



# AGENDA

## ORMOND BEACH BOARD OF ADJUSTMENT AND APPEALS

January 6, 2016

ORMOND BEACH CITY COMMISSION CHAMBERS

7:00 P.M.

- I. ROLL CALL
- II. ADMINISTRATIVE ITEMS
  - A. Election of Chairperson and Vice-Chair.
  - B. Approval of the 2016 Rules of Procedures
  - C. Acceptance of 2016 BOAA calendar.
- III. APPROVAL OF THE MINUTES
  - A. November 4, 2015
- IV. NEW BUSINESS
  - A. Case 2016-0020: 115 Bosarvey Drive, Side Yard Variance
    - V. This is a request for a side yard variance submitted by Beachside Acquisitions Inc., Mr. John Hogan, President (applicant), property owner of 115 Bosarvey Drive. The property is zoned R-3, Single Family Medium Density. Chapter 2, Article II of the Land Development Code, Section 2-15(B)(9)(c) requires a minimum side yard setback of 8' for a total of 20' between both side yards. The applicant is seeking one variance to construct two room additions at a 4.8' side yard setback, consistent with the existing setback of the single family house along the east side of the property. The existing combined side yard setback of the subject property is 8.6'. There are two standards within the side yard setback requirement that are not being met. The variance requested is for 3.2' to the required minimum 8' side yard setback and for 11.4' to the required 20' combined side yard setback.
- VI. OTHER BUSINESS
- VII. ADJOURNMENT

# CITY OF ORMOND BEACH

FLORIDA

PLANNING

MEMORANDUM

**TO:** BOAA Members

**FROM:** Steven Spraker, AICP, Senior Planner

**DATE:** December 28, 2015

**SUBJECT:** Board of Adjustment and Appeals Administrative Items

This is the first meeting of the Board of Adjustment and Appeals (BOAA) for the year 2016. There are several administrative items on the agenda including the election of the chairperson/vice-chairperson, calendar of meetings and the rules of procedures.

Planning staff will continue to provide the BOAA members copies of the packets via hard copy and by e-mail. It would be beneficial for staff if BOAA members could respond to the packet e-mail to let us know if they will be attending the Board meeting. BOAA alternate members will receive packets via e-mail and staff will provide hard copies if an alternate member is requested to attend the Board meeting. If any alternate member desires hard copies of the packet, please contact me and staff can provide the packet to the member. Alternate member(s) are not required to attend the BOAA meetings unless substituting for a member who is absent.

The variance packet and agenda are also provided at the City website, under Boards and Committees. If there are any questions, I can be contacted at 676.3341 or by e-mail at [Steven.Spraker@ormondbeach.org](mailto:Steven.Spraker@ormondbeach.org). Thank you.

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

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

**SECTION 1. OFFICERS, MEMBERS AND DUTIES**

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

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

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

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

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

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

## **SECTION 2. MEETINGS**

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

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

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

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

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

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

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

2.7 Adjournment. New items will not be heard by the Board after 10:00 PM unless authorized by a majority vote of the Board members present. Items which have not been heard before 10:00 PM may be continued to a date and time certain, or to the next regular meeting, as determined by affirmative vote of the majority of the Board members present.

### **SECTION 3.     VOTING**

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

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

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

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

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

3.3     Abstention. All members of the Board shall vote in favor of, or in opposition to, all matters coming before the Board for vote, and such vote shall be recorded in the official records of the Board. However, no member shall vote upon any matter which would inure to the member's special private gain or loss; which the member knows would inure to the special private gain or loss of any principal by whom the member is retained or to the parent organization or subsidiary of a corporate principal by which the member is retained, other than an agency as defined in §112.312(2), *Florida Statutes*; or which the member knows would inure to the special private gain or loss of a relative or business associate of the member. Any member so required to abstain shall, prior to the vote being taken, publicly state to the assembly the nature of the member's interest in the matter from which the member is abstaining from voting and, within fifteen (15) days after the vote occurs,

disclose the nature of the member's interest as a public record in a memorandum filed with the Secretary, who shall incorporate the memorandum in the minutes.

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

#### **SECTION 4. ATTENDANCE**

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

#### **SECTION 5. APPEALS AND APPLICATIONS**

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

#### **SECTION 6. RESIDENCY REQUIREMENTS**

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

#### **SECTION 7. APPLICATIONS**

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

#### **SECTION 8. CONDUCT OF HEARINGS**

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

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

8.1 In order to allow the meeting to proceed in an orderly fashion, the Board, by motion, may limit the time allowed for remarks concerning a specific agenda item to a maximum of thirty (30) minutes for City staff, the designated representative of the applicant and the

designated representative of any organized group and to five (5) minutes for members of organizations and other individual speakers. Additional time shall be allowed to respond to questions from the Board. The Chairman may also direct speakers to limit their comments to issues which have not been previously stated;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **SECTION 9. DECISIONS**

