AGENDA

ORMOND BEACH
BOARD OF ADJUSTMENT AND APPEALS

March 4, 2015
ORMOND BEACH CITY COMMISSION CHAMBERS 7:00 P.M.

1. **ROLL CALL**

2. **APPROVAL OF THE MINUTES**
   A. February 4, 2015

3. **NEW BUSINESS**

   A. <u>Case No. 2015-063: 359 Ocean Shore Blvd, fence height in north and south side yards</u>

   This is a request by Linda G. Sicotakis (applicant), authorized agent, of property owners Timothy and Rhynda Gilliam of 359 Ocean Shore Boulevard for variances related to fence height at property located at 359 Ocean Shore Boulevard. Section 2-50(n)(3) of the Ormond Beach Land Development Code requires that solid fences and walls in the front side corner, and waterfront rear yards shall not exceed a maximum height of 3' in height.

   The applicant is requesting four variances to install a solid 6' high wall instead of a 3' solid wall, requiring a 3' high variance to the fence and wall height standards, as follows:

Variance #	Yard Location	Abutting Property	Approximate linear feet	Requested Variances
1	Rear waterfront yard, south side	Neptune Avenue beach approach	40	Allow a 6' solid masonry wall where Section 2-50(n)(3) of the LDC allows a maximum height of 3' for a solid wall.
2	Front side corner, south side	Neptune Avenue beach approach	70	
3	Front side yard, north side	403 Ocean Shore Boulevard	60	
4	Rear waterfront yard, north side	403 Ocean Shore Boulevard	40	

B. <u>Case No. 2015-064: 241 South Halifax Drive, rear and side yard variances related to a new pool.</u>

This is a request by Rick J. and Reghan Taylor, applicant and property owners of 241 South Halifax Drive, for two variances to construct a pool and associated decking at 241 South Halifax Drive. The variances are as follows:

1. **Rear Yard Variance:** Section 2-50(X)(1)(c)(1) of the Land Development Code requires that for swimming pools that the edge of water shall not be closer than 7.5' to the rear property line and the edge of deck shall not be closer than 5' from the rear property line. The applicants are seeking to allow a swimming pool with the edge of water and edge of deck setback to be at 2.5' for the rear yard setback, requiring a 5' variance to the edge of water standard and a 2.5' variance to the edge of deck standard.
2. **Side Yard Variance:** Section 2-50(X)(1)(d)(1) of the Land Development Code requires that for swimming pools that the edge of water shall not be closer than 7.5' to the rear property line and the edge of deck shall not be closer than 5' from the interior side yard property line. The applicants are seeking to allow a swimming pool with the edge of water and edge of deck setback to be at 2.5' for the interior side yard, requiring a 5' variance to the edge of water standard and a 2.5' variance to the edge of deck standard for the interior side yard.

C. <u>Case No. 2015-061 830 West River Oak Dive, pool screen enclosure rear and interior side yard variances</u>

This is a request by Christopher Durost, applicant and property owner of 830 West River Oak Drive, 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:

1. **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 applicant is requesting a 6' variance to the pool screen enclosure standard with a resulting setback of 4' to the rear property line.
2. **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 side interior property line. The applicant is requesting a 2.5' variance to the pool screen enclosure standard with a resulting setback of 5' to the side interior property line.

D. <u>Case No. 2015-066: 920 Buena Vista Avenue, detached garage front and interior side setback variances.</u>

This is a request to replace a detached garage in the current location on the site from Ms. Jo Ellen Zayer, property owner of 920 Buena Vista Avenue. The applicant is seeking two variances to replace the existing detached garage as follows:

1. **Rear Yard Variance:** Section 2-15(B)(9)(b) of the Land Development Code requires a 20' setback from the rear property line. The applicant is seeking to allow the existing setback of the detached garage be at a 2.4' requiring a 17.6' variance to the rear property line; and
2. **Side Yard Variance:** Section 2-15(B)(9)(c)of the Land Development Code requires an 8' minimum side yard setback from the interior side yard property line. The applicant is seeking to allow the existing setback of the detached garage to be at 1.4' requiring a 6.6' variance to the interior side yard.

3. **OTHER BUSINESS**

4. **ADJOURNMENT**

M I N U T E S

BOARD OF ADJUSTMENT

February 4, 2015 **7:00 p.m.**

Commission Chambers
22 South Beach Street
Ormond Beach, Florida

I. ROLL CALL

Members Present	Staff Present
Tony Perricelli	Steven Spraker, Senior Planner
Ryck Hundredmark	Ann-Margret Emery, Deputy City Attorney
Jean Jenner	Melanie Nagel, Minutes Technician
Dennis McNamara	
Norman Lane (Excused)	

II. APPROVAL OF THE MINUTES

A. January 7, 2015 Minutes

Mr. Hundredmark moved to approve the January 7, 2015 Minutes as submitted. Mr. Perricelli seconded the motion. Vote was called, and the motion was unanimously approved, with Mr. McNamara abstaining.

III. OLD BUSINESS

A. Case No. 15-034: 185A Cardinal Drive, side yard variance

Mr. Spraker, Senior Planner, stated that this is a side yard variance for 185A Cardinal Drive, which is part of a triplex with unit A in the front, unit B in the back, and unit C to the east side. The applicant would like to add a sunroom to the side of the property. At the last Board of Adjustments meeting, the neighbor, Mr. Ortona expressed his concerns regarding the impact to his property. His comments are in the minutes from the January meeting. Mr. Spraker has not had any correspondence with Mr. Ortona since the last meeting.

