



AGENDA

ORMOND BEACH BOARD OF ADJUSTMENT AND APPEALS

June 27, 2012

ORMOND BEACH CITY COMMISSION CHAMBERS

7:00 P.M.

- I. ROLL CALL
- II. APPROVAL OF THE MINUTES
 - A. May 2, 2012
- III. NEW BUSINESS
 - A. **Case No. 12V-096: 121 East Granada Boulevard, Dr. Batniji Medical Office.**

This is a request from Steven R. Buswell, P.E., R.L.A., Parker Mychenberg & Associates, Inc. (applicant) on behalf of the property owner, Dr. Akram Batniji for the redevelopment of the property for a medical use at 121 East Granada Boulevard. The project proposes building additions to the rear and side of the existing building and would increase the existing building square footage from 5,211 square feet to 7,527 square feet. The property at 121 East Granada Boulevard is zoned B-4 (Central Business). The requested variances are as follows:

Variance 1 - rear yard setback: Section 2-25.B.9.b of the Land Development Code requires a 30' rear yard setback if a property abuts a residential zoning district. The applicant is requesting a 22.75' rear yard setback to the abutting Oceanside golf course, requiring a rear yard variance of 7.25'.

Variance 2 – side interior yard setback: Section 2-25.B.9.c of the Land Development Code requires a 10' side yard setback. The applicant is requesting to maintain the existing building setback of 6.2' along the western property line, requiring a rear yard variance of 3.8'.

Variance 3 – side interior yard landscape buffer: Section 3-06.D. of the Land Development Code requires a landscape buffer of 6' for the western property boundary. The applicant is requesting that the landscape buffer be reduced from 6' to 0' abutting the building only along the western property line, requiring a 6' landscape variance. The requested variance area is 210' from the Granada Boulevard right-of-way.

- IV. OTHER BUSINESS
- V. ADJOURNMENT

STAFF REPORT

City of Ormond Beach Department of Planning

DATE: June 20, 2012

SUBJECT: 121 East Granada Boulevard, Dr. Batniji Medical Office

APPLICANT: Steven R. Buswell, P.E., R.L.A., on behalf of the property owner Dr. Batniji

FILE NUMBER: V-12-96

PROJECT PLANNER: Steven Spraker, AICP, Senior Planner

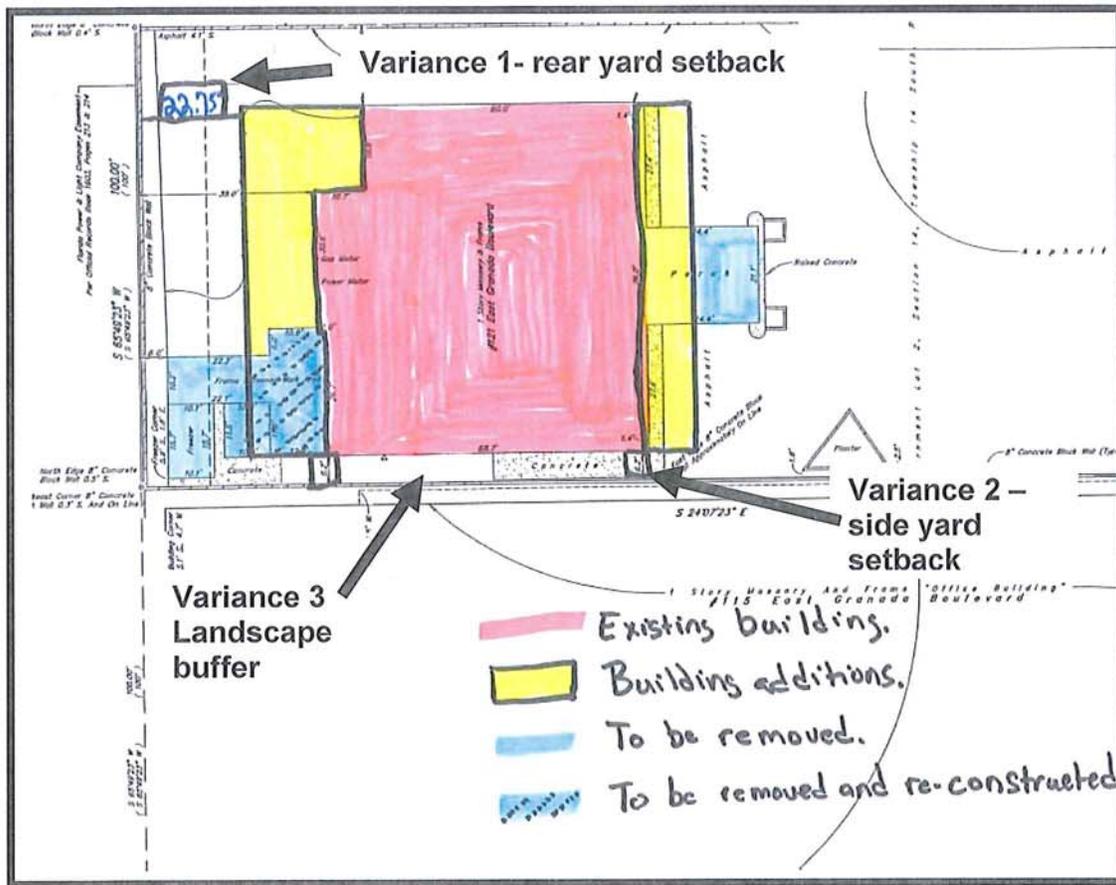
INTRODUCTION:

This is a request for three variances submitted by Steven R. Buswell, P.E., R.L.A., Parker Mychenberg & Associates, Inc. (applicant) on behalf of the property owner, Dr. Akram Batniji for the redevelopment of the property for a medical use at 121 East Granada Boulevard. The project proposes building additions to the rear and side of the existing building and would increase the existing building square footage from 5,211 square feet to 7,527 square feet. The property at 121 East Granada Boulevard is zoned B-4 (Central Business). The requested variances are as follows:

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BACKGROUND:

The property is designated as “General Commercial” on the City’s Future Land Use Map (FLUM) and is zoned B-4 (Central Business) on the City’s Official Zoning Map. The property is located within the Downtown Overlay District. The adjacent land uses and zoning for the surrounding properties are listed below:

Adjacent land uses and zoning:

	Current Land Uses	Future Land Use Designation	Zoning
North	Oceanside Golf Course	“Low Density Residential”	R 2.5 (Single Family Low-Medium Density)
South	Bank and Fountain Square	“General Commercial”	B-4 (Central Business)
East	Granada Plaza	“General Commercial”	PBD (Planned Business Development)
West	Offices	“General Commercial”	B-4 (Central Business)

Site Aerial



Site Pictures



Front elevation



Rear elevation

The Volusia County Property Appraiser's website shows that the building at 121 East Granada Boulevard was built in 1973 and is approximately 5,211 square feet. The Property Appraiser's website also shows that the current property owner purchased the property in April 2012. The property has been a number of restaurants with the last one being the Woody's BBQ which left in 2008. One challenge to this site for restaurants has been the 185' setback from Granada Boulevard.

In 2004, the BOAA approved (Case #04-20) approved the following variances for the property as part of the Woody's renovations to the on-site coolers and freezers:

1. A variance of 8' from the required side yard setback of ten 10'. The resulting setback was approved at 2'.
2. A variance of 24' from the required rear yard setback of 30'. The resulting setback was approved at 6'.

The project is required to go through the Site Plan Review Committee (SPRC) as a change of use for a nonconforming developed site. The applicant did submit a conceptual plan that was reviewed by the SPRC and several issues were identified. One issue was the proposed setback encroachments. A second issue was the applicability of the form based code that is adopted as part of the Downtown Overlay District. The form based code requires vacant properties and buildings removed for redevelopment to be setback close to the right-of-way. The form based code (Section 2-70.K of the LDC) states:

“A Change of Use as defined by LDC §2-64D, building expansions and other improvements regardless of valuation or a use vacant for greater than six (6) months shall comply with the Design Guidelines only from Sections E, F, H and J. Compliance with the Design Guidelines shall make the property eligible for financial assistance.”

The form based code does permit building expansions as proposed. Staff requested that the applicant consider demolishing the existing building and re-building a structure closer to the Granada Boulevard right-of-way. The applicant did perform the analysis and discovered that the cost to demolish the building and re-build cost substantially more than expanding the existing building. As part of the change of use, the project shall be required to provide site improvements to the landscape and parking areas.

ANALYSIS:

As stated in the introduction of the report, the applicant is seeking 3 variances related to a building expansion as follows:

Variance 1 - rear yard setback: Section 2-25.B.9.b of the Land Development Code requires a 30' rear yard setback if a property abuts a residential zoning district. The applicant is requesting a 22.75' rear yard setback to the abutting Oceanside golf course, requiring a rear yard variance of 7.25'.

Variance 2 – side interior yard setback: Section 2-25.B.9.c of the Land Development Code requires a 10' side yard setback. The applicant is requesting to maintain the existing building setback of 6.2' along the western property line, requiring a rear yard variance of 3.8'.

Variance 3 – side interior yard landscape buffer: Section 3-06.D. of the Land Development Code requires a landscape buffer of 6' for the western property boundary. The applicant is requesting that the landscape buffer be reduced from 6' to 0' abutting the building only along the western property line, requiring a 6' landscape variance. The requested variance area is 210' from the Granada Boulevard right-of-way.