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

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

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

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

## **SECTION 10. AGENDA**

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

## **SECTION 11. RECONSIDERATION, REHEARINGS AND REAPPLICATIONS**

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

11.2 Rehearing.

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

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

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

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

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

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

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

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

## **SECTION 12. AMENDMENTS**

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

## **SECTION 13. MOTIONS**

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

**SECTION 14. ROBERTS RULES OF ORDER**

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

**PRESENTED IN WRITING** at a regular meeting of the Board on January 6, 2016.

**APPROVED** at a regular meeting of the Board on\_\_\_\_\_.

## BOARD OF ADJUSTMENT AND APPEALS 2016 CALENDER

Action	JAN	FEB	MARCH	APRIL	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC
<b>Application due</b>	12/01/15	01/04/16	02/01/16	03/01/16	04/01/16	05/02/16	06/01/16	07/01/16	08/01/16	09/01/16	10/03/16	11/01/16
<b>Newspaper ad submitted</b>	12/16/15	01/13/16	02/10/16	03/16/16	04/13/16	05/11/16	06/15/16	07/23/16	08/17/16	09/14/16	10/12/16	11/16/16
<b>Abutter letters sent</b>	12/18/15	01/15/16	02/12/16	03/18/16	04/15/16	05/13/16	06/17/16	07/25/16	08/19/16	09/16/16	10/14/16	11/18/16
<b>Property posted</b>	12/18/15	01/15/16	02/12/16	03/18/16	04/15/16	05/13/16	06/17/16	07/25/16	08/19/16	09/16/16	10/14/16	11/18/16
<b>Newspaper ad runs</b>	12/19/15	01/16/16	02/13/16	03/19/16	04/16/16	05/14/16	06/18/16	07/26/16	08/20/16	09/17/16	10/15/16	11/19/16
<b>Staff Report issued</b>	12/30/15	01/27/16	02/24/16	03/30/16	04/27/16	05/25/16	06/29/16	08/06/16	08/31/16	09/28/16	10/26/16	11/30/16
<b>Board hearing date</b>	01/06/16	02/03/16	03/02/16	04/06/16	05/04/16	06/01/16	07/06/16	08/13/16	09/07/16	10/05/16	11/02/16	12/07/16
<b>Appeal period ends</b>	02/06/16	03/05/16	04/02/16	05/07/16	06/04/16	07/02/16	08/06/16	09/13/16	10/08/16	11/05/16	12/03/16	01/07/17
<b>Building permit required to be executed to vest variance</b>	01/05/17	02/02/17	03/02/17	04/06/17	05/04/17	06/01/17	07/06/17	08/13/17	09/07/17	10/05/17	11/02/17	12/07/17

**MINUTES**  
**BOARD OF ADJUSTMENT**

**November 4, 2015**

**7:00 p.m.**

**Commission Chambers**

22 South Beach Street  
Ormond Beach, Florida

**I. ROLL CALL**

Members Present

Dennis McNamara  
Ryck Hundredmark  
Norman Lane  
Stan Driscoll (Alternate)  
Frank Ganz (Alternate)  
Tony Perricelli (Excused)  
Jean Jenner (Excused)

Staff Present

Steven Spraker, Senior Planner  
Ann-Margret Emery, Deputy City Attorney  
Colby Cilento, Minutes Technician

**II. APPROVAL OF THE MINUTES**

**A. September 2, 2015 Minutes**

Mr. Hundredmark moved to approve the September 2, 2015 Minutes as submitted. Mr. Lane seconded the motion. Vote was called, and the motion was approved (5-0).

**III. NEW BUSINESS**

**A. Case No. 16-003: 40 Twelve Oaks Trail, Front Yard Variance**

Mr. Steven Spraker, Senior Planner, stated that this is a request for a variance at 40 Twelve Oaks Trail. This is a very unique street and very unique lot that abuts the Tomoka River. 40 Twelve Oaks has a residential lot on one side of it, and an HOA parcel on the other side of it. The applicant is requesting a front yard variance, and when the meeting was advertised, the HOA came forward and stated that they have some unique setbacks, which are different than what the city requires. Mr. Spraker explained that the HOA requires a greater distance between buildings. Staff put the HOA contact in touch with the applicant, and what was originally submitted has shifted a little bit.

The advertised setback was a 21.5' setback, requiring a variance of 8.5'. The Staff Report covers some of the unique factors of this property. The most unique factor of this property is the platted cul-de-sac that was never built, and a roadway was put in. When Staff reviewed setbacks, they have to use the platted lot. While Staff agrees that this cul-de-sac will probably never be built, the front yard setback is measured from the platted cul-de-sac.

The second unique feature is the bluff line, and a wetland line. Obviously the property owner is trying to stay away from the bluff line and wetlands line. That is why the house is being moved forward. These two factors create the hardship and the need for the variance. As the applicant has worked with the HOA, the house has shifted, so there is more distance in between the buildings, and there is a little more encroachment at the bend of the cul-de-sac. Staff is recommending approval of the variance.