Mr. Spraker reviewed the location, orientation, and characteristics of the subject property and presented the staff report.

Mr. Steve Abel, 2212 Crescent Ridge Road, Daytona Beach, contractor for the property owner, stated that this addition is very similar to other projects in the area. This will be a 10’ x 21’ addition in the back. Mr. Abel knows that Mr. Ortona had voiced some objections of possible noise or disturbances, which shouldn’t be an issue, since the owners have been there for two years, and there have been no problems.

Mr. Patrick Kelley, 777A Flamingo Dr, president of the Ocean Village Home Owners Association, stated that the applicant had submitted a letter to the HOA, and it was taken to the Architectural Review Committee. The three people on the committee went over the plans, walked the grounds, looked at other structures that Mr. Abel had put up, and thought this would be a fine addition to the property. The HOA approves of the addition, and feels that it will improve the value of the property.

Mr. McNamara asked if this building was a duplex or a triplex. Mr. Kelley answered that it is a small triplex, with each unit being about 425 sq. ft. The homeowner is very restricted and is just looking to add some more living space. Mr. Kelly feels that Mr. Ortona should not be bothered by the structure or the people living in it, because it simply isn't close enough, in an enclosed room, to make that much noise.

Mr. Kevin Corey, 18 Oak Bluff, Mr. Ortona's attorney, stated that Mr. Ortona has expressed his opposition to the aluminum structure being built on the adjoining property. Mr. Ortona feels that the variance being sought is an unreasonable request to encroach that far over the required setback. Mr. Ortona also has significant concerns over the aluminum structure being built right outside his bedroom window. Since this is a room where people will congregate and watch TV, Mr. Ortona is concerned about the neighbors having full view of his driveway and into his bedroom.

Mr. Corey continued that when Mr. Ortona received a variance for his property, he built a structure that was consistent with his existing structure – cinder block house, cinder block addition, and tile roof. If the neighbors were getting a variance for a similar structure, he would have no objection. He is concerned about the aluminum structure being built right outside his property.

Mr. McNamara asked if Mr. Ortona was in attendance at the meeting. Mr. Corey replied no, that he resides in Canada, but spends about 4-6 months out of the year in Ormond Beach. Mr. McNamara asked if Mr. Ortona's home is a single family home. Mr. Corey replied that it is a duplex, which he purchased with his brother.

Mr. Jenner asked Mr. Spraker how many triplexes are in the neighborhood. Mr. Spraker stated that he didn't know how many there were. Mr. Kelley stated that there are eight triplexes in the community. Mr. Jenner sees this as a way to expand the living area of the property, which is only about 420 sq. ft.

Mr. McNamara commented that there were only two exterior walls to the unit where the room could be placed – the front or the side. Mr. Spraker explained that they couldn't expand to the front, and the side yard is their only choice.

Mr. Perricelli asked how many screen enclosures are presently built in this area? Mr. Spraker replied that he does not have an exact number. Mr. Spraker observed several of these rooms in the immediate area, but he isn't sure of the total number.

Mr. Kelley stated that the HOA has a set of rules that governs noise, and people can be cited and fined for being a nuisance. So, the problem of noise is

moderated, because the owners understand the HOA rules. Mr. Kelly further mentioned that 175A (other side of duplex to 175B) and the house next to it to the west, has the same situation now as what will exist between 175B and 185A. There are no complaints or problems with the tin roof that is closer to 175A, than what this new screen room will be to 175B.

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

IV. NEW BUSINESS

A. Case No. 15-043: 711 South Atlantic Avenue, front yard variance

Mr. Spaker explained that a variance had previously come to the board in July of 2013, to construct the canopy at the front entrance of the hotel, to protect guests from rain or sun while checking in. The project was approved through the variance process, went through construction, and upon completion it was discovered that the columns were placed out further than planned. Originally the variance was for 20', with a 10' setback.

There is an existing storm water inlet that prevented where the columns could be placed, so they made a logical shift into the landscape island to avoid the inlet, which would have been very costly to move. They moved the columns into the landscape buffer, and it passed inspection. As the property went through financing, it was discovered that the setbacks don't match the variance. The applicant is seeking a variance to allow what was built. It would be a 6.73' setback, requiring a variance of 3.27'. The addition has been very well received, is an asset to the transient lodging facility, and the staff is recommending approval.

Mr. Jeff Brock, attorney for the owner of the property, stated that this is an enhancement of the overall restoration of the hotel. It wasn't until a recent survey was done for some refinancing, that it was realized the structure was 3' off from what the variance allowed. The lender has required the owner to come back for another variance for the additional 3'. The lender is holding a significant portion of the owner's money in escrow pending the approval of this variance.

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

B. Case No. 15-044: 417 Cherrywood Drive, pool screen enclosure variance

Mr. Spaker stated the home owner has an existing screen enclosure, and a tree came down on the screen enclosure, doing a lot of damage. The home owner would like to replace the existing screen enclosure with one exactly the same size, but it would require a variance of 5'. The existing screen enclosure has been in place since 1984, at which time it was permitted. Mr. Spraker looked to see if

there had been a variance done at that time, but couldn't find anything. Staff is recommending approval of the variance.

Ms. Sandy Stewart explained that her pool screen had been damaged when a tree fell on it. She doesn't want to expand it, but just wants it replaced, and her insurance has covered it to get a whole new enclosure.

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

Mr. Jenner asked if the Board couldn't agree that people in a situation such as this shouldn't have to pay for a survey, or a variance, to fix something that has just been broken and needs to be repaired. Mr. Spraker explained that there is a pending Land Development Code amendment that specifically addresses this type of situation. The applicant did not want to wait, since there is no guarantee that the City Commission is going to approve the amendment.