Potential Alternatives:

- 1. Grant the applicant's request and permit the building encroachments and side yard landscape variances.**

The requested variances are less than the approved 2004 variances and would allow the redevelopment of the property that has been vacant for a number of years. The rear yard abuts the Oceanside golf course, which is technically residentially zoned, but operates as a non-residential use.

- 2. Deny the request as presented and require the building expansion to meet the rear and side yard setback and require landscaping along the side interior yard by the building.**

This option would require the expansion to meet all applicable setbacks and provide the required landscape buffer along the western side of the building.

CONCLUSION:

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

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

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

Argument for the variances: The B-4 zoning classification requires a total lot area of 20,000 square feet. The subject property is 100' in width by 330' in depth or 33,000 square feet and meets the minimum lot area standards for the zoning district.

Argument against the variances: None, criteria met.

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

Argument for the variances: The request decreases the setback encroachment along the rear property line from the existing 6' to 22.75'. The zoning district requires a 20' setback which is bumped up to 30' abutting a residential zoning district. The side yard variance is to maintain the existing building plane. The landscape variance is required to provide pedestrian access around the building. There are no other practical methods to alter the structure.

Argument against the variances: One could argue that the building square footage should not be expanded or alternatively should be expanded toward the front of the property. The applicant and staff have reviewed multiple alternatives and believe the proposed improvements would improve the building and make it viable for the urgent care use.

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

Argument for the variances: The proposed urgent care medical use as a permitted use within the B-4 zoning district.

Argument against the variances: None.

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.**

Argument for the variances: The proposed additions reduce the nonconforming setback from 6’ to 22.75’ along the rear property line and maintains the building plane along the side property line. No building addition extends beyond an existing building line.

Argument against the variances: None.

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

Argument for the variances: The proposed additions have no impact to the scale with adjacent buildings and will provide an architectural upgrade to the existing building. To the rear of the property is the landscape buffer for the golf course parking area.

Argument against the variances: The existing building is already located in the side yard setback and should not be permitted to further encroach into the setback.

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

Argument for the variances: The expansion will not impact adjacent properties by limiting views or increasing light or noise. The addition will reduce the building setback encroachment in the rear yard and maintain the current side yard setback.

Argument against the variances: None.

RECOMMENDATION:

It is recommended that the Board of Adjustments and Appeals **APPROVE** the following variances for the building additions at 121 East Granada Boulevard:

Variance 1 - rear yard setback: Section 2-25.B.9.b of the Land Development Code requires a 30’ rear yard setback if a property abuts a residential zoning district. The applicant is requesting a 22.75’ rear yard setback to the abutting Oceanside golf course, requiring a rear yard variance of 7.25’.

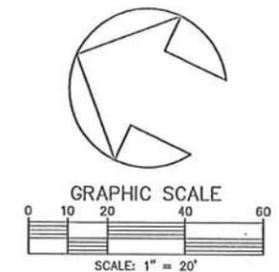
Variance 2 – side interior yard setback: Section 2-25.B.9.c of the Land Development Code requires a 10’ side yard setback. The applicant is requesting to maintain the existing building setback of 6.2’ along the western property line, requiring a rear yard variance of 3.8’.

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Exhibit A

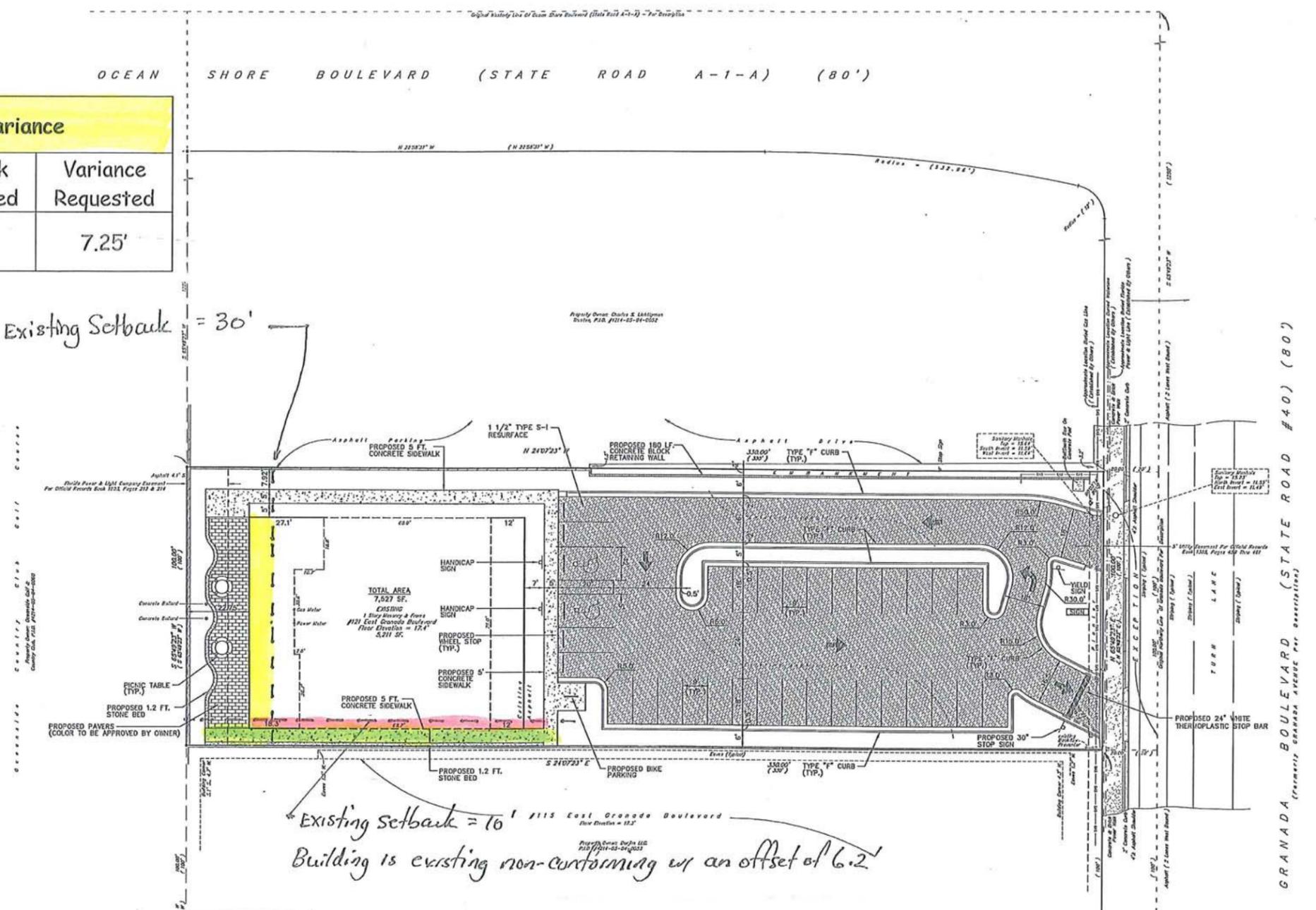
- Variance Request

Rear Yard variance		
Setback Required	Setback Requested	Variance Requested
30'	22.75'	7.25'



OCEAN SHORE BOULEVARD (STATE ROAD A-1-A) (80')

Existing Setback = 30'



Existing setback = 10' #113 East Granada Boulevard
 Building is existing non-conforming w/ an offset of 6.2'

Side Yard variance		
Setback Required	Setback Requested	Variance Requested
10'	6.2'	3.8'

Side Yard landscape variance		
Landscape buffer required	Landscape buffer requested	Variance Requested
6'	0' (by building only)	6'