Mr. Lane asked if another house could be put in on the other side of the cul-de-sac. Mr. Spraker stated that one could not be put on Twelve Oaks Trail, and the road will never be extended to another property. Mr. Lane asked if there was an encroachment based on the existing road. Mr. Spraker stated yes, there would still be an encroachment.

Mr. Driscoll stated that he understood that the only encroachment was on the platted cul-de-sac that was not built. But there is a 2' variance to the existing road, as well. Mr. Spraker stated that we advertise variances by the greatest distance of variance, even though there may be a couple of different ones shown. Mr. Driscoll asked how the home lines up with the existing property. Mr. Spraker stated that the setback is 30' for the neighboring property.

Mr. Hundredmark asked if there will be no point less than 21.5'. Mr. Spraker stated that is correct. 21.5' was the advertised setback. If the applicant wants to go closer than 21.5', they would need to come back and go through another variance process.

Mr. Paul Bellanca, applicant, stated that he is trying to work with his new neighbor, and build a house that is going to help increase the property values. This property is on a dead-end road, and Mr. Bellanca doesn't think it will ever be developed any further. This lot has been there for 28 years and never been developed. They will be building as far back as they can because of the bluff. The neighbor is in agreement with what they are proposing, and they are working with the HOA to get it done.

Mr. McNamara asked what the HOA's requirement is on the side. Mr. Bellanca stated it is 20'.

Mr. Jeffrey Newfield, 36 Twelve Oaks, neighbor to the proposed new home, stated that Twelve Oaks has its own HOA, within The Trails HOA. There are two sets of lots, 1 & 2, and lots 15 & 16, that are unique. All other lots require 28' between structures. The two sets of lots can take that number to 20' if everyone is in agreement, due to the configuration of the lots. Another unique feature of this property is that there is a creek at the bottom of this HOA property, so there is water on two sides of the property. So the land is running down toward the creek and dropping off to the river. Mr. Newfield is not here to oppose Mr. Bellanca's request, but is here to become knowledgeable since it impacts him.

Mr. Ben Butera, architect, 51 W Granada, stated that once he got into the project, he checked with the city for setbacks, and the HOA from The Trails. He did not realize there is another HOA just for the Twelve Oaks street. Mr. Butera met with

the neighbors and they discussed the front setback. Even though they are encroaching on the front setback, the house is still 60' back from the road. So this is almost double what any other house is in the subdivision. Although the setback is measured from the property line, the cul-de-sac was never built, so it is an imaginary property line. There are woods here and no cul-de-sac, and if they ever built a cul-de-sac, it would have to be 16' in the air because of the drop-off. Common sense says that the front setback doesn't impact anybody, since it is all woods.

Mr. Driscoll asked if the lot was on city sewer. Mr. Butera stated that the whole neighborhood is on sewer. Mr. Driscoll stated that the elevation plan looks nice. Mr. Butera stated that the owner has been impacted economically because of the site. The site dictates that there will be a lot of cut and fill to be done. And making this setback adjustment will create even more cut and fill, since they will be going into more of the slope.

**Mr. Hundredmark moved to approve the application for the front yard variance. Mr. Lane seconded the motion. Vote was called and the Board unanimously approved the variance application (5-0).**

## **V. OTHER BUSINESS**

Mr. Lane asked Mr. Spraker how often does someone come to the Planning Department for a variance, and they are turned away because they probably wouldn't be able to get one. Mr. Spraker explained that when someone is interested in a variance, Planning asks them to provide a concept plan of what they want to do. It is then discussed at staff meeting, and everyone gives their recommendations. Staff then goes back to the applicant with the recommendations, and if it is not a recommendation for approval, the applicant is told that they have the right to apply, but Staff can't recommend approval. It is then the applicant's decision if they want to move forward.

As in tonight's case, if Staff is recommending approval, they have a higher percentage of it moving forward. The cost alone is \$700 for advertising and recording the variance. The cost is high for someone to gamble that it will be approved, which discourages some people right away. Mr. Lane asked if an entire review is done before Staff gives them an opinion. Mr. Spraker stated that they tell the applicant to talk to the neighbors, because if they are dead set against it, it will make their burden of proof that much harder. We try not to waste their time and money. At times, the neighbors work together to come up with a solution.

Mr. Lane stated that they approve most of the variances that come before the Board, but that is probably because some of them never actually made the application. Mr. Spraker explained that there was a time when everyone just filled out the application, there was no staff review, and the Board sifted through them. This made it hard for the Board, and hard for the applicant who couldn't understand why they couldn't get their variance. Staff does not tell them they

can't submit for a variance. They just give the homeowners their recommendation.

