



GROWTH AND RESOURCE MANAGEMENT DEPARTMENT  
**PLANNING AND DEVELOPMENT SERVICES DIVISION**  
**CURRENT PLANNING ACTIVITY**  
123 W. Indiana Avenue, DeLand, FL 32720  
(386) 736-5959

**PUBLIC HEARING:** February 11, 2014 - Planning and Land Development  
Regulation Commission (PLDRC)

**CASE NO:** V-14-017

**SUBJECT:** Variance to the side yard requirement for an existing dock on  
Urban Single-Family Residential (R-3) zoned property.

**LOCATION:** 215 Lake Talmadge Road, DeLand

**APPLICANT:** Fred and Barbara King

**OWNERS:** Fred and Barbara King

**STAFF:** Carol McFarlane, AICP, Planner II

---

## **I. SUMMARY OF REQUEST**

The applicant is requesting a variance to the minimum side yard requirement for a dock, to allow for the processing of an after-the-fact building permit. The property is approximately 1.20 acres and is zoned Urban Single-Family Residential (R-3).

The requested variance is:

A variance to section 72-278(5) for a south side yard from the required 15 feet to 1.8 feet for an existing dock on Urban Single-Family Residential (R-3) zoned property.

*Staff recommendation:* Denial.

## II. SITE INFORMATION

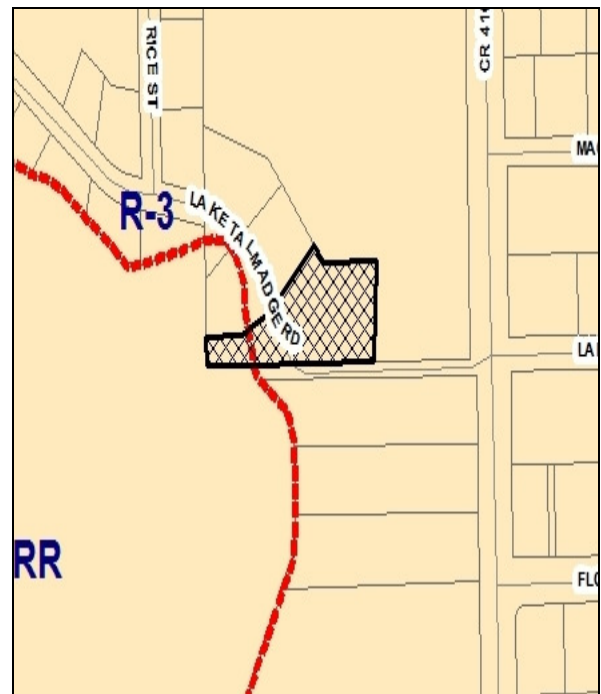
1. Location: The property is located on the north side of Lake Talmadge Road, approximately 370 feet west of Kepler Road, in the DeLand area.
2. Parcel No(s): 7011-11-02-0031
3. Property Size: ±1.20 acres
4. Council District: 4
5. Zoning: Urban Single-Family Residential (R-3)
6. Future Land Use: Urban Low Intensity (ULI)
7. ECO Overlay: No
8. NRMA Overlay: No
9. Adjacent Zoning and Land Use:

DIRECTION	ZONING	FUTURE LAND USE	CURRENT USE
North:	R-3	ULI	Single Family Residence
East:	R-3	ULI	Single Family Residence
South:	R-3	ULI	Single Family Residential
West:	RR	Water	South Lake Talmadge

### 10. Location Maps:



Aerial Map



Zoning Map

### III. BACKGROUND AND PREVIOUS ACTIONS

The subject parcel is a portion of a lot in the Winnemissett Park subdivision that was platted in 1890, and developed with a single-family residence in 1986. An unrecorded subdivision was created in 1996 that split the original parent parcel into four lots, and gave the subject parcel its current configuration. The resulting parcel is irregularly shaped with a narrow property extension to South Lake Talmadge to the west that provides approximately 45 feet of lake frontage. The current owner purchased this property in 1996 after the unrecorded subdivision was approved.

The property's southern boundary abuts the 40-foot wide platted Lake Talmadge Road right-of-way; however, the road physically departs the platted right-of-way extending northwest becoming a prescriptive right-of-way. The road bisects the western portion of the parcel between the front of the residence and the lakefront portion of the parcel. The road meanders in this fashion along the north bank of South Lake Talmadge that other neighborhood properties have docks on the opposite side of the road from their houses.

The applicant did not apply for a building permit before constructing the dock. If a permit have been obtained the applicant would have been made aware of the setback requirement. The dock has a 12-foot by 12-foot terminal platform with a seven-foot wide access walkway.

### IV REVIEW CRITERIA AND ANALYSIS

The purpose of this variance is to allow for an after-the-fact building permit to be issued for a dock that was constructed in the summer of 2013. Under section 72-277(5) of the zoning code boat docks, or its extension into the water, may be located in water front yards but shall not be permitted within 15 feet of any side lot line. In this case, the dock is setback at the shoreline a sufficient distance, but the extension of the dock into the water is angled so that it encroaches into the south side yard by 13.2 feet. It should be noted that the western portion of the subject property abuts an unopened section of a 40-foot platted right-of-way.

According to evidence submitted by the applicant, the dock was constructed to match the location of an older dock that had existed on the property. Old wooden pilings suggest that there had been a dock in the same approximate location. However, the applicant has stated that the dock was effectively destroyed at the time the property was purchased in 1996, and therefore any new construction of the dock must comply with the current zoning code.