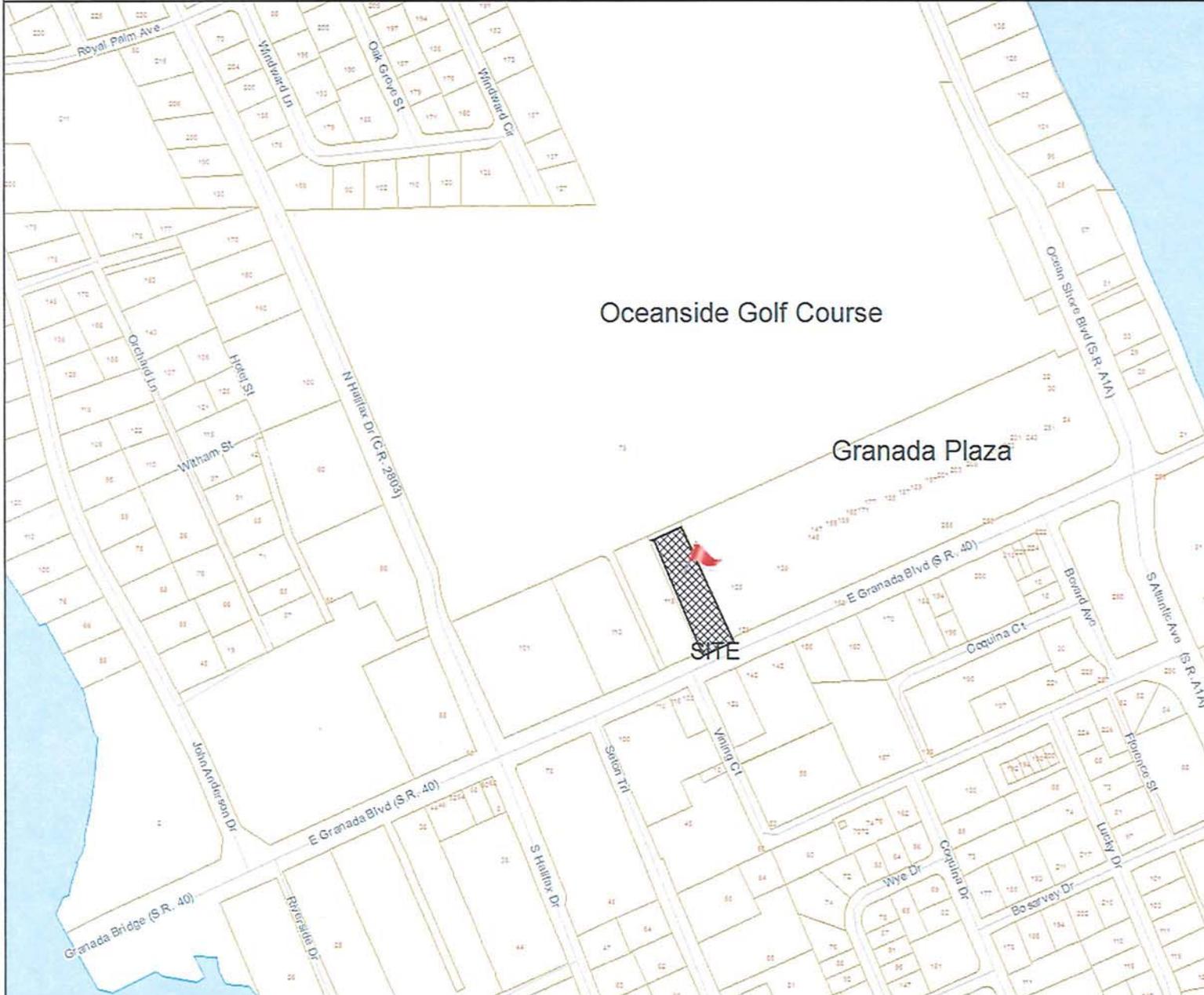
NO.	DATE	DESCRIPTION	BY
REVISIONS			
PARKER MYNCHENBERG & ASSOCIATES, INC.			
PROFESSIONAL ENGINEERS * LANDSCAPE ARCHITECTS 1729 RIDGEWOOD AVENUE HOLLY HILL, FLORIDA 32117 (386)677-6891 FAX(386)677-2114 E-MAIL: info@parkermynchenberg.com CERTIFICATE OF AUTHORIZATION NUMBER: 00003910			
FINAL SITE PLAN			
DR. BATNIJI MEDICAL OFFICE ORMOND BEACH * FLORIDA			
FILE NO. SITE.DWG	DESIGNER: P.MYNCHENBERG		
DATE: 4-27-12	CADD TECH: SWB		
SCALE: 1" = 20'	SHEET - OF -	SEAL	

C:\Users\pmynch\Documents\Projects\Medical\Dr. Batniji Medical Office\Site Plan\Site Plan.dwg, Model: 4/27/2012 12:22:11 AM, Drawn, DWG to PDF.pc3, 2/18/2008, 120

Exhibit B

Location Map and Site
Pictures

121 East Granada Boulevard Location Map



Address Points

Airport and Railroad

- AIRPORT
- RAILROAD

City Streets

- DIRT
- MAJOR
- PAVED

- Water Features
- Property Lines

400 ft



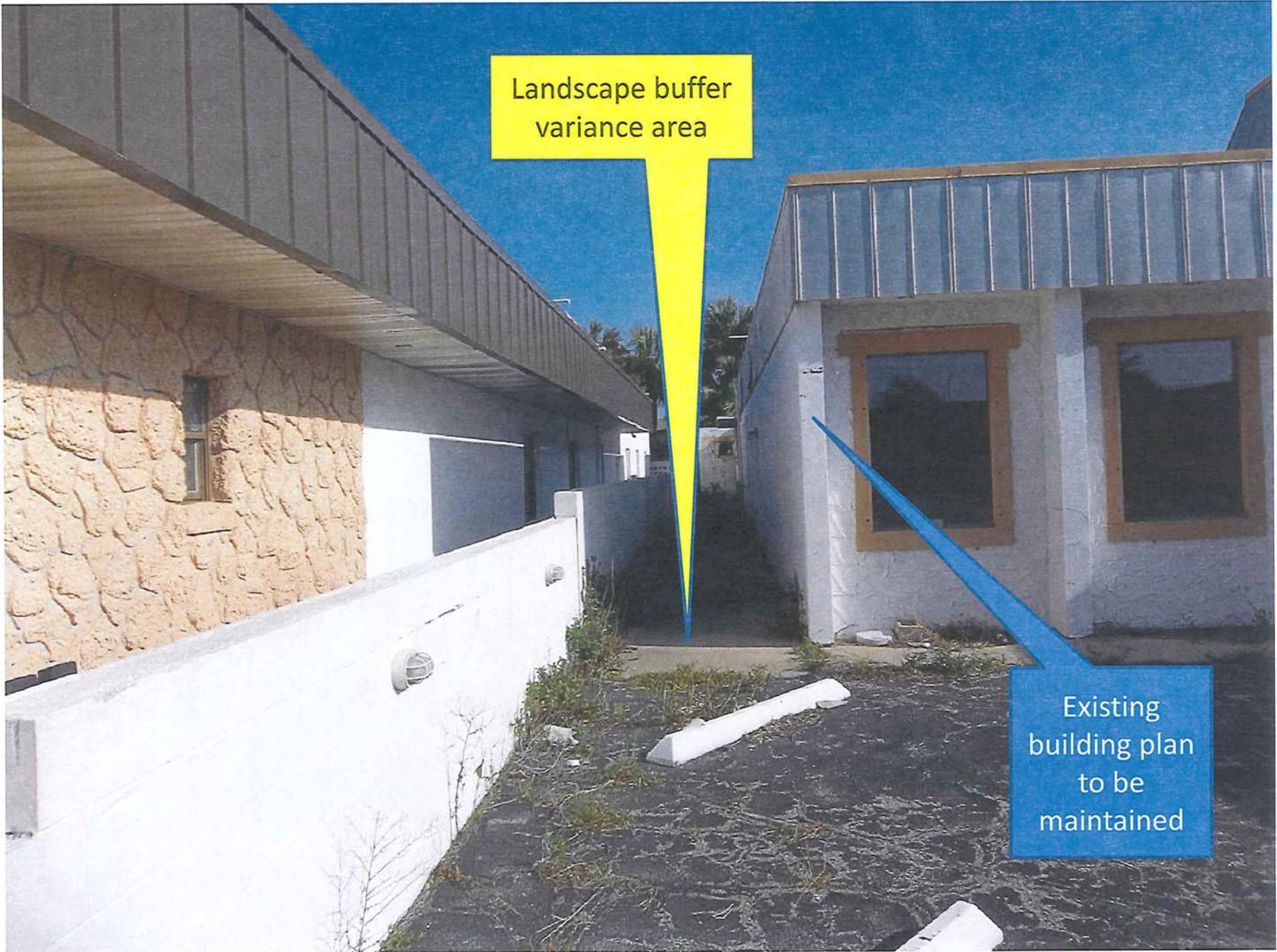
GIS data is provided on an "as is" basis. The accuracy or reliability of the data is not guaranteed or warranted in any way. The City of Ormond Beach specifically disclaims any warranty either expressed or implied, including, but not limited to, the implied warranties of merchantability and fitness for 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.