Mr. McNamara stated that over the years there have been some homeowners that have gone forward with the request, regardless of staff opinion. Mr. Spraker stated that there have been some that staff recommended approval, and the Board denied, and vice versa. It's not a guarantee, but Staff's comments give the homeowner a thought process of what Staff's report to the Board would be.

## **VI. ADJOURNMENT**

As there was no other business, the meeting was adjourned at 7:24 p.m.

Respectfully submitted,

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Steven Spraker, AICP, Senior Planner

ATTEST:

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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:** December 28, 2015

**SUBJECT:** 115 Bosarvey Room Additions - Side Yard Variance

**APPLICANT:** Beachside Acquisitions Inc., Mr. John Hogan, President  
 (applicant), property owner

**FILE NUMBER:** 2016-0020

**PROJECT PLANNER:** S. Lauren Kornel, AICP, Senior Planner

**INTRODUCTION:**

This is a request for a side yard variance submitted by Beachside Acquisitions Inc., Mr. John Hogan, President (applicant), property owner of 115 Bosarvey Drive. The property is zoned R-3, Single Family Medium Density. Chapter 2, Article II of the Land Development Code, Section 2-15(B)(9)(c) requires a minimum side yard setback of 8' for a total of 20' between both side yards. The applicant is seeking one variance to construct two room additions at a 4.8' side yard setback, consistent with the existing setback of the single family house along the east side of the property. The existing combined side yard setback of the subject property is 8.6'. There are two standards within the side yard setback requirement that are not being met. The variance requested is for 3.2' to the required minimum 8' side yard setback and for 11.4' to the required 20' combined side yard setback.

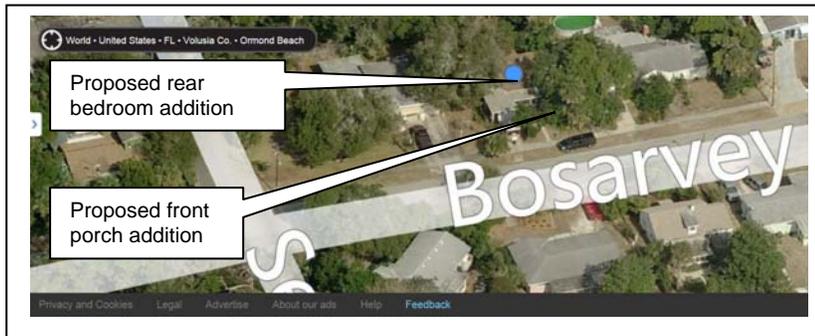
**BACKGROUND:**

The subject property is located south of East Granada Boulevard and east of South Halifax Drive and was originally constructed in 1954. The property is designated as "Low Density Residential" on the City's Future Land Use Map (FLUM) and is zoned R-3 (Single Family Medium Density) on the City's Official Zoning Map. The existing use of the property is consistent with the FLUM designation and zoning district. The adjacent land uses and zoning for the surrounding properties are as follows:

**Adjacent land uses and zoning:**

	<b>Current Land Uses</b>	<b>Future Land Use Designation</b>	<b>Zoning</b>
<b>North</b>	Single Family Home	"High Density Residential"	R-4 (Single Family Medium Residential)
<b>South</b>	Single Family Home	"Low Density Residential"	R-3 (Single Family Medium Density)
<b>East</b>	Single Family Home	"Low Density Residential"	R-3 (Single Family Medium Density)
<b>West</b>	Single Family Home	"Low Density Residential"	R-3 (Single Family Medium Density)

**Site Aerial of proposed front and rear building additions:**



**Source: Google Maps**

**Pictures of proposed rear and front building additions:**



**Rear Bedroom Addition**



**Front Porch Addition**

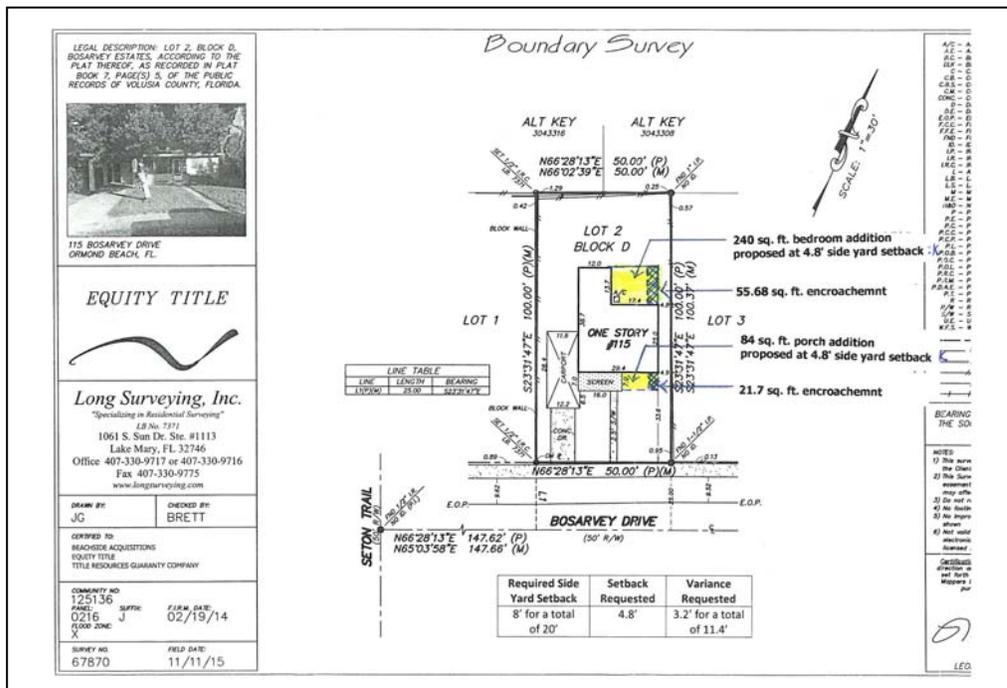
## APPLICANT'S REQUEST: SIDE YARD SETBACK VARIANCE