The Land Development Code presently discourages the replacement of non-conforming items. A home owner can maintain it and repair it, but once it gets destroyed more than 50%, the code wants it to come into conformance, or obtain a variance. Mr. Spraker explained that the amendment will take care of problems such as this going forward. It will go to the Planning Board on February 12, 2015 and if approved, will move forward to City Commission in April.

Mr. Jenner asked again about Case 15-043, and wondered when this was discovered that the columns were in the wrong location. Mr. Spraker stated that a survey was done for the financial institution and that is when it was discovered. Mr. Perricelli stated that it is hard to believe that a general contractor, who goes by a set of plans, wasn't aware of this. The general contractor didn't follow the plans and the inspectors didn't catch it. When the general contractor poured the footers, he knew he was wrong, and it is hard to believe that they just caught it.

V. OTHER BUSINESS

None.

VI. ADJOURNMENT

As there was no other business, the meeting was adjourned at 7:32 p.m.

Respectfully submitted,

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Steven Spraker, AICP, Senior Planner

ATTEST:

_____

Dennis McNamara, Chair

Minutes prepared by Melanie Nagel.

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

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

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

STAFF REPORT

City of Ormond Beach
Department of Planning

DATE: February 25, 2015

SUBJECT: 359 Ocean Shore Boulevard, fence height in north and south side yards

APPLICANT: Linda G. Sicotakis, authorized agent for Timothy and Rhynda Gilliam of 359 Ocean Shore Boulevard, property owners

FILE NUMBER: 15-063

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

INTRODUCTION:

This is a request by Linda G. Sicotakis (applicant), authorized agent, of property owners Timothy and Rhynda Gilliam of 359 Ocean Shore Boulevard for variances related to fence height at property located at 359 Ocean Shore Boulevard. Section 2-50(n)(3) of the Ormond Beach Land Development Code requires that solid fences and walls in the front side corner, and waterfront rear yards shall not exceed a maximum height of 3' in height.

The applicant is requesting four variances to install a solid 6' high wall instead of a 3' solid wall, requiring a 3' high variance to the fence and wall height standards, as follows:

Variance #	Yard Location	Abutting Property	Approximate linear feet	Requested Variances
#1	Rear waterfront yard, south side	Neptune Avenue beach approach	40	Allow a 6' solid masonry wall where Section 2-50(n)(3) of the LDC allows a maximum height of 3' for a solid wall.
#2	Front side corner, south side	Neptune Avenue beach approach	70	
#3	Front side yard, north side	403 Ocean Shore Boulevard	60	
#4	Rear waterfront yard, north side	403 Ocean Shore Boulevard	40	

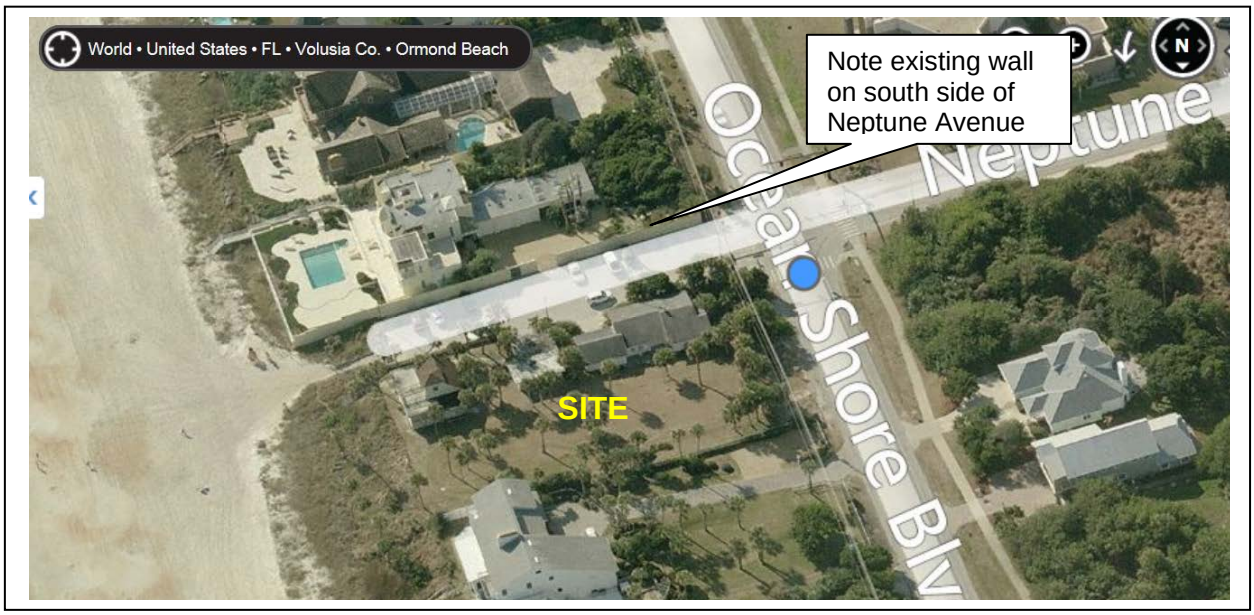
BACKGROUND:

The property is designated as "Low Density Residential" on the City's Future Land Use Map (FLUM) and is zoned R-1 (Residential Estate) on the City's Official Zoning Map. The existing use of the property is consistent with the FLUM designation and zoning district.