Front elevation, facing Granada Boulevard

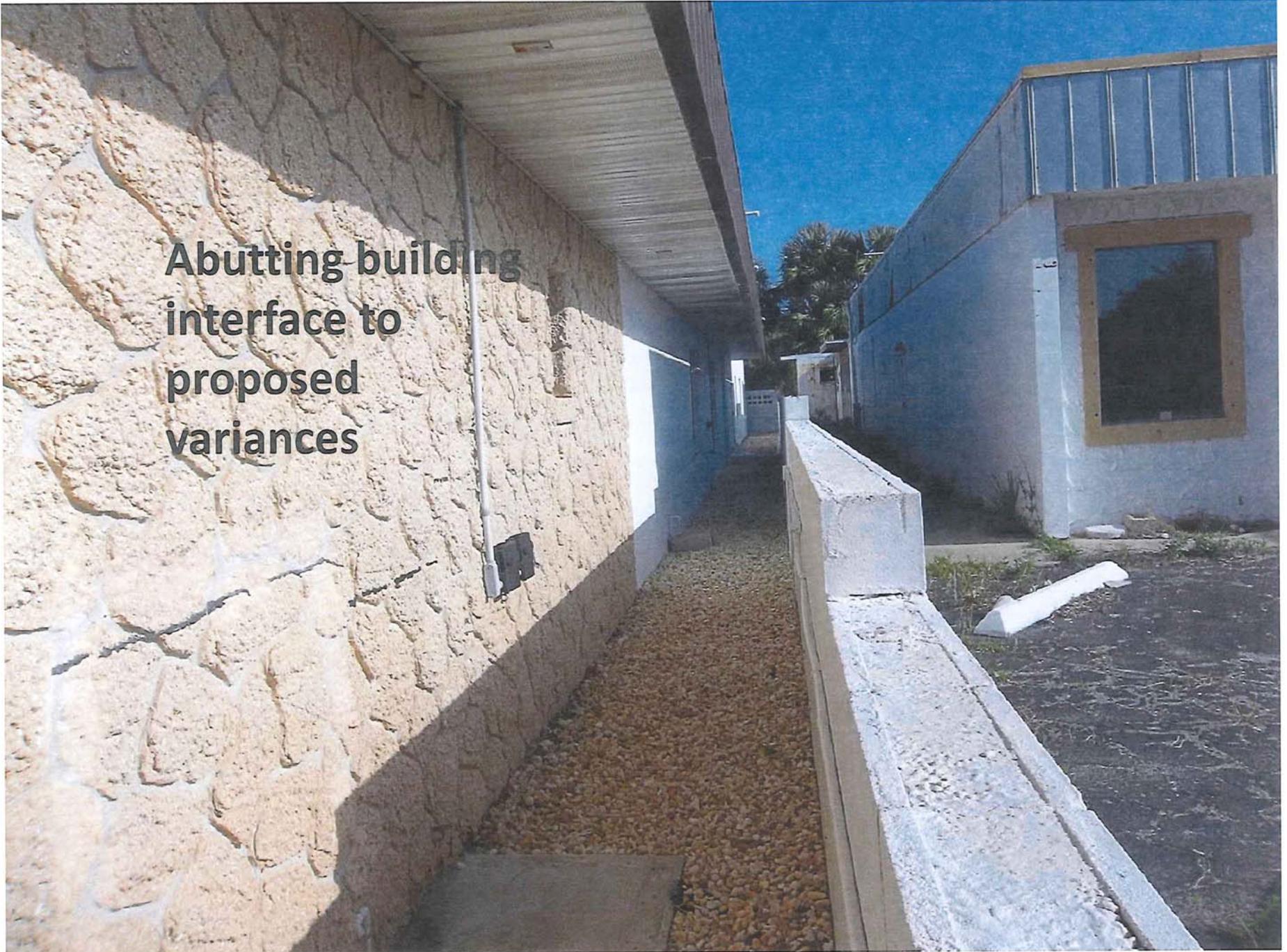




Landscape buffer
variance area

Existing
building plan
to be
maintained

**Abutting building
interface to
proposed
variances**





Rear area. Portion of existing building to be demolished and replaced at a 22.75' setback



Exhibit C

Variance Application
and Permit information

June 6, 2012

Mr. Steven Spraker, AICP
Senior Planner
City of Ormond Beach
Planning Department
22 S. Beach St., Room 104
Ormond Beach, FL 32175-0277

**Re: DR. BATNIJI MEDICAL OFFICE
Variance Application**

Dear Steve:

Please find enclosed the following in connection with the above referenced project:

1. One (1) executed copy of the Variance Application.
2. One (1) copy of the recorded Warranty Deed for the subject property.
3. One (1) copy of the current property survey dated April 9, 2012.
4. One (1) copy of the Site Plan indicating the requested Variance.
5. One (1) copy of the Property Owner Information.
6. One (1) copy of site photographs for the BOAA.
7. A check in the amount of \$704.00, payable to the City of Ormond Beach, to cover the Variance Application fee.

Should you have any questions or require additional information, please give me a call at 677-6891.

Sincerely,



Steven R. Buswell, P.E., R.L.A.

SRB/cg

Enclosures

cc: Dr. Akram Batniji

**DR. BATNIJI
MEDICAL OFFICE**

**The City of Ormond Beach
Volusia County, Florida**

**PROPERTY OWNER INFORMATION
(121 E. GRANADA BLVD)**

Date: June 5, 2012

**Prepared By:
Parker Mynchenberg and Associates, Inc.
Professional Engineers * Land Planners * Landscape Architects
1729 Ridgewood Avenue
Holly Hill, Florida 32117
386-677-6891**



ORMOND BEACH




Volusia County
FLORIDA
Scale 1:708 - 1 in = 59 ft
Date Created:
05-Jun-12 12:38 PM

DISCLAIMER: This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of this information. Use at your own risk.
SOURCE: PARCEL DATA, VOLUSIA COUNTY PROPERTY APPRAISER



The Volusia County Property Appraiser makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. The values shown in the Total Values section at the end of the Property Record Card are "Working Tax Roll" values, as our valuations proceed during the year. These Working Values are subject to change until the Notice of Proposed Taxes (TRIM) are mailed in mid-August. For Official Tax Roll Values, see the History of Values section within the property record card below.

Last Updated: 06-05-2012 Today's Date: 6-5-2012		Volusia County Property Appraiser's Office Property Record Card (PRC) <u>Morgan B. Gilreath Jr., M.A., A.S.A., C.F.A.</u> Property Appraiser			
Full Parcel ID Short Parcel ID	14-14-32-05-04-0051 4214-05-04-0051	Mill Group	201 Ormond Beach		
Alternate Key	3042727	2011 Final Millage Rate	21.46020		
Parcel Status	Active Parcel	PC Code	21		
Date Created	23 DEC 1981				
Owner Name	BATNIJI AKRAM		<input type="button" value="GO TO ADD'L OWNERS"/>		
Owner Name/Address 1					
Owner Address 2	16 LONGFORD FARM DR				
Owner Address 3	ELMIRA NY				
Owner Zip Code	14903				
Location Address	121 E GRANADA BLVD ORMOND BEACH 32176				

LEGAL DESCRIPTION	<input type="button" value="GO TO ADD'L LEGAL"/>
W 100 FT OF S 350 FT OF THE E 885 FT OF LOT 5 A ASSESSORS OR	
MOND PER OR 4947 PGS 2193-2194 & OR 5372 PG 859 PER OR 6699	

SALES HISTORY						<input type="button" value="GO TO ADD'L SALES"/>	
#	BOOK	PAGE	DATE	INSTRUMENT	QUALIFICATION	IMPROVED?	SALE PRICE
1	6699	4710	4/2012	Warranty Deed	Qualified Sale	Yes	415,000
2	5372	0859	7/2004	Warranty Deed	Qualified Sale	Yes	850,000
3	4947	2193	10/2002	Warranty Deed	Qualified Sale	Yes	735,000

HISTORY OF VALUES							<input type="button" value="GO TO..."/>	
						SCH		

YEAR	LAND	BLDG(S)	MISC	JUST	ASD	ASD	NS ASD	EXEMPT	TXBL	TD
2011	367,500	102,873	11,848	482,221	482,221	482,221	482,221	0	482,221	482
2010	402,500	116,257	11,848	530,605	530,605	530,605	530,605	0	530,605	530

LAND DATA										
CODE	TYPE OF LAND USE	FRONTAGE	DEPTH	# OF UNITS	UNIT TYPE	RATE	DPH	LOC	SHP	I
2100	RESTAURANT	100.0	350.0	35000.00	SQUARE FEET	10.00	100	100	100	:
NEIGHBORHOOD CODE	C3909	GRANADA AVE (ATLANTIC AVE TO								
						TOTAL LAND CLASSIFIED (
						TOTAL LAND JUST :				

BUILDING CHARACTERISTICS						
BUILDING 1 OF 1				GO TO BLDG SKETCH		
Physical Depreciation %	35	Next Review	2999	Obsolescence	Functional	0%
		Year Built	1973		Locational	45%
Quality Grade	300	Architecture			Base Perimeter	268435455

BUILDING CHARACTERISTICS				
PROPERTY TYPE	Restaurant		EXTERIOR WALL TYPE	%
STRUCTURE TYPE	Concrete / Masonry Walls		Unknown	27
			Unknown	73

BUILDING REFINEMENTS		
Description	# of Units	Unit Type
Baths, 2-Fixture	8	UB
Extra Fixture	6	UT

Section #	Wall Height	# Of Stories	Year Built	Bsmt %	Ground Floor Area	Interior Finish(es)	%	Sprinkler	AC
1	12.00	1	1973	0.00	5211	Unknown	97.00	No	Ye
						Unknown	3.00	No	Nc
2	12.00	1	1973	0.00	550	Finished Open Porch (FOP)	1.00	No	Nc
						Finished Screen Porch			

3	8.00	1	1980	0.00	836	(FSP)	1.00	No	No
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MISCELLANEOUS IMPROVEMENTS

TYPE	NUMBER UNITS	UNIT TYPE	LIFE	YEAR IN	GRADE	LENGTH	WIDTH	DEPR. VALUE
PAVING ASPHALT	29528	SF	6	1973	2	0	0	10,748
RETAINING WALL	660	SF	45	1973	3	0	0	1,026
LIGHT PK LOT	1	UT	20	1973	1	0	0	74

PLANNING AND BUILDING

GO TO ADD'L PERMITS

PERMIT NUMBER	PERMIT AMOUNT	DATE ISSUED	DATE COMPLETED	DESCRIPTION	OCCUPANCY NBR	OCCUPANCY BLDG
00002562	2,890.00	8-24-2001	12-27-2001	NONRESIDENTIAL		0
13039	10,000.00	1-1-1988	1-1-1989	REROOF EBB/GSC-DL 2/		0

TOTAL VALUES

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Land Value	350,000	New Construction Value	
Building Value	102,874	City Econ Dev/Historic Taxable	
Miscellaneous	11,848		
Total Just Value	464,722	Previous Total Just Value	482,22
School Assessed Value	464,722	Previous School Assessed	482,22
Non-School Assessed Value	464,722	Previous Non-School Assessed	482,22
Exemption Value	0	Previous Exemption Value	
Additional Exemption Value	0	Previous Add'l Exempt Value	
School Taxable Value	464,722	Previous School Taxable	482,22
Non-School Taxable Value	464,722	Previous Non-School Taxable	482,22

MapIT | PALMS | Map Kiosk

Parcel Notes

MapIT: Your basic parcel record search including sales.