The property is zoned R-3, Single Family Medium Density. Chapter 2, Article II of the Land Development Code, Section 2-17(B)(9)(c) requires a minimum side yard setback of 8' for a total of 20' between both side yards. The scope of improvements involves two room additions with one requested variance side yard setback involving two side yard setback standards. The applicant is seeking to construct a bedroom addition at a 4.8' side yard setback designed to square off the house along the rear of the north eastern boundary of the property. The bedroom addition is proposed at 13.8' by 17.4' and would be even with the existing building plane on both the side and rear yards. The bedroom addition would encroach into the side yard setback by 3.2' to be even with the existing house side yard setback. The addition meets the rear yard setback. The second improvement is to extend the existing front porch eastward at a 4.8' side yard setback, the same as the bedroom addition, designed to square off the house along the front south eastern boundary of the property. The porch addition is proposed at 7.0' by 12' and would be even with the existing plane on both the side and front yards. The existing combined side yard setback of the subject property is only 8.6'. As part of the 3.2' variance the applicant also needs 11.4' to the required 20' combined side yard setback.

The Volusia County Property Appraiser shows the current structure as being constructed in 1954. Since the two improvements impact only one side yard setback and the applicant is requesting only one variance, the analysis of this report will analyze the two improvements together as a single variance.

### ANALYSIS – BEDROOM AND PORCH ADDITIONS:

The applicant is requesting a bedroom addition and a porch addition at the rear and front east side of the property respectively. Both additions are proposed even with the existing side yard setback of 4.8', requiring a 3.2' variance to the required minimum 8' side yard setback and for 11.4' to the required 20' combined side yard setback standards. The variance exhibit is shown below:



Per Chapter 2, Article V, Sec. 2-63. F., the City's Board of Adjustment and Appeals may review variance requests to allow for the expansion of the nonconforming portion of a structure.

Potential Alternatives:

1. **Grant the applicant's request and permit a 4.8' setback for the building additions, granting a 3.2' variance to the required minimum 8' side yard setback and for 11.4' to the required 20' combined side yard setback.**

The non-conforming variance criteria were established to allow property owners of non-conforming homes to square off existing homes. The area of encroachment for the bedroom addition is a 3.2' by 17.4' or a 55.68 square foot area. The area of encroachment for the front porch addition is a 3.1' by 7.0' or a 21.7 square foot area. The additions would allow the modernization of a 1954 structure and the existing non-conforming setback would remain the same.

2. **Deny the request as presented.**

**By allowing the proposed additions the applicant would be expanding an already non-conforming structure.**

Neighbor Input:

The applicant has verbally contacted each adjacent abutting neighbor to advise of the proposed additions. Included with the applicant's application were signatures from abutting property owners located at 120, 112 and 119 Bosarvey Drive. Staff knows of no objections to the proposed variance.

**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."

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 variance: The R-3 zoning classification requires a minimum lot area of 8,625 square feet for single family homes. The property is less than the required minimum lot size and does not meet the lot standards and it is considered a nonconforming lot of record.

Argument against the variance: The property has been developed to its maximum potential.

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 variance: There is no other practical alternative for the construction of the building additions at 115 Bosarvey Drive. The existing structure and the R-3 zoning district dimensions limit the ability to expand and meet the required setbacks.

Argument against the variance: The applicant does have the ability to add building square footage at the rear and front of the property to meet the 8' side yard setback along the east side of the building.

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

Argument against the variance: None.

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

Argument for the variance: The proposed building additions shall maintain the front and rear building setbacks and will extend from the side plane of the existing structure thereby “squaring off” the existing building.

Argument against the variance: None.

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

Argument for the variance: The request is in scale with the adjacent structures and will be a one-story structure. The request is an investment into the single family home. The proposed additions will make the existing unit more functional for the property owners.