Section 72-379 (1) a. 4 *Variances* of the zoning code contains five applicable criteria by which a variance application may be granted by the commission. The following staff evaluation using these criteria is as follows:

***i. Special conditions and circumstances exist which are peculiar to the land, structure, sign, or building involved and which are not applicable to other lands, structures, signs, or buildings in the same zoning classification.***

There are special circumstances peculiar to this parcel of land in that it is irregularly shaped and it has narrow waterfront access compare to other properties along South Lake Talmadge. With only 45 feet to access the water, and a minimum setback of 15 feet, the area that could be permitted for a dock is limited to 15 feet. Also, the angle of the irregularly shaped property prohibits a direct alignment of the dock with the front of the house. These two circumstances limit the placement and design options for a dock on the property.

Staff finds that the variance application can meet this criterion.

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

The special circumstance of the layout of the parcel is not the result of actions of the applicant. The house was constructed in 1986 and the property was subdivided in 1996 prior to the applicant's purchase of the property. However, the applicant is responsible for the placement and construction of the dock.

Staff finds that the variance application does not meet this criterion.

***iii. Literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning classification, under the terms of the ordinance, and would work an unnecessary and undue hardship on the applicant.***

Literal interpretation of the zoning code would require the dock to be removed and rebuilt to meet code. Since the dock is already in existence, demolition and reconstruction of the dock would create a hardship on the applicant.

Staff finds that the variance application can meet this criterion.

***iv. The variance granted is the minimum variance that will make possible the reasonable use of the land, building, structure, or sign.***

The existing 12-foot wide dock could have been built on the waterfront area without the need of a variance had a building permit application been received prior to construction. However, the requested variance is the minimum required to maintain the existing dock.

Staff finds that the variance application does not meet this criterion.

***v. The grant of the variance will be in harmony with the general intent and purpose of this ordinance and the Volusia County Comprehensive Plan Ordinance No. 90-10, as amended, and that such variance will not be injurious to the area involved.***

Granting of this variance would place a dock structure within 1.8 feet of a platted, public right-of-way. While this portion of the right-of-way is not opened or improved at this time, the county can use the right-of-way as access to South Lake Talmadge. Due to the intervening right-of-way, the dock location will not be injurious to the nearest neighbor to

the south.

Staff finds that the variance application can meet this criterion with conditions.

#### **IV. STAFF RECOMMENDATION**

Staff finds that the application does not meet all five criteria to grant the requested variance. Therefore, staff recommends denial of the variance to section 72-278(5) for a south side yard from the required 15 feet to 1.8 feet for an existing accessory dock on Urban Single-Family Residential (R-3) zoned property.

However, if the PLDRC finds that this application does meet the five criteria, then staff offers the following conditions for the commission's consideration:

1. The variance is limited to the dock as depicted on the variance site plan. The dock shall not be converted into living area, or enlarged, increased, or extended to further encroach or occupy any greater area or other part of the side yard of the property as defined by the zoning ordinance without approval of a separate variance and/or building permits and inspections.
2. The property owners shall obtain all required after-the-fact building permits and inspections for the dock within 90 days of the date of the variance rendition, unless the Zoning Enforcement Official grants an extension.
3. If the dock is destroyed or damaged in excess of 50 percent of its assessed value, as determined by the Volusia County Property Appraiser, any reconstruction of the structure shall thereafter comply with the zoning ordinance.

#### **VI. ATTACHMENTS**

- Written Petition
- Variance Site Plan
- Site Photos
- Reviewer Comments
- Maps

#### **VII. AUTHORITY AND PROCEDURE**

The commission may, except as otherwise provided in Section 72-379 of the zoning code, authorize, after due public notice upon application on a form prescribed by the zoning enforcement official, such variance or variances from the terms of this ordinance as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provision of this ordinance would result in unnecessary and undue hardship. Said variance application shall be heard only if it is presented by the person owning 51 percent or more of the specific area of land involved or upon an administrative application by the county council.

Any new information to be presented at the planning and land development regulation commission meeting for any application will be grounds to continue an application to the next planning and land development regulation commission meeting. Applicants shall inform and

provide staff with the new information prior to the planning and land development regulation commission meeting.

JAN 15 2014

RECEIVED

DMR

VOLUSIA COUNTY  
WRITTEN PETITION FOR A VARIANCE

Section 72-379(1)(a)(4) of the Zoning Ordinance of Volusia County, as amended, requires that each applicant for a Variance submit a written petition as part of the application. The written petition must clearly describe how the Variance request satisfies all of the specific conditions necessary for the granting of the Variance, as listed in the Ordinance.

The following items must be completed in sufficient detail to allow Current Planning to determine if the application complies with the Ordinance (use additional sheets if necessary):

- A. What special condition(s) and circumstance(s) exist which are peculiar to your land, structure, building, or sign and are not applicable to other lands, structures, buildings, or signs in the same zoning classification? Were these special condition(s) and circumstance(s) the result of actions by you?

Special conditions/circumstances do exist which are peculiar to our land which are not a result of our actions. Along Lake Talmadge Road there are 10 waterfront lots, 7 of which have docks. On the whole of S. Lake Talmadge there are 23 waterfront lots, 16 of which have docks. Of all these lots, our lot and one abutting lot, for some unknown reason, are the only lots that actually protrude out into the lake and thus have to meet setback requirements beyond the shoreline. In addition, our lot is unique, being the only lot that abuts against a road allowance that protrudes out beyond the shoreline.

- B. How would literal interpretation of the Zoning Ordinance deprive you of rights commonly enjoyed by other properties in the same zoning classification and be an unnecessary and undue hardship on you?