Adjacent land uses and zoning:

	Current Land Uses	Future Land Use Designation	Zoning
North	Single Family House	"Low Density Residential"	R-1 (Residential Estate)
South	Single Family House	"Low Density Residential"	R-1 (Residential Estate)
East	Beach and Atlantic Ocean	N/A	N/A
West	Single Family House	"Low Density Residential" "Public Institutional"	R-2.5 (Single-Family Low-Medium Density)

Below is a site aerial of the property:



In 2012, Timothy and Rhynda Gilliam purchased 359 Ocean Shore Blvd. which had an abandoned home on the property. In 2013, the Gilliam's purchased 401 Ocean Shore Bvd. which also had an abandoned home in disrepair. All structures located on those properties were subsequently demolished and construction of a new single family home commenced in March 2014. The project is scheduled for completion in August 2015.

Below are two photos that illustrate the subject two properties that were demolished prior to construction of the new single family home.

359 Ocean Shore Blvd./289 Neptune Avenue

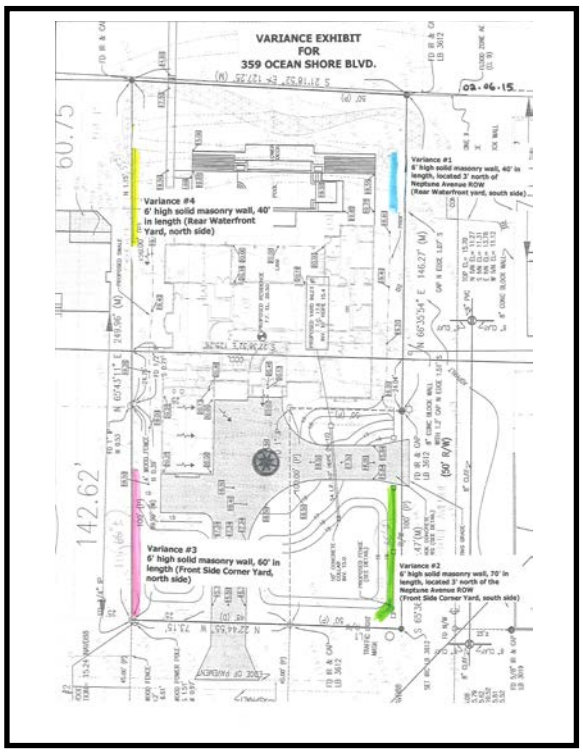
401 Ocean Shore Blvd.

The applicant is seeking to construct fencing around the subject property in conjunction with the construction of their new home and have encountered issues based on the location of the parcel as it is next to the Neptune Avenue public beach approach. The south side of the parcel lies along the north side of the Neptune Avenue beach approach for its entire ±250' feet. 359 Ocean Shore Boulevard fronts Ocean Shore Blvd. for ±127'. As illustrated below, the property directly to the south of the Neptune Avenue beach approach has a 6' solid privacy masonry wall.

357 Ocean Shore Boulevard – 6' solid masonry wall

ANALYSIS:

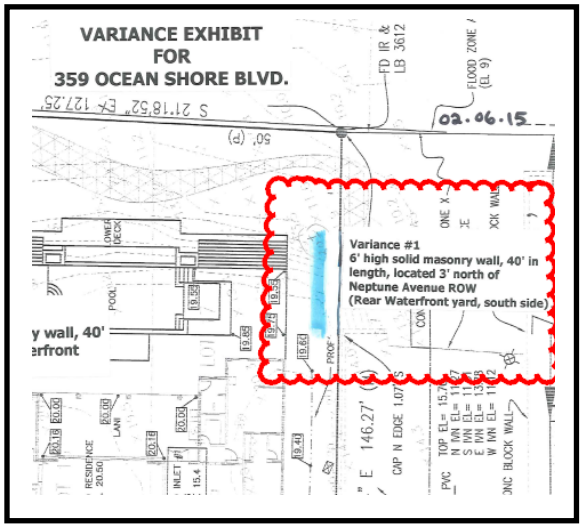
The four variances all seek to allow a 6' solid masonry wall where the Land Development Code would require either a 6' open fence or a combination of a closed fence at 3' and an open fence to a height of 6'. The two yards under review include the front yard and waterfront rear yards. The applicant has indicated a desire to provide security and privacy for the property which is located next to a major beach approach. The request is similar to the property located along the south line of the Neptune Beach approach. For the purposes of this analysis, staff has separated the variances into four distinct variances. The Board can vote on the variances individually or group the four variances for action. The variances are shown on the exhibit below:



The applicant has been approved for two 20' gates, 6' high solid fence along the side yards and a 3' solid fence with 3' open railing along the front yard, front side yards and rear waterfront yards. A 4' fence aluminum open railing fence required due to the proposed pool has been approved along the rear yard. The Land Development Code requires that solid fences and walls in the front side corner, and waterfront rear yards shall not exceed a maximum height of 3'.

VARIANCE 1, REAR WATERFRONT YARD, SOUTH SIDE:

The first variance is located along the Neptune Beach approach and is within the waterfront rear yard. The applicants are requesting a 6' solid wall based upon privacy and security concerns, given that the rear south side of the property abuts the popular Neptune Avenue public beach approach. The applicant has expressed a serious concern about privacy at the beach approach because the applicant is building a pool in their backyard and a 3' high fence in the rear waterfront setback would enable the general public to easily see over the fence into the pool area.



