THE EASTERLY LINE OF SAID LOT 40, 99.89 FEET TO THE POINT OF BEGINNING.

PREPARED FOR:
C FRED HUDSON III

OFFICE WORK BY: ACS
DATE: 12/29/11

FIELD WORK BY: AS-PR
DATE: 10/23/11

EAST COAST LAND SURVEYING

11 Coolidge Ave, Suite-J, Ormond Beach FL 32174
PHONE (386) 672-3633 FAX (386) 672-3635

THE FOREGOING PLAT MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS AS PER CHAPTER 61G17-6, FLORIDA ADMINISTRATIVE CODE, AS PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

WO# 1201001

BOUNDARY SURVEY

ANTHONY SANZONE, PSM# 6309 LB #7382

Not valid without the signature and the original raised seal of a Florida Licensed surveyor and mapper.