Argument against the variance: The room additions at a 4.8' side yard setback are too close to the side property line.

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

Argument for the variance: The proposed room additions will not impact adjacent properties by limiting view or increasing light or noise. The remaining side yard setback is adequate to provide buffering and distance from the abutting property.

Argument against the variance: The room additions are only 4.8' from the side property line and are too close to the property line.

**RECOMMENDATION:** Staff believes that the variance allows the redevelopment and modernization of the property and is a necessary investment to maintain properties within older neighborhoods. It is recommended that the Board of Adjustments and Appeals **APPROVE** a side yard setback of 4.8' for two room additions, requiring a side yard variance of 3.2' to the required minimum 8' side yard setback and for 11.4' to the required 20' combined side yard setback.

Attachments:

- 1: Location Aerial
- 2: Variance Application

# ATTACHMENT 1

Location Aerial



# ATTACHMENT 2

## Variance Application



**CITY OF ORMOND BEACH**

v3.2013

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

16-0020

Date Submitted

12/14/15

**APPLICATION TYPE AND FEES**

	Application	Advertising Deposit for Advisory Board	Advertising Deposit for Commission	Total*
<input checked="" type="checkbox"/> Residential or Commercial	350	350	N/A	700
<input type="checkbox"/> After the Fact Residential or Commercial	700	350	N/A	1050

\*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 John Hogan

Full Address 472 Wild Olive Ave O.B. FL-32176

Telephone 386-871-7980 Email John.Hogan@live.com

\* If this application is being submitted by a person other than the property owner, please provide the following Property Owner Information as well as a notarized letter designating you as agent.

**PROPERTY OWNER INFORMATION\*\*\***

Name Beachside Acquisitions Inc (John Hogan President)

Full Address 472 24 Cypress Cir. (A) O.B. FL-32176

Telephone 386-871-7980 Email John.Hogan@live.com

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

**PROPERTY DETAILS**

Full Address 115 BOSARVEY DR. O.B. FL. 32176

Parcel ID Number 14-14-32-13-04-0020

Legal Description Lot 2, Block D, BOSARVEY Estates, Book 7, pg. 5 Volusia County FL.

**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.

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:

I John Hogan would like to Add AN Bedroom  
Addition to the N/E corner of Home (REAR)  
Also would like to ~~extend~~ Porch in Front home  
SQUARE OFF

**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~~ NO

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

NO

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:

SQUARES OFF - existing building.

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:

no

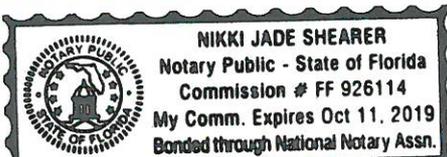
**CERTIFICATION**

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

Signature: John Hogan

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of DEC, 2015, by John William Hogan as owner (title\*) for Beach Side Acquisitions (name of corporation\*), who  provided FL DL#H250479653290 as identification, or  who is personally known to me.



Nikki Jade Shearer  
Notary Public, State of Florida  
My Commission Expires:

\* If you are executing this document on behalf of a corporation please complete the spaces with your title and the name of your company as indicated.

Friday, 11 December, 2015

Subject Property

115 Bosarvey Ormond Beach Fl. 32176

I (We) do not object in Mr. Hogan's bedroom addition on the N/E corner of residency.

- |   |                  |                  |   |
|---|------------------|------------------|---|
| ① | RICHARD L HILL   | 120 BOSARVEY DR  |  |
| ② | GARY MUENCH      | 112 BOSARVEY DR. |  |
| ③ | STEVEN R JOHNSON | 119 BOSARVEY DR. |  |

# Boundary Survey



115 BOSARVEY DRIVE  
ORMOND BEACH, FL.

## EQUITY TITLE



### Long Surveying, Inc.

"Specializing in Residential Surveying"  
 LB No. 7371  
 1061 S. Sun Dr. Ste. #1113  
 Lake Mary, FL 32746  
 Office 407-330-9717 or 407-330-9716  
 Fax 407-330-9775  
[www.longsurveying.com](http://www.longsurveying.com)