Below are pictures of the area of variance #1:

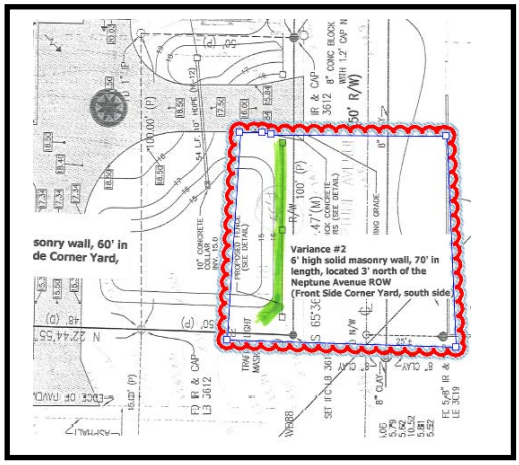
Neptune Avenue Public Beach Approach

Variance #1 – rear waterfront yard, south side

Staff has received correspondence from the Department of Environmental Protection (DEP) that the applicant is required to file a permit modification to construct the 6' solid wall. The applicant is currently working with the DEP to acquire the required permitting for the wall. The solid fence would require DEP approval prior to site construction.

VARIANCE 2, FRONT SIDE CORNER, SOUTH SIDE:

The second variance lies along the south side of the front of the property at the intersection of Ocean Shore Boulevard and the Neptune Avenue right-of-way and public beach access. The existing treed vegetation at the south west corner of the property is proposed to remain and the proposed 6' masonry wall would angle around the vegetation as illustrated in the Variance exhibit. Below are pictures of the area of variance #2:

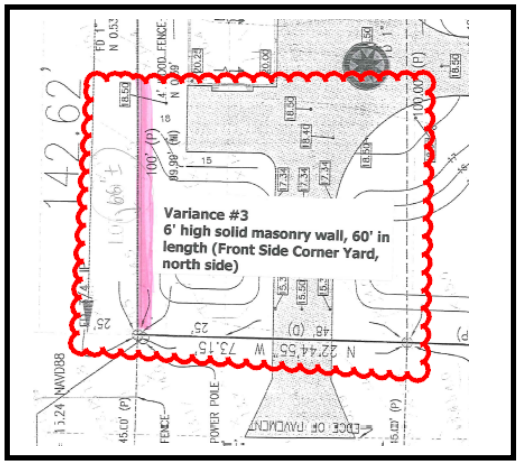


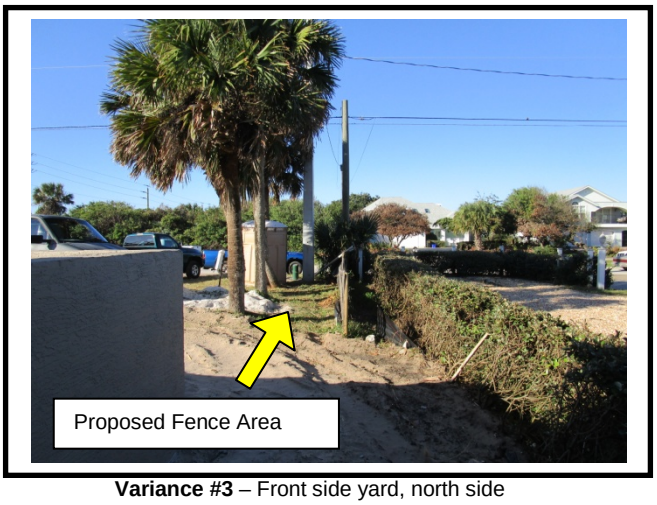
Variance #2 – Front Side Corner, South Side

Variance #2 – Treed vegetation proposed to remain

VARIANCE 3, FRONT SIDE YARD, NORTH SIDE:

The third variance lies along the northwest side of the property. The adjacent property owner to the north has the south side of their property landscaped with shrubbery roughly 5 feet high. **Variance #3** is requested for privacy and to maintain symmetry or consistency with rest of the requested 6' masonry fence. Below is a picture illustrating the area of variance #3:

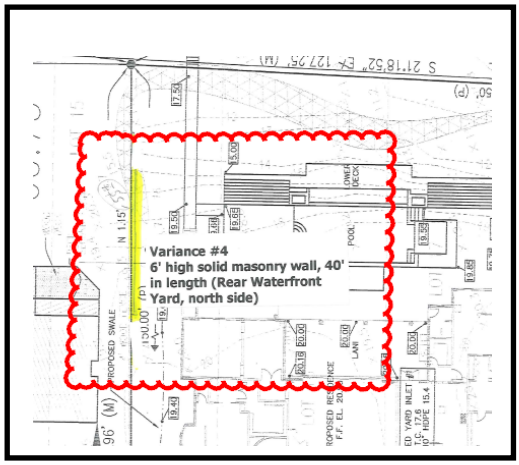


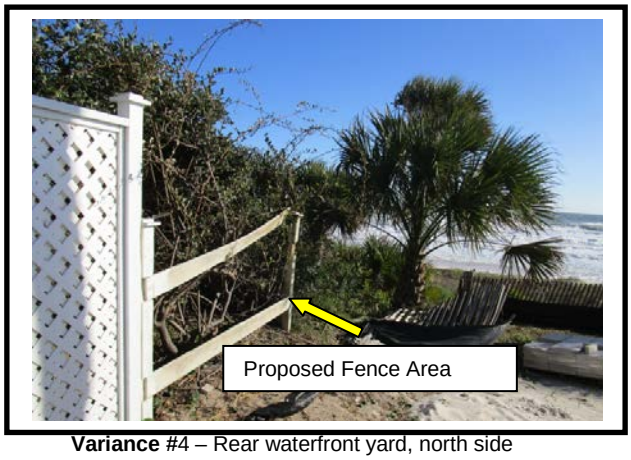


Variance #3 – Front side yard, north side

VARIANCE 4, REAR WATERFRONT YARD, NORTH SIDE:

The fourth variance lies along the north east side of the property within the side waterfront setbacks. As illustrated below, the adjacent property owner along the north side of the subject property has 6' PVC lattice that she has requested be put back once the applicant constructs their 6' masonry wall, if approved. The adjacent property owner, through a combinated of landscaping and fencing, has maintained their ownprivacy interest. Since the wall is proposed within the north waterfront setbacks, the same DEP permit modification is required as in variance number one. Below is a picture of the area of variance #4:





Variance #4 – Rear waterfront yard, north side

The adjacent property owners have no objection to all four proposed variances and have provided their signatures in support of the variances. The subject property has some change in elevations throughout the property and the proposed fence is not seeking any height beyond 6' at the grade which it is placed.

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.**

   Cases for Variances #1 and #2 (abutting Neptune beach approach): The applicant states the special condition relates to the location of the property at 359 Ocean Shore Boulevard and the beach approach. The application states that the beach approach is heavily used with a high volume of vehicle and pedestrian traffic. The applicant is seeking privacy and security, similar to the single-family residence along the south property boundary.

   Cases for Variance #3 and #4 (abutting single family residential): The special condition is related to the need to provide security and the desire to have similar wall materials surrounding the property.

   Case against Variances #1 though #4: One can argue that other fencing options exist including a three foot solid and three foot open style fencing.

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

   Case for Variances #1 though #4: The land area of 359 Ocean Shore Boulevard was originally two lots. 359 Ocean Shore Boulevard was purchased in 2012 while the adjacent lot to the south (401 Ocean Shore Boulevard) was purchased in 2013 after which the two lots were combined. The location of the single-family house in proximity to a beach approach causes the need for additional screening and the need for the close fencing. The special conditions of this property are not the result from actions of the applicant.

   Case against Variances #1 through #4: None. The typical purpose of masonry walls is to provide buffering to uses which may have different uses, such as residential and commercial. This request is very similar where a single-family residence is seeking to create privacy and sound reduction from a popular beach approach.

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 Variances #1 through #4: The fence regulations in Section 2-50 of the Land Development allow for a 3' solid fence or wall in the front side corner, and waterfront rear yards. The literal interpretation of the zoning regulations would not allow a 6' high solid masonry wall where the subject property abuts the Neptune Avenue right-of-way beach approach or the abutting property to the north (403 Ocean Shore Boulevard). The ability to utilize privacy fencing is a right commonly enjoyed by others and not allowing it would create an undue hardship.

   Case against Variances #1 through #4: The applicant can have a 3' high solid fence, a combination of solid and open fence totaling 6', or a 6' high open style fence. However, an open style fence does not provide the same level of screening for privacy.

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 Variances #1 through #4: There is no practical alternative for a 6' privacy fence based on the location of the lot. The variance is the minimum to allow the screening, privacy and sound reduction of the property consistent with other residential properties and to maintain symmetry throughout the property.

   Case against Variances #1 through #4: An alternative would be an open style fence 6' in height. However, an open style fence does not provide the same level of screening, privacy, and sound reduction.

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 Variances #1 through #4: The variance is not sought to reduce the cost of the construction of the fencing.

Case against Variances #1 through #4: 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 Variances #1 through #4: The request will not increase congestion, fire danger or public hazards. Fencing is a common accessory structure and the variances are needed based on the location of the lot.

Case against Variances #1 through #4: 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 Variances #1 through #4: Fencing is a common accessory structure and the proposed fence abuts the rear or side yard of all the properties touching the subject property. The fencing should not diminish the property values of the surrounding properties or alter the residential character of the surrounding properties. The applicant has discussed the fencing with abutting neighbors and obtained signatures in support of the variance.

Case against Variances #1 through #4: None. Fencing is commonly allowed in residential zoning districts.

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 Variances #1 through #4: 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. Staff believes that the location of the property along two rights-of–way, one of which is a substantially busy public beach approach, is a unique condition that is worthy of a variance.

Case against Variances #1 through #4: 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. If the Board does not believe the variance criteria have been met, then the application should be denied.

RECOMMENDATION: Each variance could be considered independently or the Board can approve all or any combination of the four variances, or deny all or any combination of the four variances. It is recommended that the Board of Adjustments and Appeals **APPROVE** all four variances to install a solid 6' high solid masonry wall instead of a 3' solid wall, requiring a 3' high variance to the fence and wall height standards, as follows:

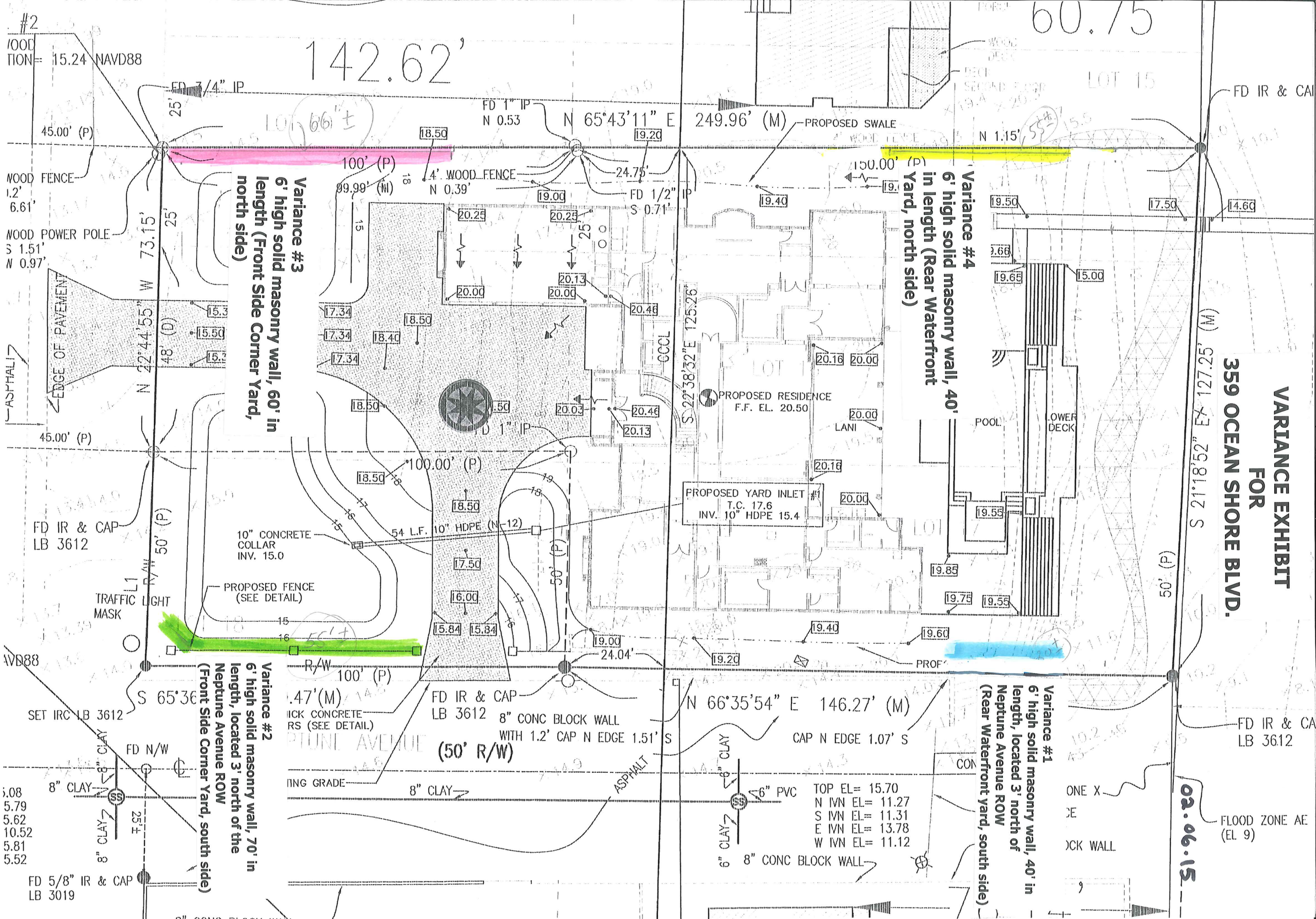
Variance #	Yard Location	Abutting Property	Approximate linear feet	Requested Variances
#1	Rear waterfront yard, south side	Neptune Avenue beach approach	40	Allow a 6' solid masonry wall where Section 2-50(n)(3) of the LDC allows a maximum height of 3' for a solid wall.
#2	Front side corner, south side	Neptune Avenue beach approach	70	
#3	Front side yard, north side	403 Ocean Shore Boulevard	60	
#4	Rear waterfront yard, north side	403 Ocean Shore Boulevard	40	

Attachments:

1: Variance Exhibit
2: Location Map and Photos
3: Applicant Provided Information

ATTACHMENT 1

Variance Exhibit

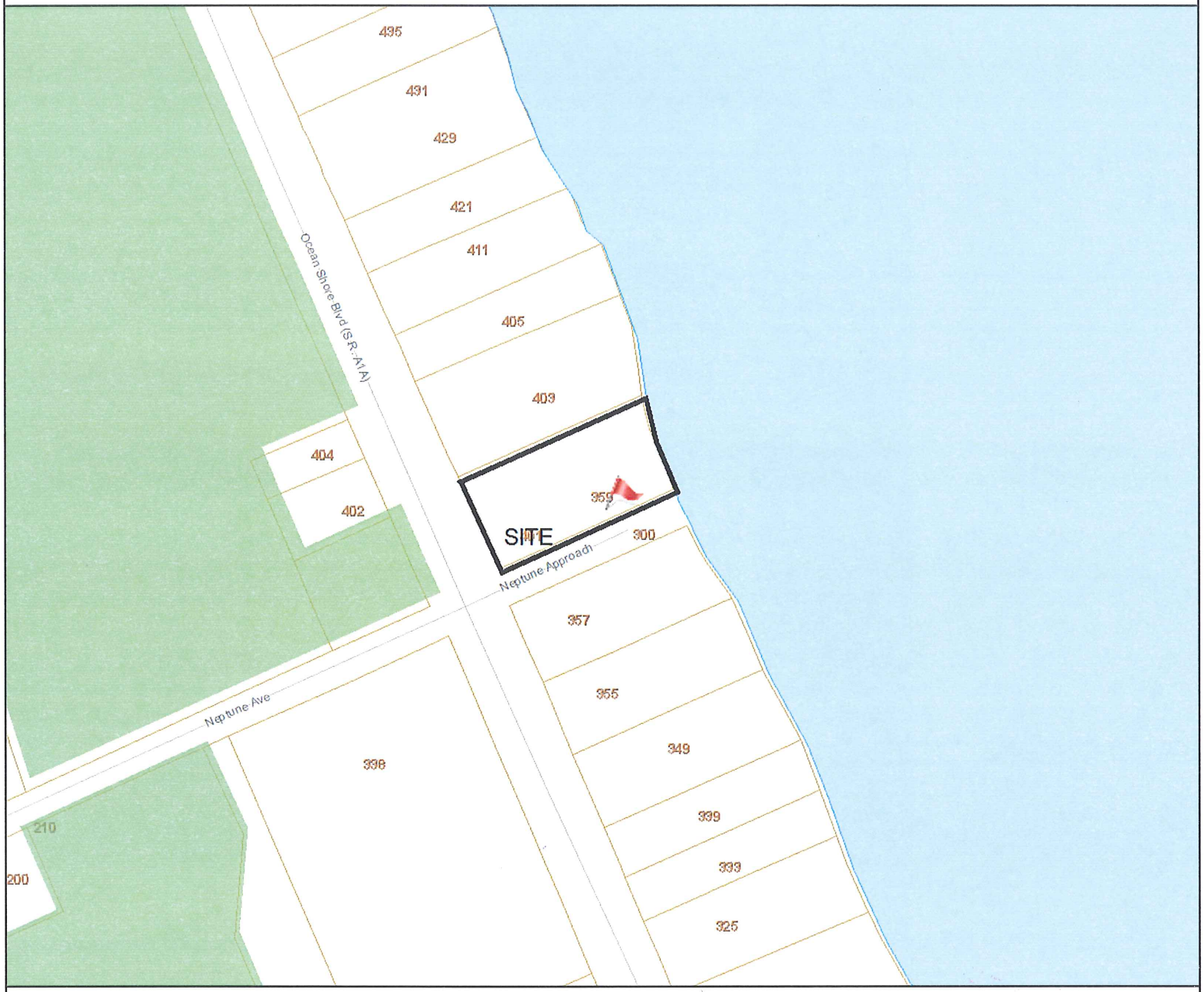


VARIANCE EXHIBIT
FOR
359 OCEAN SHORE BLVD.
Variance #1
6' high solid masonry wall, 40' in length, located 3' north of Neptune Avenue ROW
(Rear Waterfront yard, south side)
Variance #2
6' high solid masonry wall, 70' in length, located 3' north of the Neptune Avenue ROW
(Front Side Corner Yard, south side)
Variance #3
6' high solid masonry wall, 60' in length (Front Side Corner Yard, north side)
Variance #4
6' high solid masonry wall, 40' in length (Rear Waterfront Yard, north side)
142.62'
60.75
N 65°43'11" E 249.96' (M)
N 66°35'54" E 146.27' (M)
S 21°18'52" E 127.25' (M)
S 22°38'32" E 125.26'
N 22°44'55" W 73.15'
S 65°36
PROPOSED RESIDENCE
F.F. EL. 20.50
PROPOSED YARD INLET #1
T.C. 17.6
INV. 10" HDPE 15.4
10" CONCRETE COLLAR
INV. 15.0
54 L.F. 10" HDPE (N-12)
PROPOSED FENCE (SEE DETAIL)
TRAFFIC LIGHT MASK
FD IR & CAP
LB 3612
FD 5/8" IR & CAP
LB 3019
SET IRC LB 3612
8" CONC BLOCK WALL
WITH 1.2' CAP N EDGE 1.51' S
CAP N EDGE 1.07' S
TOP EL= 15.70
N IVN EL= 11.27
S IVN EL= 11.31
E IVN EL= 13.78
W IVN EL= 11.12
8" CONC BLOCK WALL
FLOOD ZONE AE
(EL 9)
(50' R/W)
PROPOSED SWALE
4' WOOD FENCE
N 0.39'
FD 1" IP
N 0.53
FD 1/2" IP
S 0.71'
FD 3/4" IP
WOOD POWER POLE
EDGE OF PAVEMENT
ASPHALT
POOL
LOWER DECK
LANI
FD N/W
8" CLAY
6" PVC
6" CLAY
02.06.15

ATTACHMENT 2

- Maps
- Pictures

359 Oceanshore Boulevard location map



Golf Courses

Address Points

City Streets

DIRT

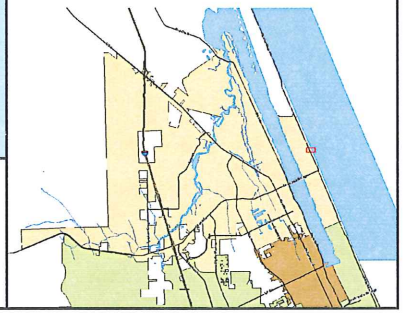
MAJOR

PAVED

Water Features

Property Lines

178 ft



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Front Elevation – 359 Ocean Shore Boulevard
02.05.15

Variance #1 – View looking east over beach approach from south east corner of 359 Ocean Shore Boulevard.

Variance #2 – Looking west along the south side of the subject property from where the existing masonry wall ends along the Neptune Avenue right-of-way.

Facing east toward the ocean along the Neptune Avenue right-of-way from the intersection of Neptune Avenue and Ocean Shore Boulevard.

Variance #2 – Facing east and illustrating the change in grade along the south side of the property (Neptune Avenue right-of-way).

Variance #3 – Facing west toward Ocean Shore Boulevard from the north west corner of 359 Ocean Shore Boulevard.

Variance #4 along north side of
359 Ocean Shore Boulevard
facing east where 6’ solid
masonry wall is proposed.