A literal interpretation of the Zoning Ordinance would deprive us of having a dock, something commonly enjoyed by others on the Lake. Relocating our dock would involve considerable hardship and loss of time and money. It would require us to place our dock on a peculiar, unsightly angle to the shoreline, the roadway and our house. At present, it extends out on a natural angle following the location and angle of the original, on site dock. This hardship is unnecessary and undue because the chances of the County ever requiring the use of the abutting road allowance is extremely remote.

- C. Explain how the Variance(s) you are requesting is/are the minimum Variance(s) that will make it possible for you to make reasonable use of your land, building, structure or sign:

The Variance we are requesting could be further minimized by the County granting "Provisional Approval". By placing a "Covenant on the Deed", stating that if and when the County needs the Road Allowance for whatever reason, the dock must be removed or relocated at that point in time. This Covenant on the Deed would of course be recorded as a deed restriction, that would run with the property in perpetuity. This Covenant on the Deed would make it possible for us to make reasonable use of our land and structure without causing any unnecessary or undue hardship at the present time.



- D. The general intent and purpose of the Zoning Ordinance and the Volusia County Comprehensive Plan Ordinance No. 90-10 is to lessen congestion in the streets; to promote public health, safety, morals, and the general welfare; to properly provide for the use of land and governmental services; and to preserve the character, appearance, and aesthetic qualities of Volusia County by regulating signs.

1. Is your request for Variance(s) consistent with this intent and purpose?

Yes! Our request for a Variance is completely consistent with the intent and purpose of the Zoning Ordinance and the Volusia County Comprehensive Plan Ordinance No. 90-10. Granting a Variance or a Provisional Variance will have no negative affect whatever on the things mentioned above. The dock we have built, on the other hand, does preserve the character, appearance, and aesthetic qualities of our community. Our dock has received numerous compliments to that affect.

and

2. Explain how your request for Variance(s) will not be injurious to the surrounding area:

Our request for a Variance will not be injurious to the surrounding area in the least and quite the contrary. Our dock is beautifully constructed and enjoyed by our neighbors. It enhances the beauty of the surrounding area attracting a variety of birds and providing shelter the fish in Lake Talmadge. I sincerely apologize for building the dock without a permit; I was under the false impression that I was grandfathered in and didn't need one because of the dock that was previously on the property. Please consider a Variance with a "Covenant on the Deed" or some other alternative. Thank-you.

\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Date



**VOLUSIA COUNTY  
WRITTEN PETITION FOR A VARIANCE**

Section 72-379(1)(a)(4) of the Zoning Ordinance of Volusia County, as amended, requires that each applicant for a Variance submit a written petition as part of the application. The written petition must clearly describe how the Variance request satisfies all of the specific conditions necessary for the granting of the Variance, as listed in the Ordinance.

The following items must be completed in sufficient detail to allow Current Planning to determine if the application complies with the Ordinance (use additional sheets if necessary):

- A. What special condition(s) and circumstance(s) exist which are peculiar to your land, structure, building, or sign and are not applicable to other lands, structures, buildings, or signs in the same zoning classification? Were these special condition(s) and circumstance(s) the result of actions by you?

*The new dock was built in the same location as the previous dock, using the existing pilings and rock crib as a guide.*

- B. How would literal interpretation of the Zoning Ordinance deprive you of rights commonly enjoyed by other properties in the same zoning classification and be an unnecessary and undue hardship on you?

*It would be an (undue) considerable hardship to have to remove the dock at this point. The dock has the proper set back at the water's edge. It is only the extension that is over the water that needs a variance.*

- C. Explain how the Variance(s) you are requesting is/are the minimum Variance(s) that will make it possible for you to make reasonable use of your land, building, structure or sign:

*As stated above it is only the part of the dock that extends into the water that does not conform.*

- D. The general intent and purpose of the Zoning Ordinance and the Volusia County Comprehensive Plan Ordinance No. 90-10 is to lessen congestion in the streets; to promote public health, safety, morals, and the general welfare; to properly provide for the use of land and governmental services; and to preserve the character, appearance, and aesthetic qualities of Volusia County by regulating signs.

1. Is your request for Variance(s) consistent with this intent and purpose?

I can not see how granting this  
variance would be inconsistent with  
the intent + purpose of the Ordinance.

and

2. Explain how your request for Variance(s) will not be injurious to the surrounding area:

It will not injure anyone to grant  
this variance.

NOTE: The applicant, in the past, has donated  
land to Volusia county at the corner  
of LENOX ROAD + Hwy 401 in Barberville.

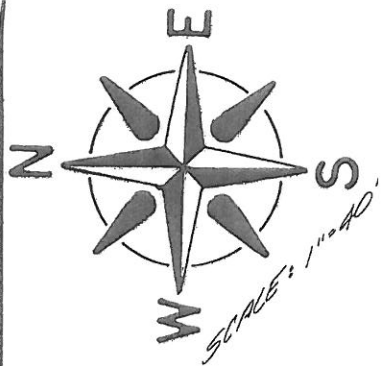
Fred W. K. O  
 Applicant's Signature

Nov. 20/13  
 Date

\_\_\_\_\_  
 Applicant's Signature

\_\_\_\_\_  
 Date





**BEARING NOTE:**  
 BEARINGS BASED ON THE SOUTHERLY LINE OF LOT 4,  
 MAP OF WINNEMISSETT PARK, BEING A BEARING  
 OF S 88°34'32" W (ASSUMED).

## VARIANCE SITE PLAN

### NOTE:

ELEVATIONS BASED ON U.S.C. & G.S. ELEVATION.

