



GROWTH AND RESOURCE MANAGEMENT DEPARTMENT
PLANNING AND DEVELOPMENT SERVICES DIVISION
CURRENT PLANNING ACTIVITY
123 W. Indiana Avenue, DeLand, FL 32720
(386) 943-7059

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

CASE NO: V-14-026

SUBJECT: Variances to the minimum front yard requirement for an existing
single-family dwelling and an existing accessory structure on
Tourist (B-8) zoned property.

LOCATION: 2 Ocean Dunes Drive, Ormond by the Sea

APPLICANTS: Murray & Connie Lauer

OWNERS: Murray & Connie Lauer

STAFF: William Gardner, Activity Project Manager

I. SUMMARY OF REQUEST

The applicants are requesting a variance to legitimize a 57-year old setback in effect at the time the single-family dwelling was constructed. Also, the applicants seek a variance for an existing accessory structure, a shed, situated on the above referenced property. The requested variances are:

Variance 1: A variance to the front yard requirements from 20 feet to 10.4 feet; and

Variance 2: A variance to the side yard requirements from 5 feet to 2.1 feet for an existing accessory structure on Tourist (B-8) zoned property.

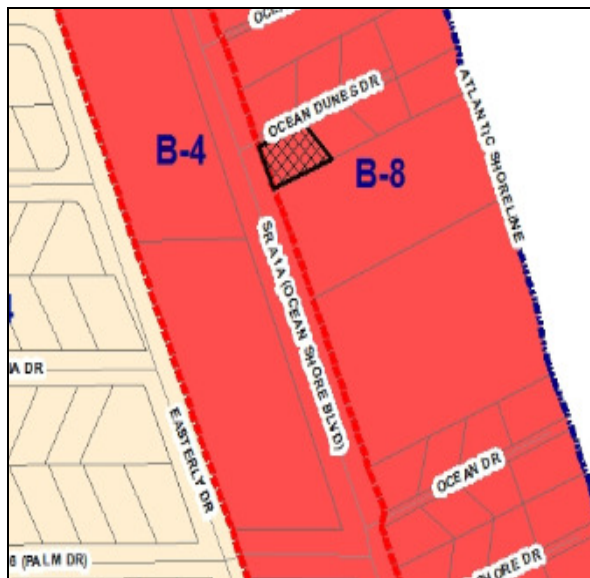
Staff recommendation: Approval of Variance 1 and denial of Variance 2.

II. SITE INFORMATION

1. Location: The property is located at 2 Ocean Dunes Drive, a portion of Lot 14, O'Byrne Subdivision, in the Ormond by the Sea community.
2. Parcel No(s): 3234-07-00-0150
3. Property Size: \pm 5,847 square feet or 0.13 acres
4. Council District: 4
5. Zoning: Tourist (B-8)
6. Future Land Use: Urban High Intensity (UHI)
7. ECO Overlay: No
8. NRMA Overlay: No
9. Adjacent Zoning and Land Use:

| DIRECTION | ZONING | FUTURE LAND USE | CURRENT USE |
|-----------|--------------------------|----------------------------|------------------------|
| North: | Tourist (B-8) | Urban High Intensity (UHI) | Single-family dwelling |
| East: | Tourist (B-8) | Urban High Intensity (UHI) | Single-family dwelling |
| South: | Tourist (B-8) | Urban High Intensity (UHI) | Condominium |
| West: | General Commercial (B-4) | Commercial (C) | Retail and Office |

10. Location Maps:



ZONING MAP



2012 AERIAL MAP

III. BACKGROUND AND PREVIOUS ACTIONS

The property is in the North Peninsula community of Ormond by the Sea, $\frac{3}{4}$ mile north of the Ormond Beach city limits. The area development pattern on the east side of Ocean Shore Boulevard consists of single-family dwellings and condominiums. The lot is part of the O'Byrne Subdivision, platted in 1946 and developed in the 1950's with small lots and small vacation homes. Over the years, a number of the vacation homes became permanent residences. The property record card indicates that the subject single-family dwelling was constructed in 1957.