PALMS: Basic parcel record searches with enhanced features.

Map Kiosk: More advanced tools for custom searches on several layers including parcels.



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

June 6, 2012

VARIANCE TYPE

Please select appropriate application type

Commercial

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 | Dr. Akram Batniji
Address | 16 Longford Farm Dr.
City, State, Zip Code | Elmira, NY 14903
Telephone | 607-731-3136
Email Address | drbatniji@stny.rr.com

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

PROPERTY DETAILS

Address | 121 E. Granada Blvd., Ormond Beach, FL
Zip Code | 32176
Parcel I.D. | 4214-05-04-0051
Legal Description | West 100 feet of South 350 feet of the East 885 feet of Lot 5, A Assessors Ormond, per OR 4947, Pgs. 2193-2194, and OR 5372, Pg. 859, per OR 6699.

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 |
1) Reduce the rear yard building setback from 30' to 22.75'.
2) Reduce the side yard (west) building setback from 10' to 6.2'. (Existing Building is 6.2').
3) Eliminate 6 ft. landscape buffer along the west side. A sidewalk exists for emergency access.

ABUTTING PROPERTY OWNERS

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

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

Yes B-4 Minimum Lot Width = 100 ft. : Lot Width = 100 ft.
 Minimum Lot Area = 20,000 SF : Lot Area = 33,000 SF

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:

The existing east and west wall of the structure exist and are to remain. The existing west building setback is 6.2'.

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:

Yes.

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:

Yes.

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

Yes.

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

True.

Prepared By: Cyndi H. Parker
Professional Title Agency, Inc.
747 South Ridgewood Avenue, Suite 204
Daytona Beach, Florida 32114
incidental to the issuance of a title insurance policy.
File Number: P-18549
Parcel ID# 4214-05-04-0051

**WARRANTY DEED
(INDIVIDUAL)**

This **WARRANTY DEED**, dated 04/09/2012 by
PULL OB, LLC, a dissolved Florida limited liability company
Whose post office address is
400 John Anderson Drive, Ormond Beach, FL 32176
hereinafter called the GRANTOR, to
Akram Batilji
whose post office address is
16 Longford Farm Drive, Elmira, NY 14903
hereinafter called the GRANTEE:

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

WITNESSETH: That the GRANTOR, for and in consideration of the sum of \$10.00 and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the GRANTEE, all that certain land situate in Volusia County, Florida, viz:

The Easterly 100 feet of that part of Government Lot 2, Section 14, Township 14 South, Range 32 East, Volusia County, Florida, described as follows: BEGIN at a point in the Northerly line of Granada Boulevard, formerly known as Granada Avenue, a 60 foot street as formerly laid out, said point being a distance of 1250 feet Westerly of the intersection of said line with the Westerly line of Ocean Shore Boulevard, a 30 foot street as formerly laid out; thence Northerly and at right angles to Granada Boulevard, formerly known as Granada Avenue, a distance of 350 feet to a point; thence Westerly and parallel to Granada Boulevard, formerly known as Granada Avenue, a distance of 200 feet to a point; thence Southerly and at right angles to Granada Boulevard, formerly known as Granada Avenue, a distance of 350 feet to the Northerly line of Granada Boulevard, formerly known as Granada Avenue; thence Easterly along said Northerly line of Granada Boulevard, formerly known as Granada Avenue, a distance of 200 feet to the POINT OF BEGINNING; excepting therefrom that portion thereof taken for Granada right of way purposes.

SAID PROPERTY IS ALSO DESCRIBED AS:

That part of Government Lot 2, Section 14, Township 14 South, Range 32 East, Volusia County, Florida, described as follows: BEGIN at a point in the Northerly line of Granada Boulevard, formerly known as Granada Avenue, a 60 foot street as formerly laid out, said point being a distance of 1250 feet Westerly of the intersection of said line with the Westerly line of Ocean Shore Boulevard, a 30 foot street as formerly laid out; thence Westerly along the said Northerly line of Granada Boulevard, formerly known as Granada Avenue, a distance of 100 feet to a point; thence Northerly and at right angles to said North line of Granada Boulevard, formerly known as Granada Avenue, a distance of 350 feet to a point; thence Easterly and parallel to Granada Boulevard, formerly known as Granada Avenue, a distance of 100 feet to a point; thence Southerly and at right angles to Granada Boulevard, formerly known as Granada Avenue, a distance of 350 feet to the POINT OF BEGINNING; excepting therefrom that portion thereof taken for Granada right of way purposes.

THIS DEED IS BEING GIVEN IN THE WINDING DOWN OF COMPANY AFFAIRS.

SUBJECT TO covenants, conditions, restrictions, reservations, limitations, easements and agreements of record, if any; taxes and assessments for the year 2012 and subsequent years; and to all applicable zoning ordinances and/or restrictions and prohibitions imposed by governmental authorities, if any,

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 except as above noted, 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.

IN WITNESS WHEREOF, GRANTOR has signed and sealed these presents the date set forth above.

SIGNED IN THE PRESENCE OF THE FOLLOWING WITNESSES:

PULL OB, LLC, a dissolved Florida limited liability company

Witness #1 Signature:

Jennifer Dedow

Witness #1 Print Name:

JENNIFER DEDOW

By:

Roger Blanchard

Roger Blanchard, Managing Member

Witness #2 Signature:

Yvonne S. Ferrara

Witness #2 Print Name:

YVONNE S. FERRARA

By:

Mark Ascik

Mark Ascik, Member

STATE OF FLORIDA

COUNTY OF VOLUSIA

I am a notary public of the state of Florida and my commission expires: _____

THE FOREGOING INSTRUMENT was acknowledged before me on 04/ /2012 by:
Roger Blanchard, Managing Member, and Mark Ascik, Member, on behalf of PUL OB, LLC, a dissolved Florida limited liability company.

He/She is personally known to me or who has produced drivers license as identification.

Notary Seal

Signature:

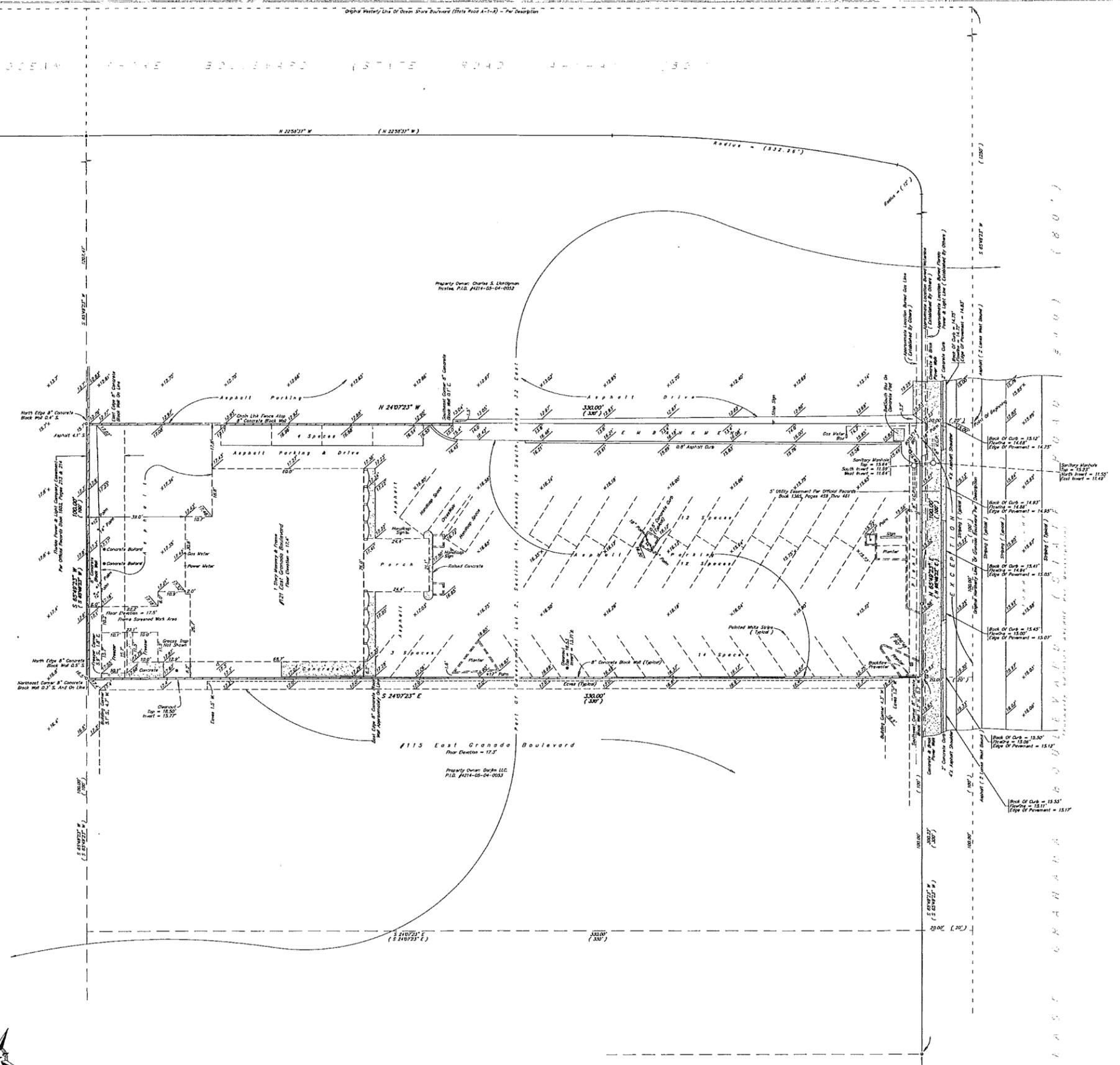
Jennifer Dedow

Print Name:

JENNIFER DEDOW, Notary Public



JENNIFER DEDOW
MY COMMISSION # EE 164303
EXPIRES: January 9, 2016
Bonded Thru Budget Holary Services



- LEGEND:**
- - 5/8" Iron Rod & Cap #3019 Found
 - - Nail & Disk #2860 Found "in Concrete Block Wall" 1.62' N. (Witness Corner)
 - - 1/2" Iron Pipe Found
 - - 5/8" Iron Rod Found
 - - 5/8" Iron Rod #3019 Found
 - - Cut And 1 1/4" Iron Pipe Found
 - ⊕ - Fire Hydrant
 - ⊗ - Water Meter
 - ⊕ - Electric Service
 - ⊕ - BellSouth Box
 - - Cleanout
 - ⊕ - Fiberglass Light Pole
 - V.C.P. - Vitrified Clay Pipe
 - P.I.D. - Parcel Identification Number
 - ⊕ - Weld Light Pole

GENERAL NOTES:

No overhead or underground features shown except as noted.