DRAWING REVISED TO ADD DOCK DATED: OCT. 4, 2013.

BOUNDARY SURVEY RECERTIFIED TO: BANK OF AMERICA, FREDERICK W.  
 N. KING AND BARBARA L. KING DATED: OCTOBER 15, 2009.

**FLOOD CERTIFICATION:**  
 (per map dated April 15, 2002)  
 This is to certify that I have consulted  
 the Federal Insurance Flood Hazard  
 Boundary Map and found the BELOW named  
 property 15 located in a special  
 flood hazard area, according to Community  
 Panel Map No. 12127C - 0470 - G Map,  
 Panel 470 of 930, ZONE "A" (Flood Zone)  
 and Zone "X" as shown.

POINT OF COMMENCEMENT:  
 N.W. CORNER OF LOT 4,  
 BLOCK 2, MAP OF  
 WINNEMISSETT PARK

### LEGAL DESCRIPTION (WRITTEN):

A portion of Lot 4, Block 2, Map of Winnemissett Park, a subdivision according to map in Map Book 1, Page 143, Public Records of Volusia County, Florida, being more particularly described as follows: Commencing at the Northwest corner of Lot 4, run thence N 88°33'03" E along the North line of said Lot 4 a distance of 138.28 feet; run thence S 40°26'57" E a distance of 181.48 feet to the Point of Beginning; run thence S 72°03'34" E a distance of 65.60 feet; run thence N 88°34'32" E a distance of 80.00 feet; run thence S 01°25'28" E a distance of 156.91 feet to the South line of said Lot 4; run thence S 88°34'32" W along said South line of Lot 4 a distance of 392.38 feet to the Southwest corner of said Lot 4; run thence N 01°47'35" W along the West line of said Lot 4 a distance of 45.0 feet; run thence N 88°34'32" E a distance of 82.48 feet; run thence N 60°00'52" E a distance of 77.0 feet; run thence N 44°41'03" E a distance of 139.69 feet to the Point of Beginning. Parcel contains 1.01 Acre more or less. Being subject to any Rights-of-Way or Easement of Right-of-Way for Lake Talmadge Road. Also being subject to any other Easements and Rights-of-Way of Record.

THIS SURVEY MEETS THE MINIMUM TECHNICAL STANDARDS PURSUANT TO SECTION 472-027 FLA. STATUTE.

I HEREBY CERTIFY THAT THIS PLAT IS A CORRECT REPRESENTATION OF A SURVEY, OF THE ABOVE DESCRIBED PROPERTY, MADE UNDER MY DIRECTION.

BLACKWELL & ASSOCIATES  
 LAND SURVEYORS, INC. LB 2791

BY:

*Robert R. Evers*

ROBERT R. EVERS  
 PROFESSIONAL SURVEYOR & MAPPER  
 Florida Certificate No. 5675

NOT VALID UNLESS EMBOSSED  
 WITH SURVEYORS SEAL.

### BLACKWELL & ASSOCIATES

#### LAND SURVEYORS, INC.

P.O. BOX 741013, ORANGE CITY, FLORIDA PH. 775-3550

BOUNDARY SURVEY CERTIFIED TO:

*EMERSON BISSINGER*

### LEGEND:

- (F.M.) = FIELD MEASUREMENT  
 (P.) = PLAT MEASUREMENT  
 (D.) = DEED DESCRIPTION  
 ■ = CONCRETE MONUMENT FOUND  
 □ = CONCRETE MONUMENT SET  
 ◆ = RAILROAD SPIKE FOUND  
 ● = BOLT FOUND  
 ○ = P.K. NAIL FOUND  
 ○ = R.L.S. CAP FOUND  
 ○ = R.L.S. CAP SET  
 ○ = IRON PIPE FOUND  
 ○ = REROD SET  
 ● = REROD FOUND

DATE: NOVEMBER 21, 1995

W.D. NO.: 11-690-95

DRAWN BY: B.A. SCOTT

FIELD BOOK:

FILE NO.: SMALL

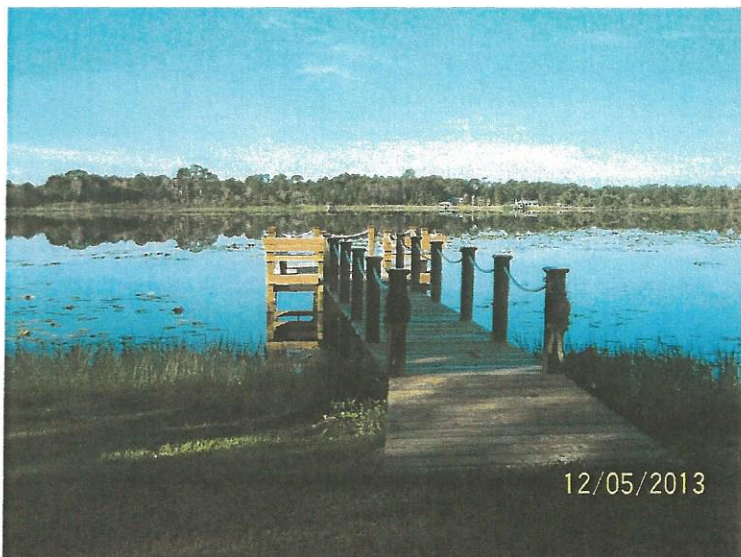
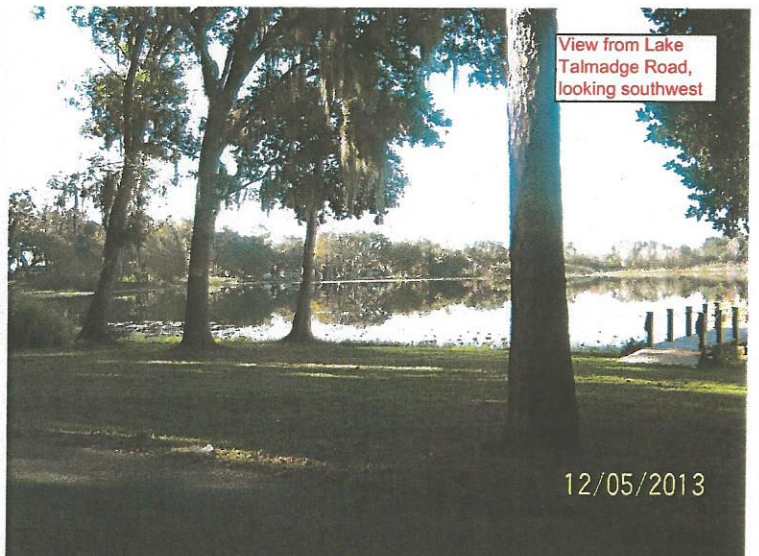
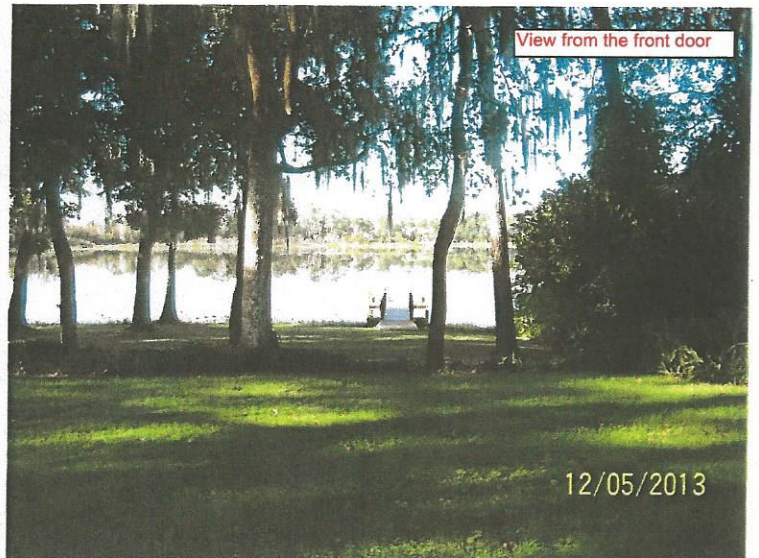
REVISIONS: CORRECTED TO: FIELD W. N. KING; DATED: MARCH 6, 1996.  
 REVISION: CORRECTED TO: FIELD W. N. KING; DATED: APRIL 9, 1996.