DRAWN BY: JG  
 CHECKED BY: BRETT

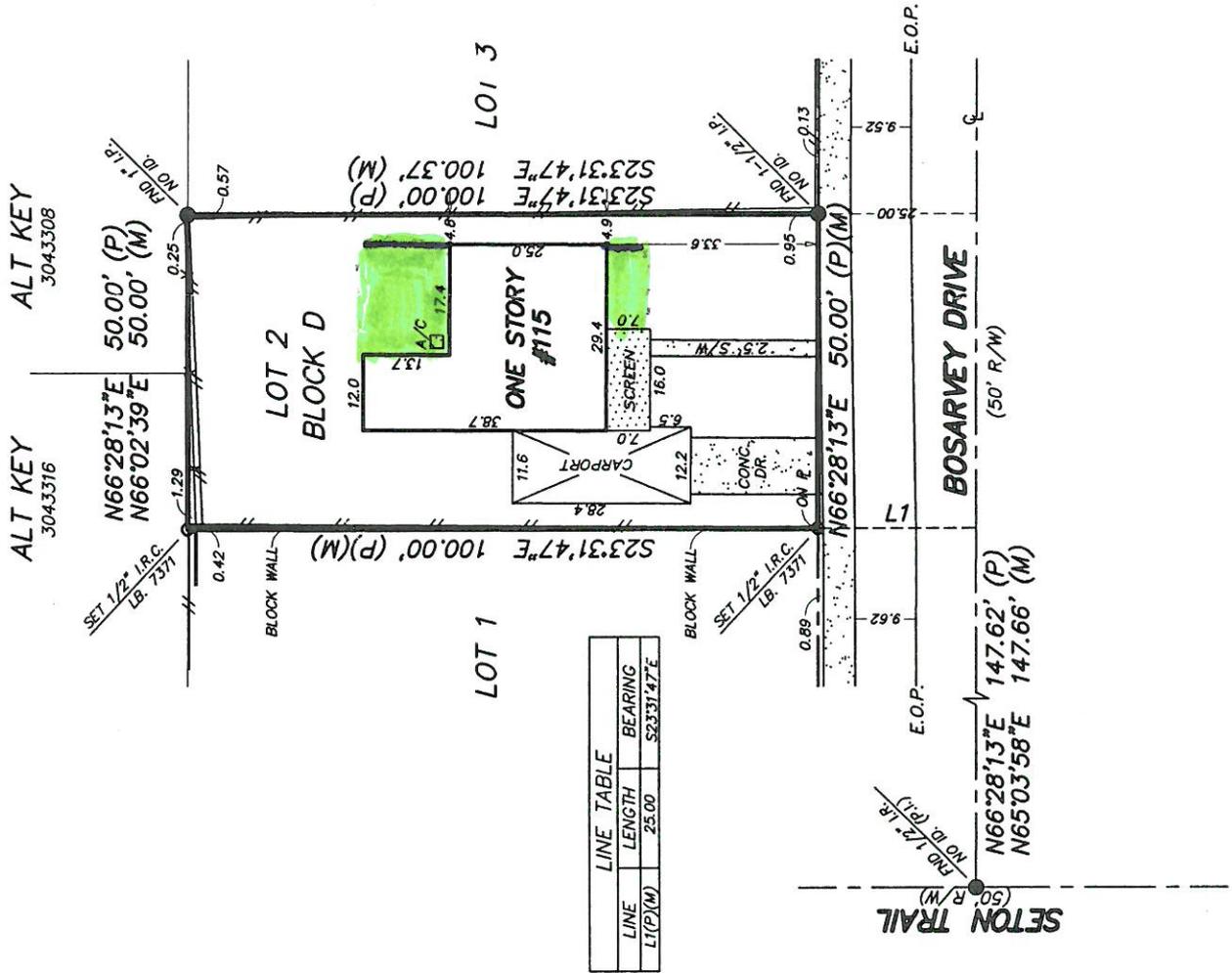
CERTIFIED TO:  
 BEACHSIDE ACQUISITIONS  
 EQUITY TITLE  
 TITLE RESOURCES GUARANTY COMPANY