The property contains a single-family dwelling comprising of 1,392 square feet that includes an enclosed finished utility room and a single garage. A 7-foot by 10-foot accessory structure is located at the rear of the house, but located within the side-yard setback. A building permit was not applied for when the accessory structure was erected per property record card.

The lot is zoned Tourist (B-8), which, until recently, made many of the area homes nonconforming because single-family dwellings were not a permitted use in the B-8 zoning classification. Many of these dwellings, like the subject single-family dwelling, were also nonconforming structures because they do not meet the minimum required yards in the B-8 zoning classification and, as such, could not be expanded and rebuilt without a special exception and/or variance application.

On January 24, 2013, the county council adopted Ordinance No. 2013-01 to allow single-family dwellings as a permitted principal use (instead of a permitted special exception) in the B-8 zoning classification and established minimum and maximum dimensional requirements for the single-family use, such as lot size, yard setbacks, floor area, and building height. The property is a conforming lot per Ordinance 2013-01; however, the dwelling is a nonconforming structure because it does not meet the minimum front and rear yard requirements.

In conjunction with Ordinance No. 2013-01, county council also adopted Resolution No. 2013-10 waiving the variance application fees for B-8 zoned properties so that property owners could apply for variances to address nonconforming issues not resolved by the code changes. Approval of the requested variance would remedy nonconforming setbacks for an existing single-family dwelling.

IV. REVIEW CRITERIA AND ANALYSIS

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

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.

Variance 1: There are special conditions and circumstances peculiar to the property and the single-family dwelling involved. As mentioned previously, the applicant's dwelling was built in 1957 and the property has a limited lot depth of 67+/- feet. The current front yard setback does not comply with the B-8 classification requirements. The minimum front yard is 20 feet whereas the dwelling is only 10.4 feet off the front yard property line.

When the lot was created, it was legal and not considered nonconforming. Therefore, the variance will recognize and legitimize the 57-year old setback regulations that were in effect at the time of the single-family dwelling construction.

Staff finds that Variance 1 meets this criterion.

Variance 2: No special conditions or circumstances exist pertaining to the existing accessory structure. The applicants purchased the property in April 2008, and in January 2009 the shed first appears in an aerial photograph. The appraiser's property record card does not list the shed as having a building permit issued. With the minimum side yard requirement of 5 feet, there is adequate yard area along the southerly property boundary to relocate the shed.

Staff finds that Variance 2 does not meet this criterion.

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

Variance 1: The applicant is not responsible for the special conditions and circumstances pertaining to the property and the single-family dwelling involved. The applicant obtained ownership of the property in April 2008 according to the warranty deed listed on the property record card.

Staff finds that Variance 1 meets this criterion.

Variance 2: The accessory structure was installed after the purchase of the property per applicant. No building permit was issued per property record card. Therefore, the existing circumstance is the result of the applicant's actions.

Staff finds that Variance 2 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.

Variance 1: The provisions of subsection 72-206(3) *Nonconforming structure* of the zoning code apply to the applicant's single-family dwelling, because the structure is assumed a lawful nonconforming structure due to dimensional requirements. Literal application of the subsection 72-206(3) code provisions would require the structure to comply with current zoning code requirements, including minimum setback provisions, if damaged in excess of 75 percent of the assessed value by the Property Appraiser, except as provided in

subsection 72-302., Hurricane damage. This latter code provision applies to the rebuilding of both conforming and nonconforming structures damaged by a hurricane, which are located in the coastal high hazard area as defined by the comprehensive plan. Section 72-302 requires conforming and nonconforming structures which have been damaged more than 50 percent of their replacement cost at the time of occurrence.

Approval of the requested variance would establish the conforming front yard setback for the dwelling which would help the applicant to repair and/or rebuild and reuse the single-family dwelling if damaged or destroyed, in compliance with applicable code provisions.

Staff finds that given the peculiar circumstances and conditions that apply to the property and single-family dwelling involved, that Variance 1 meets this criterion.