LAKE TALMADGE ROAD

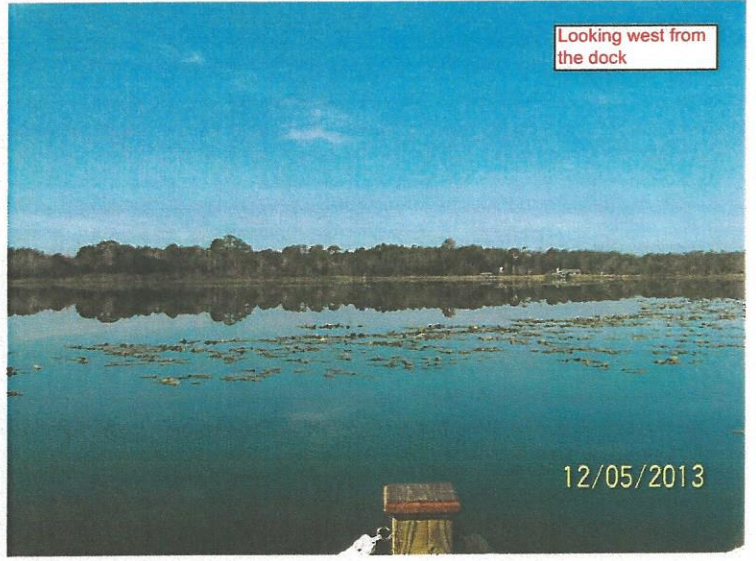
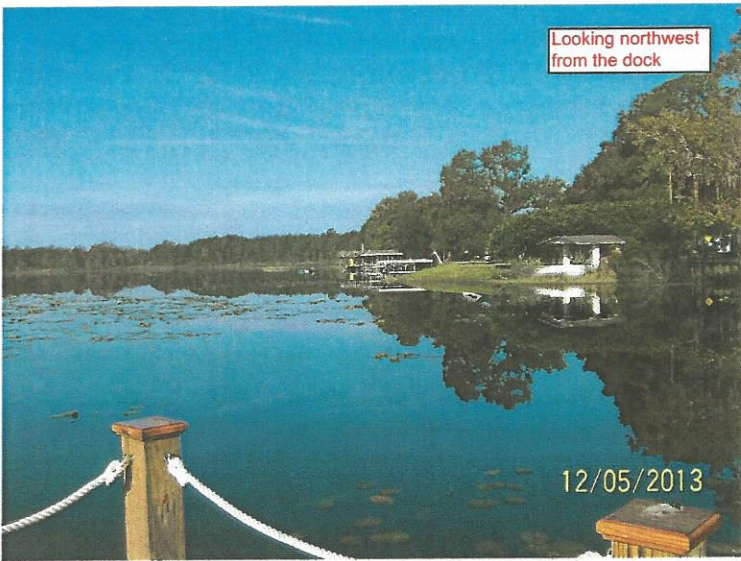
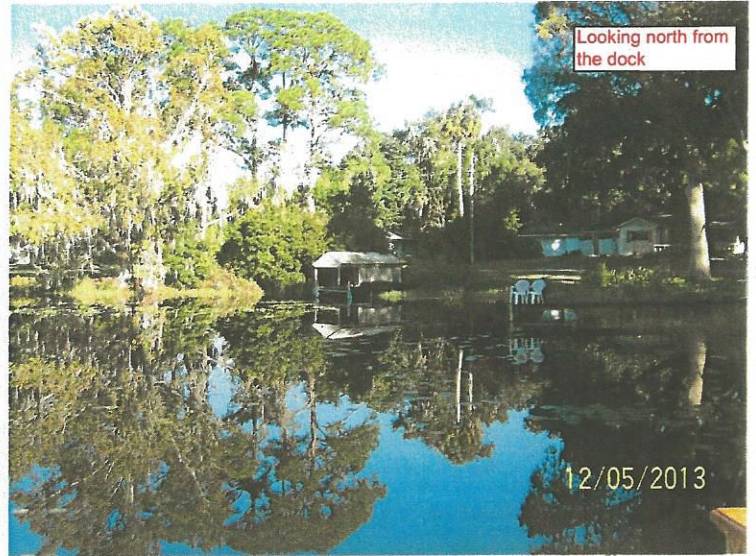
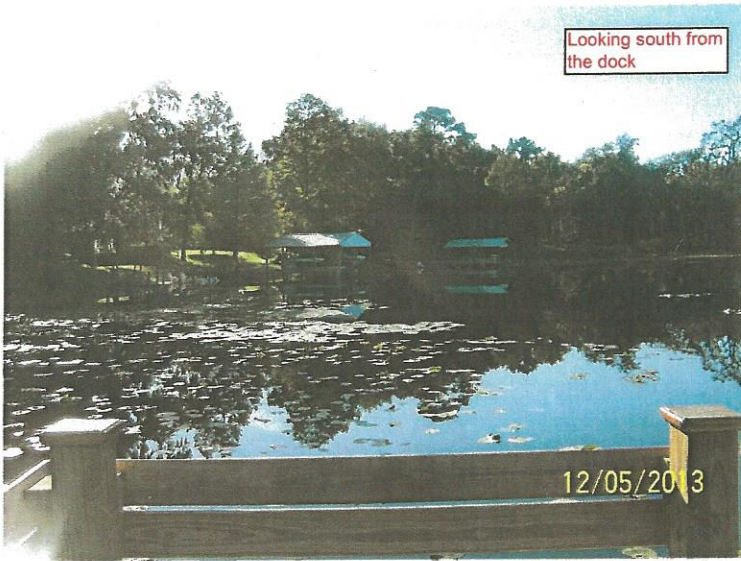
SOUTHERLY LINE OF LOT 4, BLOCK 2,  
 MAP OF WINNEMISSETT PARK,  