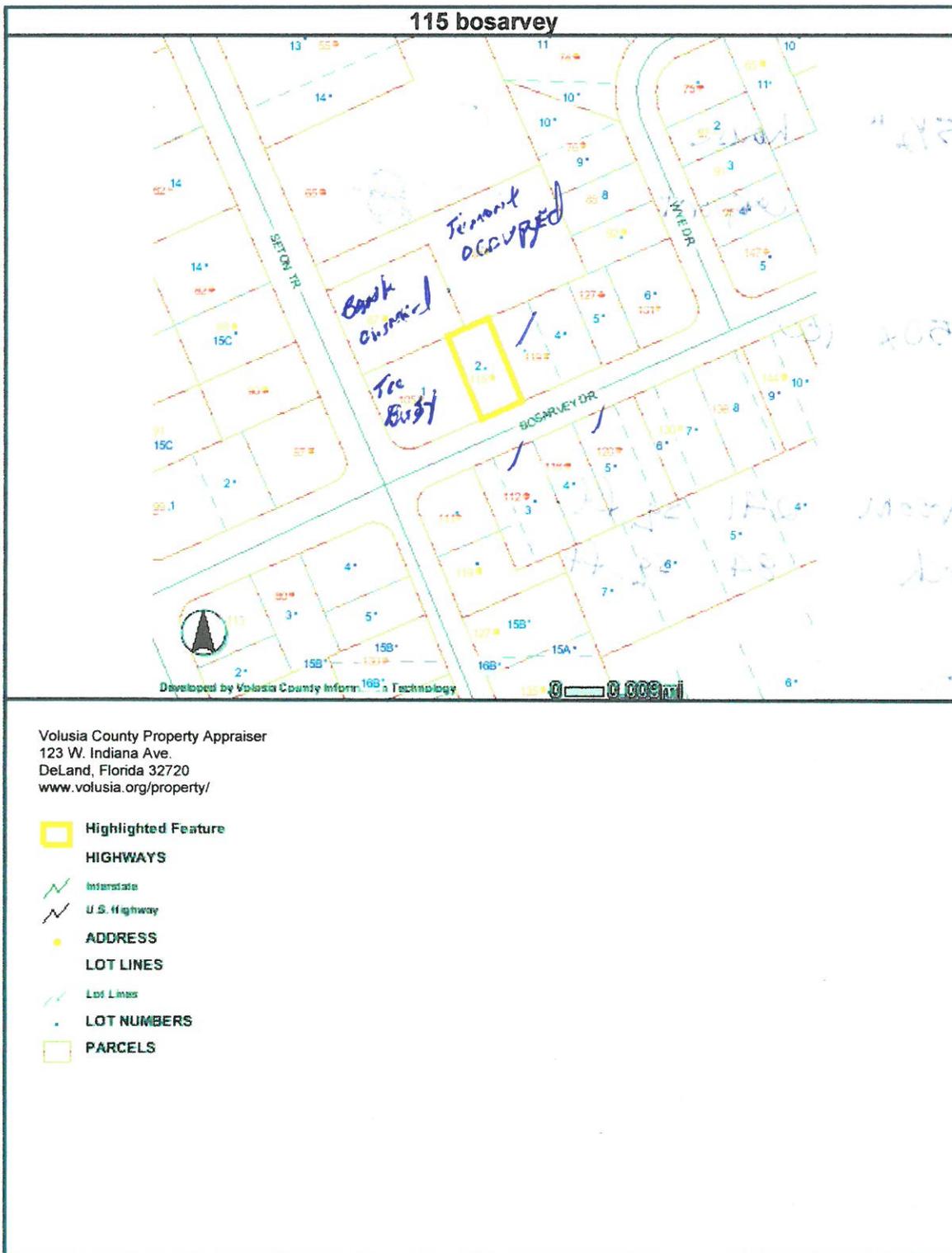
COMMUNITY NO: 125136  
 F.I.R.M. DATE: 02/19/14  
 PANEL: 0216 J  
 SUFFIX: J  
 FLOOD ZONE: X

SURVEY NO: 67870  
 FIELD DATE: 11/11/15

LEGAL DESCRIPTION: LOT 2, BLOCK D, BOSARVEY ESTATES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 7, PAGE(S) 5, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

SCALE: 1"=30'





Prepared by:  
John F. Pyle  
Equity Closing and Title Corporation  
555 W. Granada Blvd., Suite A-5  
Ormond Beach, Florida 32174

File Number: P-5069

## General Warranty Deed

Made this **October 21, 2015** A.D. By  
**Tacy M. Moore F/K/A Tacy M. Dawson, an unmarried woman,**  
whose address is:  
**87 Bosarvey Drive, Ormond Beach, FL 32176,**  
hereinafter called the grantor, to  
**Beach Side Acquisitions, Inc., a Florida Corporation,**  
whose address is:  
**472 Wild Olive Avenue, Ormond Beach, FL 32176,**  
hereinafter called the grantee:

(Whenever used herein the term "grantor" and "grantee" include all the 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 Ten Dollars, (\$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:

**Lot 2, Block D, BOSARVEY ESTATES, according to the plat thereof, recorded in Plat Book 7, Page(s) 5, of the Public Records of Volusia County, Florida.**

Parcel ID Number: 4214-13-04-0020

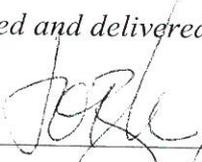
**Together** with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

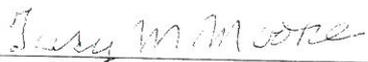
**To Have and to Hold**, the same in fee simple forever.

**And** the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances except taxes accruing subsequent to **December 31, 2014**.

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

Signed, sealed and delivered in our presence:

  
\_\_\_\_\_  
Witness Printed Name John F. Pyle

  
\_\_\_\_\_  
**Tacy M. Moore F/K/A Tacy M. Dawson** (Seal)  
Address: 87 Bosarvey Drive, Ormond Beach, FL 32176

\_\_\_\_\_  
Witness Printed Name \_\_\_\_\_

\_\_\_\_\_  
Address: \_\_\_\_\_ (Seal)

State of **Florida**  
County of **Volusia**

The foregoing instrument was acknowledged before me this **21st** day of **October, 2015**, by **Tacy M. Moore F/K/A Tacy M. Dawson, an unmarried woman**, who is/are personally known to me or who has produced Drivers License as identification.