Record dimensions are shown in parenthesis - field measurements are not.

This survey and plat not valid without the signature and the original raised seal of a Florida Licensed Surveyor and Mapper.

There may be additional restrictions and/or other matters not shown hereon that may be found in the Public Records of Volusia County, Florida.

Bearings are assumed, based on the Northerly Line of East Granada Boulevard (State Road #40) shown hereon, bearing N 65°49'23" E. Said bearing taken from the State of Florida, State Road Department Right-Of-Way Map for State Road #40.

Elevations are on National Geodetic Vertical Datum, based on Coast & Geodetic Survey Disk 79 78 A64, published elevation = 12.24'.

The expected land use, as classified in the Minimum Technical Standards (5J-17, Florida Administrative Code) is "Commercial/High Risk". The minimum relative distance accuracy obtained by measurement and calculation of a closed geometric figure was found to exceed this requirement.

Field Survey Date: 05 April, 2012.

Tree location shown hereon incorporates all trees on subject property.

Parcel Area = 32,999.9582± Square Feet; 0.758± Acres.

PLAT OF BOUNDARY SURVEY OF:

THE EASTERLY 100 FEET OF THAT PART OF GOVERNMENT LOT 2, SECTION 14, TOWNSHIP 14 SOUTH, RANGE 32 EAST, VOLUSIA COUNTY, FLORIDA, DESCRIBED AS FOLLOWS: BEGIN AT A POINT IN THE NORTHERLY LINE OF GRANADA BOULEVARD, FORMERLY KNOWN AS GRANADA AVENUE, A 60 FOOT STREET AS FORMERLY LAID OUT, SAID POINT BEING A DISTANCE OF 1250 FEET WESTERLY OF THE INTERSECTION OF SAID LINE WITH THE WESTERLY LINE OF OCEAN SHORE BOULEVARD, A 30 FOOT STREET AS FORMERLY LAID OUT; THENCE NORTHERLY AND AT RIGHT ANGLES TO GRANADA BOULEVARD, FORMERLY KNOWN AS GRANADA AVENUE, A DISTANCE OF 350 FEET TO A POINT; THENCE WESTERLY AND PARALLEL TO GRANADA BOULEVARD, FORMERLY KNOWN AS GRANADA AVENUE, A DISTANCE OF 200 FEET TO A POINT; THENCE SOUTHERLY AND AT RIGHT ANGLES TO GRANADA BOULEVARD, FORMERLY KNOWN AS GRANADA AVENUE, A DISTANCE OF 350 FEET TO THE NORTHERLY LINE OF GRANADA BOULEVARD, FORMERLY KNOWN AS GRANADA AVENUE; THENCE EASTERLY ALONG SAID NORTHERLY LINE OF GRANADA BOULEVARD, FORMERLY KNOWN AS GRANADA AVENUE, A DISTANCE OF 200 FEET TO THE POINT OF BEGINNING, EXCEPTING THEREFROM THAT PORTION THEREOF TAKEN FOR GRANADA RIGHT OF WAY PURPOSES.

SAID PROPERTY IS ALSO DESCRIBED AS:

THAT PART OF GOVERNMENT LOT 2, SECTION 14, TOWNSHIP 14 SOUTH, RANGE 32 EAST, VOLUSIA COUNTY, FLORIDA, DESCRIBED AS FOLLOWS: BEGIN AT A POINT IN THE NORTHERLY LINE OF GRANADA BOULEVARD, FORMERLY KNOWN AS GRANADA AVENUE, A 60 FOOT STREET AS FORMERLY LAID OUT, SAID POINT BEING A DISTANCE OF 1250 FEET WESTERLY OF THE INTERSECTION OF SAID LINE WITH THE WESTERLY LINE OF OCEAN SHORE BOULEVARD, A 30 FOOT STREET AS FORMERLY LAID OUT; THENCE NORTHERLY AND AT RIGHT ANGLES TO GRANADA BOULEVARD, FORMERLY KNOWN AS GRANADA AVENUE, A DISTANCE OF 350 FEET TO A POINT; THENCE WESTERLY AND PARALLEL TO GRANADA BOULEVARD, FORMERLY KNOWN AS GRANADA AVENUE, A DISTANCE OF 200 FEET TO A POINT; THENCE SOUTHERLY AND AT RIGHT ANGLES TO GRANADA BOULEVARD, FORMERLY KNOWN AS GRANADA AVENUE, A DISTANCE OF 350 FEET TO THE NORTHERLY LINE OF GRANADA BOULEVARD, FORMERLY KNOWN AS GRANADA AVENUE; THENCE EASTERLY ALONG SAID NORTHERLY LINE OF GRANADA BOULEVARD, FORMERLY KNOWN AS GRANADA AVENUE, A DISTANCE OF 200 FEET TO THE POINT OF BEGINNING, EXCEPTING THEREFROM THAT PORTION THEREOF TAKEN FOR GRANADA RIGHT OF WAY PURPOSES.

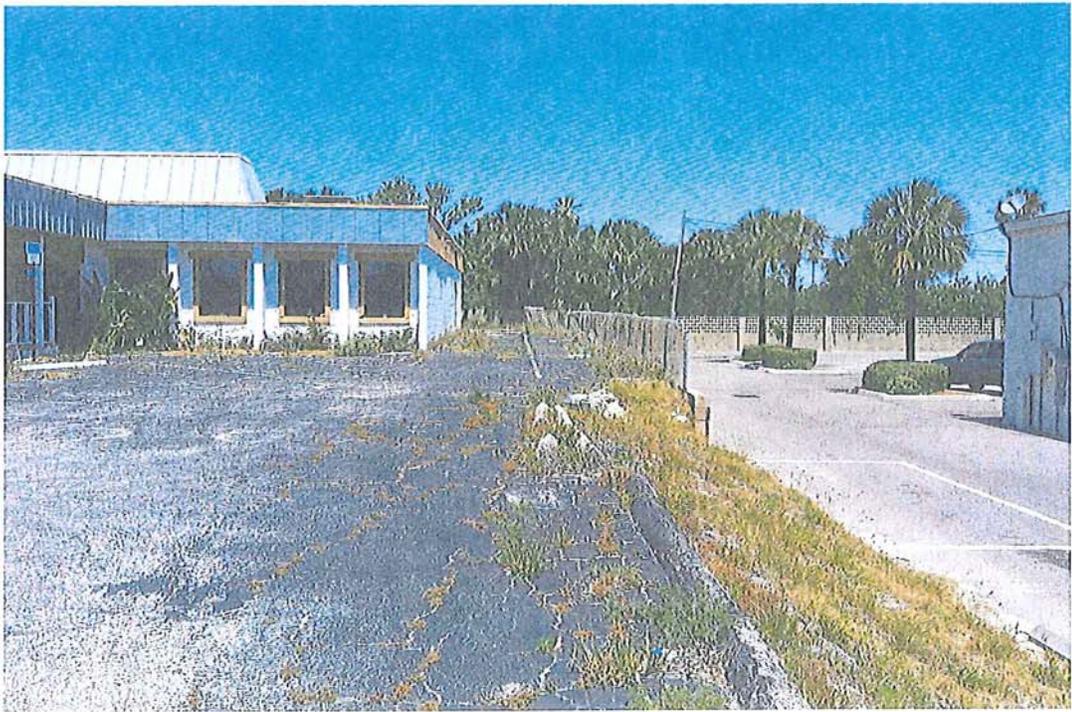
Description furnished by Mr. Jeffrey C. Sweet, Esquire.

The property described hereon is in "Unshaded Zone X" per the Flood Insurance Rate Map, Community Panel Number 125136 0216 H, Map Number 12127C0216H, dated 19 February, 2003.