 MAP BOOK 1, PAGE 143.

18'5"









**Inter-Office  
Memorandum**



**TO:** Carol McFarlane, Planner II      **DATE:** January 14, 2014

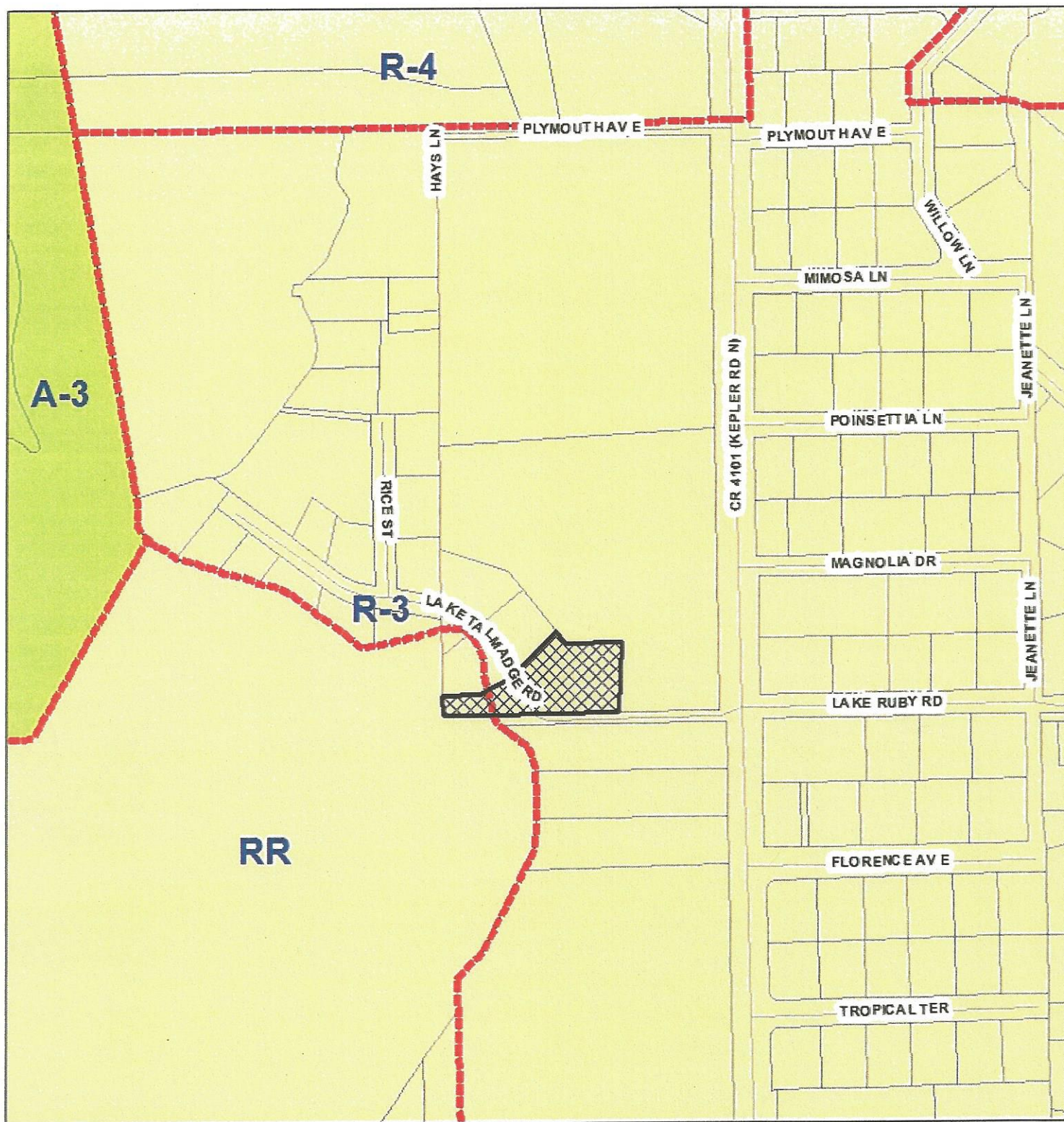
**FROM:** Danielle Dangleman, Environmental Specialist III