Variance 2: Literal interpretation of the zoning ordinance would not deprive the applicant's rights commonly enjoyed by other properties in the same zoning classification. If a building permit was applied for the accessory structure at the current location, the application would have been denied. Since there is adequate land area for relocation of the accessory structure, a variance is not necessary with the literal interpretation of the zoning ordinance for the side yard requirement of 5 feet.

Staff finds that Variance 2 does not 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.

Variance 1: The applicant has reasonable use of the land and the single-family dwelling without approval of the requested variance. However, approval of the requested variance would legitimize the existing front yard setback and will assist the applicant in the repair, rebuild and/or reuse of the structure if damaged or destroyed.

Staff finds that Variance 1 can meet this criterion.

Variance 2: A variance to the side yard requirements from 5 feet to 2.1 feet is not the minimum variance to make possible the reasonable use of the accessory structure. With adequate land area available southward of the single-family dwelling, the structure can be relocated to meet the side yard requirement of 5 feet.

Staff finds that Variance 2 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.

Variance 1: Granting the requested variance will be in harmony with the code as other variances have been approved for other properties within this subdivision. The approval of the variance should not be injurious to the immediate area.

Staff found no specific comprehensive plan policies applicable to this case.

Variance 2: Granting the variance will not be injurious to the area, but the action of the applicants by not obtaining the required building permit for the accessory structure does not absolve the process, the general intent and purpose of the zoning code.

Staff finds that Variance 2 does not meet this criterion.

V. STAFF RECOMMENDATION

Staff finds that the requested Variance 1 can meet all five of the required criteria for approval. Therefore, staff recommends approval of the variance for a front yard from the required 20 feet to 10.4 feet for a single family dwelling on B-8 zoned property subject to the following conditions:

1. Variance 1 is limited to the single-family dwelling placement as shown on the property survey from Long Surveying, Inc., Survey No. 53877, field date 1/14/14 and certified to Murray and Connie Lauer. Any future expansion of the single-family dwelling beyond the current footprint, and not in compliance with B-8 classification single-family yard requirement(s) shall require a separate variance.
2. The property owners or authorized representative shall combine the property into unified parcel by submission and completion of a subdivision exemption application through the land development office within 60 days of the date of variance rendition, unless the property owners request and is granted an extension by the Zoning Enforcement Official.

Staff finds that the requested Variance 2 does not meet all five required criteria for approval. Therefore, staff recommends denial of the variance for a side yard from the required 5 feet to 2.1 feet for the existing accessory structure. However, if the PLDRC finds that all five criteria have been met, then staff would suggest the following condition:

1. The applicant shall apply for and obtain a building permit for the 7-foot by 10-foot accessory structure as shown on the property survey from Long Surveying, Inc., Survey No. 53877, field date 1/14/14 and certified to Murray and Connie Lauer. Any future expansion of the accessory structure beyond the current footprint, and not in compliance with B-8 classification yard requirement(s) shall require a separate variance.

VI. ATTACHMENTS

- Written Petition
- Revised Survey
- Site Plan
- Site Photos
- 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.

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?

See Attached This home is part of the
O'Brien Subdivision B-8 Forest zoning classification
modified under Ordinance 2013-01 settlement
of Joseph Kohler minimum yard size requirements
County Council passed Resolution 2013-01 property Zoned
B-8

- 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?

See Attached Because this property is non
conforming existing minimum Refinancing
& Financing & nonconforming property
the right to rebuild the existing structure &
or accessory structures.

- 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:

See Attached Granting the requested Variance
will conform the existing structure & or
accessory structure to ordinance
2013-01

- 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?