CERTIFICATE: This is to certify that the plat delineated hereon is in compliance with the Minimum Technical Standards per Chapter 5J-17, Florida Administrative Code, pursuant to section 472.027 of the Florida Statutes. 09 April, 2012 (Signature Date)	Bryan E. Fries, P.S.M. #502 Licensed Business #7222	LOCATION: TOWNSHIP 14 SOUTH, RANGE 32 EAST, SECTION 14, GOVERNMENT LOT 2	PARTY DATE:	SCALE: 1" = 20'	J. B. FRIES & ASSOCIATES, INC. Professional Surveyor & Mapper 23435 West State Road #10 Ormond Beach, Florida 32174 Phone: (386) 671-1700 Fax: (386) 671-1931 Email: jbf@jbfrias.com
		PREPARED FOR: AKRAM BATINI	DATE: BRYAN E. FRIES	JOB NUMBER: 2438-2012	
CARE OF: MR. JEFFREY C. SWEET, ESQUIRE #595 WEST GRANADA BOULEVARD, SUITE A ORMOND BEACH, FLORIDA	DEVELOPER: JEFFREY E. FRIES	FILE NUMBER:	DATE: BRYAN E. FRIES		





MINUTES BOARD OF ADJUSTMENT

May 2, 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
Laureen Kornel, AICP, Senior Planner
Ann-Margret Emery, Deputy City Attorney
Meggan Znorowski, Minutes Technician

II. APPROVAL OF THE MINUTES

Mr. Hundredmark moved to approve the March 7, 2012 Minutes as submitted. Mr. Lane seconded the motion. Vote was called; the motion was unanimously approved.

III. NEW BUSINESS

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

Ms. Laureen Kornel, Senior Planner, Planning Department, City of Ormond Beach, stated this is a request for two variances regarding the location of a pool screen enclosure over an existing pool and deck inside the interior lot line at 176 Woodland Avenue. Ms. Kornel explained the location and characteristics of the property with the pool as it currently exists. Ms. Kornel stated the house was constructed in 1979. Ms. Kornel explained the application is for two variances: the first is along the rear portion of the property which requires a 10' setback. The applicant is requesting a 1.58' setback, for a variance of 8.42'; the second variance is in regards to the side yard setback which requires a 7.5' setback. The applicant is requesting 1.75', for a total of 5.75' variance. Ms. Kornel explained the characteristics of the lots with regards to large oak trees surrounding the property. Ms. Kornel explained that the applicant has expressed, with the maturation of the trees, general maintenance, as a result of leaf litter, has become an issue and the applicant believes they would be able to use the pool more often if they had the screen enclosure in terms of insects and small animals; the applicant is seeking to

reduce maintenance with regards to leaf litter and to keep small animals out of the pool. Ms. Kornel stated that Staff has reviewed the application against the variance criteria and supports the application; the special condition relates to the 1979 placement of the pool and deck; Staff believes that there are no other practical alternatives and it would be an undue hardship if a variance was not granted; the applicant has owned the property since 1984, and a pool screen enclosure would not negatively impact other neighbors; all abutting property owners have indicated no objection to the request.

Mr. David Thomas, 176 Woodland Avenue, stated he and his wife have lived in Ormond Beach for 49 years. Mr. Thomas explained that since they moved into the house in 1984, the trees have grown considerably and the leaf litter has become a hassle as far as taking care of the pool. Mr. Thomas stated they would like to use the pool more instead of cleaning up the leaves.

Mr. Jenner asked how Mr. Thomas was able to keep the pool so clean with all of the trees surrounding the pool.

Mr. Thomas responded he spends a lot of time cleaning it. Mr. Thomas stated two years ago they had the pool resurfaced, which was expensive.

Mr. McNamara stated he drove past the property today, and there was an abundance of trees in the entire neighborhood.

Mr. Thomas stated the variance would help them a great deal as they just retired 4 years ago and they are trying to enjoy life more.

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

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

Ms. Lauren Kornel stated this is a request 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. Ms. Kornel stated that the property received a variance in 2004 for a house addition, said addition was completed. Ms. Kornel explained the location and characteristics of the property where the deck and pool have been constructed. Ms. Kornel explained that the application seeks to allow a deck and pool, which were constructed without building permits, to remain. Ms. Kornel stated the structure has already been completed. Ms. Kornel explained that the deck is located 2.9' from the property line; the edge of the pool is approximately 9.9' from the property line. Ms. Kornel stated the Staff Report contained a Code Enforcement Action Summary regarding the deck and pool; the case began in June, 2011, with an inquiry about a pool being built without a permit. Ms. Kornel continued that on August 23, 2011, a citation was issued for construction without permits; the case progressed to the special master who provided the date of October 15, 2011, to obtain permits or fines would be imposed. Ms. Kornel explained that the property has been assessed a \$50 fine per day since October 16, 2011.

Ms. Kornel stated that the applicant applied for the variance on April 10, 2012. Ms. Kornel stated after action on the variance, the applicant shall be required to obtain the necessary required building permits, which is a separate issue from the variance application. Ms. Kornel explained that there are two variances issues; the first is in regards to the deck. Ms. Kornel stated the Land Development Code (LDC) requires a 5' setback and the constructed deck is set back at only 2.9'; the requested variance is 2.1'. Ms Kornel explained that the second variance issue is related to the pool and has two requirements; the first is that the LDC requires the calculated setback for pools located on the waterfront which is calculated at 54.1' and the as built setback is 2.9' to the deck and 9.9' to the actual water's edge to the property line; the second is that the setback requirement is 15' from the edge of the pool deck to the normal waterline of the river. Ms. Kornel requested that the Board note that the regulation is measured to the deck and not the pool water. Ms. Kornel stated the City has received no written objections to the requested variance; there have been six letters in support of the variance. Ms. Kornel stated staff concluded that the application does not meet criteria 5: Criteria 1- the special condition is not due to the lot or building; Criteria 2- the condition was caused by actions of the applicant, that is that the applicant constructed the pool and deck without a permit; Criteria 3- meeting the setbacks would not create a hardship, the applicant created their own hardship; Criteria 4- there are other practical alternatives, it is possible that the deck and pool could be moved to another location on the property; Criteria 7- improvements would block view corridors and impact surrounding property owners. Ms. Kornel explained after visiting the site, it is clear that where the deck and pool exist now, it is in the view shed of the adjacent property owner. Ms. Kornel stated staff is not recommending approval of the variances.

Mr. Fred Hudson, 90 Raintree Lane, stated that he owns Hudson's Furniture, and over the 30 years he has been in Ormond Beach with Hudson's Furniture he has applied for and received over 20 permits; this was in no way an effort not to apply for a permit. Mr. Hudson explained at 445 Yonge Street, which is where Hudson's Furniture is, it was probably the ugliest big building in the city. Mr. Hudson stated they bought the property and completed a tremendous façade improvement, not just to help the furniture store, but to be a positive asset to Ormond Beach, and it is by far the best looking store they have. Mr. Hudson stated that anytime they had a charity cause or something that would help Ormond Beach, they have always been one of the first to step up and do it. Mr. Hudson explained that he has done all work with permits and have tried always to do the right thing by the City to keep it beautiful. Mr. Hudson stated the long process that occurred in getting this handled was because when he first called he found out he needed the Florida Department of Environmental Protection (FDEP) to approve and he would receive a letter approving it. Mr. Hudson stated he thought that was all that needed to be done. Mr. Hudson stated when he called back he found out that he needed a survey and a permit. Mr. Hudson stated he had someone at Hudson's Furniture who was helping him with this and they got sick. Mr. Hudson stated he thought it was already handled. Mr. Hudson continued that he didn't find out until much later when it was brought to his attention that it was not totally handled or done, and there was an issue with the setbacks involved. Mr. Hudson stated that everything he has done at his house is about protecting the view of the river such as there is no boathouse which would obstruct the view. Mr. Hudson stated

that there are neighbors present who walk and see the deck and pool, some of which have a view of it all the time, who will explain to the Board that it looks very nice. Mr. Hudson stated he used the best material and did everything he could to build something he would be happy with. Mr. Hudson stated in other commercial locations he would have a parking lot that would be too big, and tell the governing agency that he wanted to remove 20 parking spaces and put in landscaping, and they informed him as long as he retained the required parking spaces he could put in all the landscaping he wanted without a permit; that he could do anything pervious as long as he was removing impervious. Mr. Hudson explained that in this case he removed a concrete deck with a jacuzzi approximately where the pool is now and put in a larger deck, but it is now pervious. Mr. Hudson stated he couldn't imagine that it would be a problem because it was a deck, not structural. Mr. Hudson stated that it would have occurred to him that anything structural would absolutely have to have a permit every time. Mr. Hudson explained that the location is critical because there is a little beach to the right of the deck that his grandchildren use and in order to watch them; if he moved the deck back there will be no view; the landscaping and the trees would have to be removed to have a view of the beach. Mr. Hudson further explained that there is a substantial drop-off much more than anywhere else on the property, which is allowing the pool to sit on the ground; the drop-off was conducive to the location of the pool because if he moved it back to the required setback, the pool would be 5' or 6' above ground and an ugly structure. Mr. Hudson stated that the pool could not be in-ground because it would pop out, which is why the pool was placed above ground; whether it was concrete or not, an in-ground pool would be forced out of the ground because the water table would get too high occasionally. Mr. Hudson explained the pool as it exists now preserves the view; the deck is almost level with the yard, so it doesn't stick up like a tremendous eyesore it would be if it was moved back. Mr. Hudson stated he has measured the waterline for the previous two weeks, and it is a little over 15' to the pool; it is only 9' to the edge of the deck. Mr. Hudson stated he is willing to pay the fees for the permits and whatever else is required; the pool and deck are located in a perfect location considering the slope of the backyard.

Mr. Jenner asked if Mr. Hudson hired a contractor to do the work.