**SUBJECT:** Planning & Land Development Regulation Commission meeting for  
Date: February 11, 2013  
Parcel #: 7011-11-02-0031  
Case #: V-14-017, Fred and Barbara King, owners

Environmental Permitting (EP) has conducted a site visit and reviewed the Variance application for the Ford property. This dock has already been constructed on Lake Talmadge, which has a 25 foot associated wetland buffer. This was done without an issued wetland alteration permit. Therefore, EP has an open wetland violation, # 20131105025.

EP has no objection to this variance as long as the wetland violation is resolved. This will require an issued wetland alteration permit with the fees paid. Required fees will include a \$255.00 permit fee and a \$382.00 late fee. Mitigation is also required for the wetland impact, which will be determined when the applicant submits the plans to EP.





# **ZONING CLASSIFICATION**

 AGRICULTURAL  RESIDENTIAL

 REQUEST AREA

1 inch = 300 feet



**VARIANCE  
CASE NUMBER**

**V-14-017**






**AERIAL**

IMAGE YEAR: 2012

1 inch = 300 feet

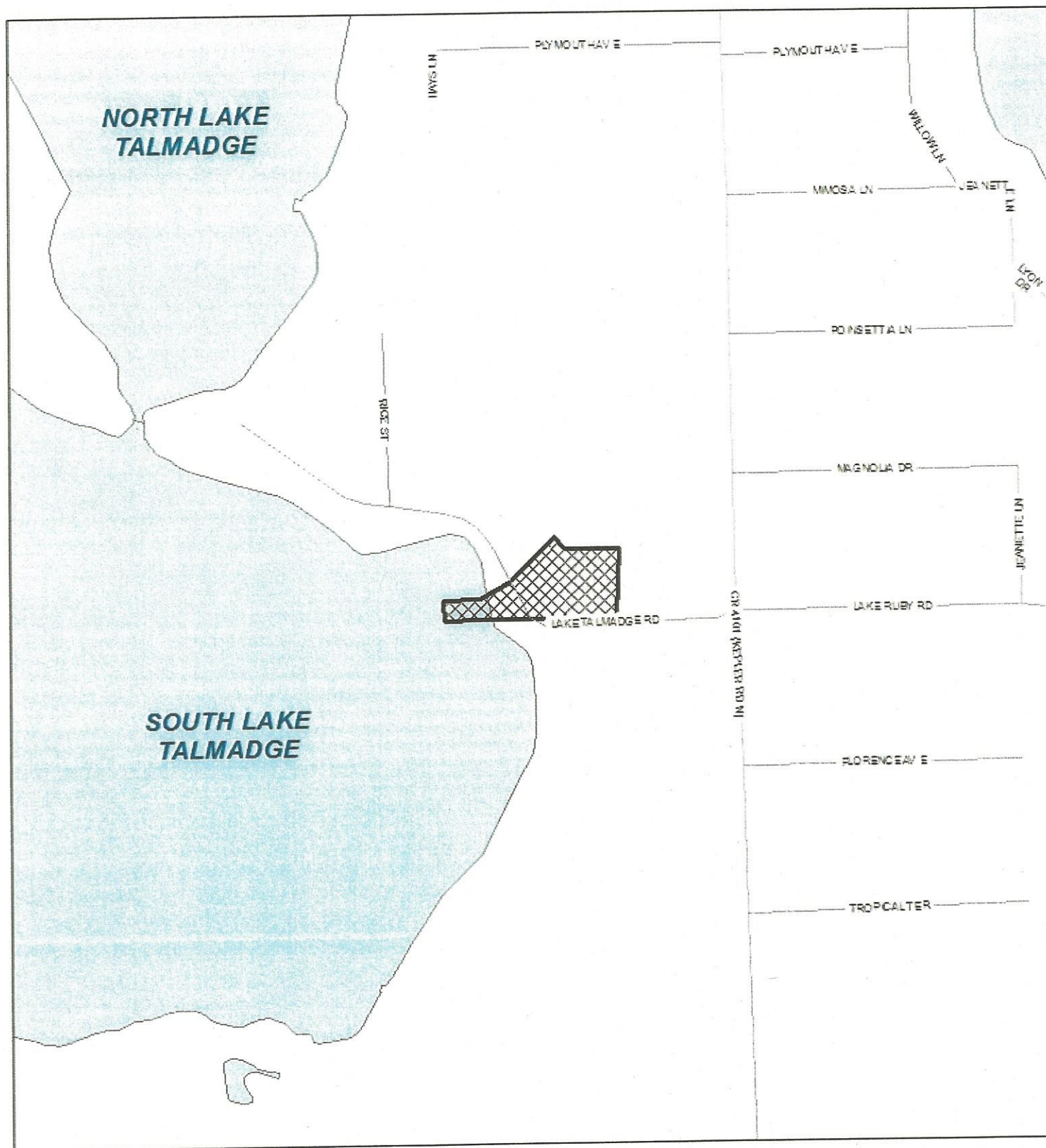
 REQUEST AREA



**VARIANCE  
CASE NUMBER**

**V-14-017**





# **ECO/NRMA**

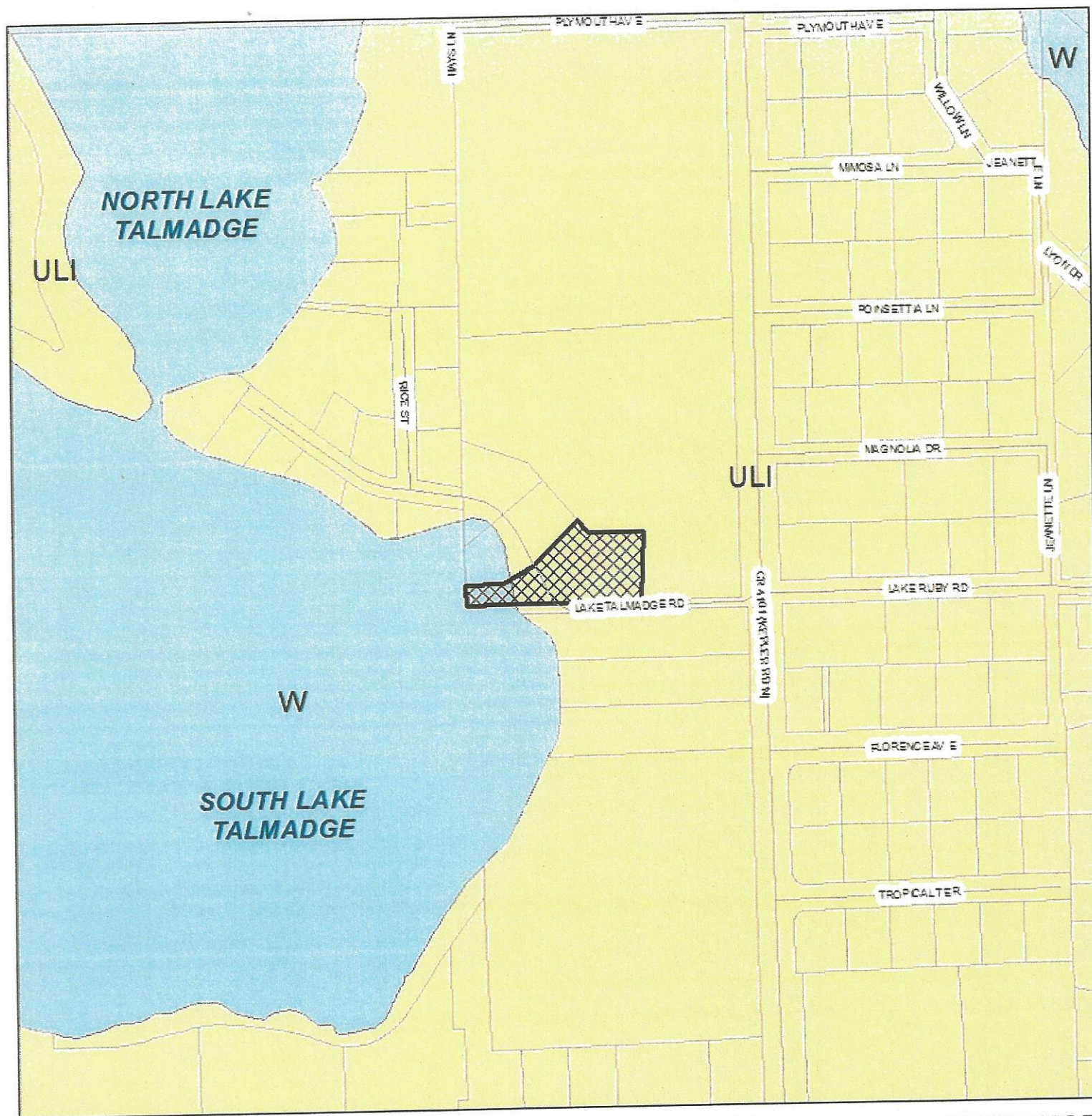
 ECO
  NRMA
  REQUEST AREA

1 inch = 300 feet



**VARIANCE**  
**CASE NUMBER**  
**V-14-017**





# **FUTURE LAND USE DESIGNATION**

URBAN LOW INTENSITY (1)

WATER (2)



REQUEST AREA

1 inch = 300 feet

**VARIANCE  
CASE NUMBER**

**V-14-017**