Mr. Hudson responded he did the work himself. Mr. Hudson stated the site had 12 volt and 220 already in that location from the jacuzzi; the pool was connected to the existing 220.

Mr. McNamara stated this is a public meeting and called for members of the audience who wished to speak.

Mimi Cerniglia, 55 Raintee Lane, stated that when she is in her front yard she can look down and see 90 Raintree Lane. Ms. Cerniglia stated that the most beautiful property on the river is 90 Raintree Lane, it makes Ormond Beach look like something special. Ms. Cerniglia stated the pool is a wading pool for the grandchildren, it is not a deep pool at all; it evolved from a jacuzzi to a small pool for grandchildren. Ms. Cerniglia stated she would like to see the Board approved the variances and it would be unfortunate if the

applicant had to make changes. Ms. Cerniglia stated she didn't see why anyone would object to the project.

Lisa McDede, 50 Spanish Oak Lane, stated her home has a direct view her property through to Mr. Hudson's yard because of the way his property was designed. Ms. McDede stated that the pool and deck does not interfere with her view whatsoever. Ms. McDede stated that when someone says it interferes with their view, she doesn't understand that because she can look through it. Ms. McDede explained that it is not a solid wall, it is 4x4" beams; it does not hinder her view whatsoever. Ms. McDede stated that her main concern is the all the dilapidated docks along the Tomoka River. Ms. McDede stated she is an avid boater and she is on the Tomoka River every weekend enjoying the outdoors; it is disconcerting boating down the Tomoka River not knowing if you are going to run into debris. Ms. McDede stated she concurred with Ms. Cerniglia's statements that the pool is a wading or dipping pool. Ms. McDede stated she feels the deck and pool has increased the value of her property and it is a beautiful thing to look at. Mr. McDede explained Mr. Hudson has purchased other homes in the neighborhood that were less than attractive and has fixed them up causing the neighborhood to be more beautiful and the property values to go up.

Ms. Kerry Rigger, 40 Raintree Lane, stated she has lived on many waterfront properties through the years. Ms. Rigger stated Mr. Hudson has always welcomed her down with her dog to enjoy the view. Ms. Rigger stated she is for what Mr. Hudson has built.

Ms. Luanne Coggins, Setting Sun Trail, stated she was representing her sister and brother-in-law, Dr. and Mrs. Ronald Hinebaugh, who live adjacent to the applicant. Ms. Coggins explained that Dr. Hinebaugh had a serious eye injury, which required surgery on April 7, 2012, in North Carolina. He is under the care of an ophthalmologist, and could not travel to attend this Board meeting. Ms. Coggins stated she had a letter she would like to read from Dr. and Mrs. Hinebaugh. Ms. Coggins read the letter from Dr. and Mrs. Hinebaugh, which stated: they reside at 80 Raintree Lane and have owned the property since 1978; their home abuts 90 Raintree Lane to the south with no other properties abutting to the north; they are the only property affected by Mr. Hudson's addition; that they feel like their rights have been violated as they can no longer sit in their backyard and have an unobstructed view of the river; their rights should be weighed fairly and equitably with the rights of Mr. Hudson; Mr. Hudson is in violation of the City's LDC, but also Florida Statute with regards to a safety fence for the pool, which would add to the obstruction of their view; allowing a structure so close to the river will change the character of their waterfront; Mr. Hudson is not requesting a few feet of variance, but 51.27' for the pool and 12.1' for the deck and asked the Board if they would have granted the variance had Mr. Hudson built the structures with permits; they asked the Board to consider carefully their decision tonight as what the Board decides will adversely affect their property, their view, and the character of the river. Ms. Coggins submitted photographs of the view from the Hinebaughs' property to the Board.

Mr. McNamara asked what the small building was in the photographs submitted.

Ms. Coggins responded. Mr. Hudson's pool pump house.

Mr. Lane asked if the pool legally should have a fence around it.

Mr. Steven Spraker, Senior Planner, Planning Department, City of Ormond Beach, responded that the applicant has not gone through permit review and once the applicant does, they will have to meet all building code requirements, which would include either a cover on the pool or a fence. Mr. Spraker explained the applicant still has to go through the permit process, which will occur depending on the outcome of the variance.

Mr. Lane asked if the variance was granted and the applicant went through the permit process, then the applicant would have to put in a fence or a pool cover.

Mr. Spraker responded yes, and that a pool cover stops someone who fell from falling into the water.

Mr. Lane asked if that cover had to be on every night.

Mr. Spraker replied he was unsure. Mr. Spraker explained that the applicant had not gone through the building process and they will have to comply with all of the building code requirements.

Mr. Lane stated he is trying to understand that what the Board is looking at is not necessarily what would be if the variance was granted.

Mr. Spraker responded that they would either need a fence or pool cover.

Mr. Hundredmark asked about Mr. Hudson's statement that the pool could not be placed elsewhere due to the water table.

Mr. Spraker responded that he had no data or analyses that would lead him to that conclusion. Mr. Spraker explained that the neighbors' pools are roughly proportionate where Mr. Hudson's pool would go, and there has been no evidence that the water table is an issue.

Mr. McNamara asked if the variance was granted, what would keep Mr. Hudson from using the new setback line to construct other structures.

Mr. Spraker replied that the variance is specific to what the Board approves, so the setback would be for the Exhibit A contained in the Board's packet, which would be all that the Board is approving; any other structures would have to go through a separate variance and building permit process.

Mr. Lane asked for clarification if Mr. McNamara meant that it would change the average setback as the setback is based on the average of 600' to either side.

Mr. Spraker responded that the pool setback is unique. Mr. Spraker explained the LDC states once you go over a 30' rear yard setback you have to space it back for every 2' of additional setback you have to push the pool back. Mr. Spraker explained that the first step was to find the average house setback which came out to be 118', then subtract the 30' from 118' which equates to 78.33', then divide that by 2, which is 44' plus the original 10', which is how you calculate the average setback. Mr. Spraker stated the goal along the riverfront is that no one structure jumps ahead of another structure with both the houses and the pools, which is why, for better or worse that is what the LDC states for both houses and pool structures.

Mr. Lane asked if it would be the future average setback.

Mr. Spraker responded no because it is all based on the house setback.

Mr. Jenner stated it is beautiful, it is just not permitted. Mr. Jenner explained that he can understand what the letters say, it is a beautiful project. Mr. Jenner stated that apparently Mr. Hudson is a very good handyman, and if he was Mr. Hudson's neighbor he would be happy to have something like this because it is the type of thing you see in a magazine. Mr. Jenner stated the problem is it is not permitted. Mr. Jenner explained he is looking for the hardship, which is the reason the Board grants variances.

Mr. Hudson stated there is a cover for the pool, but it is not kept on it all of the time. Mr. Hudson explained if you move the pool and deck back further in the yard it will have to be built up, so the deck would be 5' off the ground, which would be a big eyesore, as opposed to where it is being almost level with the ground. Mr. Hudson stated the structure was built to be all about the view, not to in any way obstruct the view; a deck elevated 5' with a screened enclosure would be grotesque.

Mr. McNamara asked if Mr. Hudson was to put a screen enclosure around the pool as it currently exists, could that be done.

Mr. Spraker responded not without a variance; the calculated setback is 54.15' setback.

Mr. McNamara asked if the Board approved the pool, could the applicant put a screened enclosure around it.

Mr. Spraker responded no, he would have to get another variance.

Mr. Jenner stated the issue is setting a precedent. Mr. Jenner questioned how the Board could say no to the next person that does the same thing if they approve the variance for Mr. Hudson.

Mr. McNamara stated he looked at it from a practical perspective; if you asked any homeowner if you needed a permit to construct a pool, it was his opinion that everyone would say yes. Mr. McNamara stated he believes that is where the fault lies in that there was never a permit issue, if there was, the pool would be in the right location.

Mr. Lane stated the setbacks on waterfront property are based on protecting the view of the neighbors. Mr. Lane stated he walked along the property line from the point of view of the next door neighbor, and it definitely has a bid impact on their view. Mr. Lane continued that if there was a fence, it would be even more so. Mr. Lane stated that if the pool was moved up closer to the house where it is supposed to be, as is the next door neighbor did, and as the law requires, it would not impact the neighbor's view because it would be up by the house not down by the river. Mr. Lane stated the opinion that it would be an eyesore if it were closer to the house does not make sense, and it also at that point could be an in-ground pool because the land elevation is higher so it would permit putting the pool in the ground if it was placed where it was supposed to be.

Mr. McNamara stated it seems like the view on riverfront lots is paramount.

Mr. McNamara called for a motion.

Mr. Lane moved to deny the variances as submitted. Mr. Jenner seconded the motion. Vote was called and the motion unanimously approved.

IV. OTHER BUSINESS

Mr. Jenner complimented staff on what a great job they do preparing the packets.

Mr. Spraker stated that the Board has been very interested in playstructures since an application for a variance a few months previous. Mr. Spraker explained there was a City Commission Workshop in which they reviewed a number of accessory uses. Mr. Spraker stated the City Commission directed staff to amend the Code to require a 7.5' setback for side and rear yards, to allow the maximum height of 18', and to allow a hard-roof structure. Mr. Spraker explained staff was taking this item back to the Planning Board on May 10, 2012, to make those changes, and therefore playstructures would require a permit for location only.

Mr. Jenner requested an after-hours contact phone number in case something was to happen.

Ms. Znorowski stated she would provide a cell phone number to the Board.

V. ADJOURNMENT

As there was no other business, the meeting was adjourned at 7:46 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.