~~See Attached~~ The general intent & purpose of Zoning Ordinance & Volusia Co Ordinance No 90-10 is to lessen congestion

and

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

~~See Attached~~ This variance request applies to an already developed property therefore will not be injurious to the surrounding area


Applicant's Signature

01/08/2014
Date


Applicant's Signature

01/08/2014
Date

LEGAL DESCRIPTION: A PORTION OF LOTS 14 AND 15, O'BRYNE'S SUBDIVISION, ACCORDING TO THE PLAT OF RECORD IN MAP BOOK 11, PAGE 152, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT WHICH IS THE INTERSECTION OF THE EASTERLY LINE OF OCEAN SHORE BOULEVARD WITH THE SOUTH LINE OF THE NORTH 1/2 OF SAID LOT 15, THENCE NORTH 66°49'23" EAST AND ALONG THE SOUTH LINE OF THE NORTH 1/2 OF SAID LOT 15, A DISTANCE OF 104.18 FEET TO A POINT; THENCE NORTH 50°10'37" WEST A DISTANCE OF 75.2 FEET TO A POINT; THENCE SOUTH 66°49'23" WEST, A DISTANCE OF 70.0 FEET TO THE EASTERLY LINE OF OCEAN SHORE BOULEVARD, THENCE SOUTHERLY ALONG SAID EASTERLY LINE OF OCEAN SHORE BOULEVARD, A DISTANCE OF 67.0 FEET TO THE POINT OF BEGINNING. TOGETHER WITH A PERPETUAL EASEMENT OVER AND UPON THE SOUTHERLY 16 FEET OF THE NORTHERLY 83 FEET OF SAID LOT 14.

CURRENT PLANNING
ACTIVITY

JAN 16 2014

RECEIVED

Long Surveying, Inc.

"Specializing in Residential Surveying"

L.B. No. 7371

143 Villa Di Este Terrace #113

Lake Mary, FL 32746

Office 407-330-9717 or 407-330-9716

Fax 407-330-9775

www.longsurveying.com

DRAWN BY:

GURU

CHECKED BY:

BRETT

CERTIFIED TO:

MURRAY AND CONNIE LAUER

COMMUNITY NO:

125136

PANEL:

0208

FLOOD ZONE:

X

SUFFIX:

H

F.I.R.M. DATE:

2/19/03

SURVEY NO.

53877

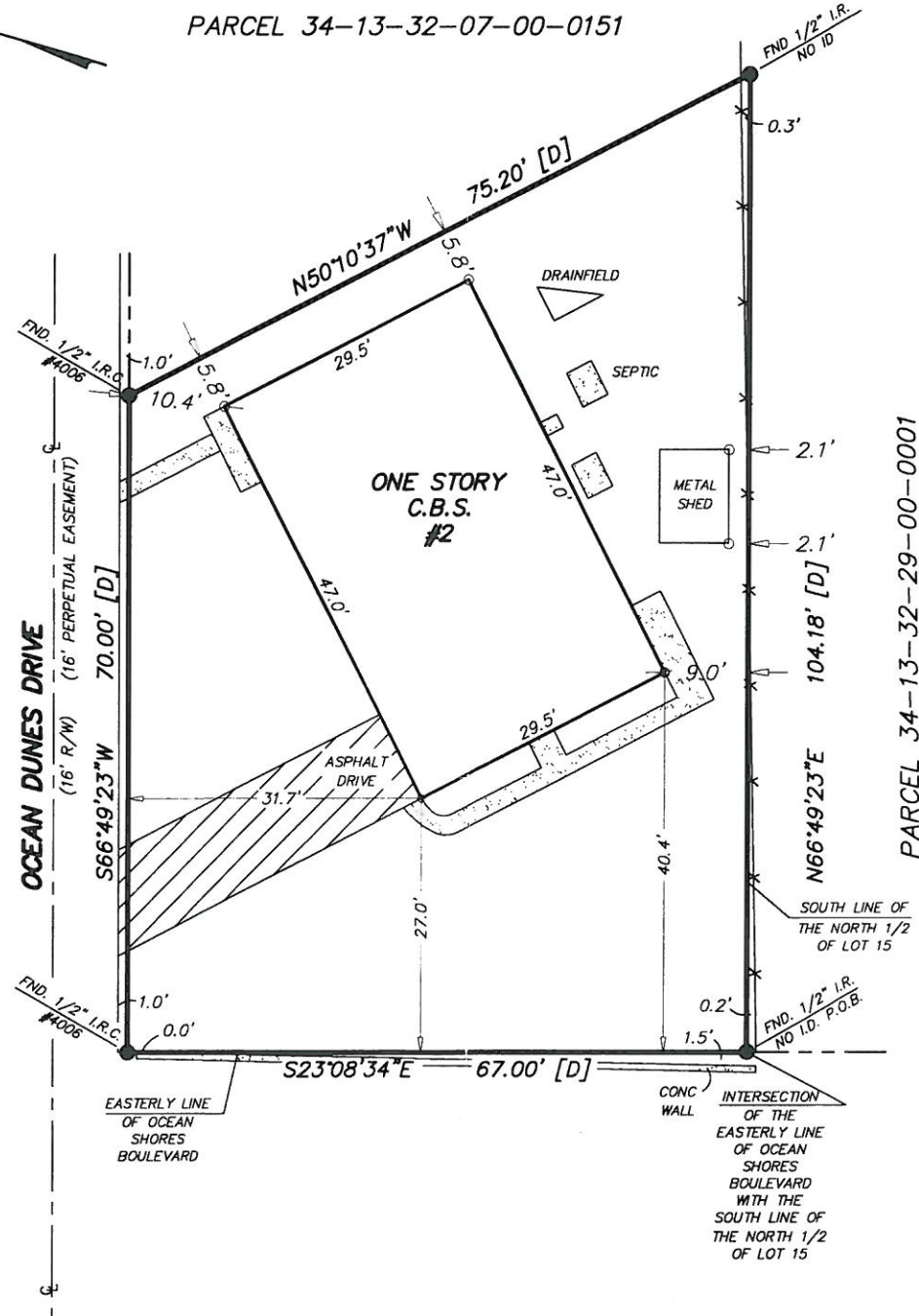
FIELD DATE:

1/14/14

Boundary Survey

PARCEL 34-13-32-07-00-0151

SCALE: 1"=20'



A/C - AIR CONDITIONER
 Δ - CENTRAL ANGLE
 BLK - BLOCK
 C.B. - CHORD BEARING
 C.B.S. - CONCRETE BLOCK STRUCTURE
 C.M. - CONCRETE MONUMENT
 CONC. - CONCRETE
 D - DEED
 D.E. - DRAINAGE EASEMENT
 E - EAST
 F.F.E. - FINISHED FLOOR ELEVATION
 FND - FOUND
 ID - IDENTIFICATION
 I.P. - IRON PIPE
 I.R. - IRON ROD
 I.R.C. - IRON ROD & CAP
 L - ARC LENGTH
 L.B. - LAND SURVEYING BUSINESS
 L.S. - LAND SURVEYOR
 M - MEASURED
 N - NORTH
 N&D - NAIL AND DISK
 P - PLAT
 P.C. - POINT OF CURVATURE
 P.C.C. - POINT OF COMPOUND CURVATURE
 P.C.P. - PERMANENT CONTROL POINT
 P.L. - PROPERTY LINE
 P.O.B. - POINT OF BEGINNING
 P.O.C. - POINT OF COMMENCEMENT
 P.O.L. - POINT ON LINE
 P.R.C. - POINT OF REVERSE CURVE
 P.R.M. - PERMANENT REFERENCE MONUMENT
 P.T. - POINT OF TANGENT
 R - RADIUS
 R/W - RIGHT OF WAY
 S/W - SIDEWALK
 S - SOUTH
 U.E. - UTILITY EASEMENT
 W - WEST
 W.F.S. - WOOD FRAME STRUCTURE
 ○ = SET 1/2" I.R.C. PSM LB#7371

--- RIGHT-OF-WAY LINE
 --- CENTERLINE
 --- BARB WIRE FENCE
 --- WOOD FENCE
 --- CHAIN LINK FENCE
 --- PLASTIC FENCE

BEARINGS SHOWN HEREON ARE BASED UPON THE CENTERLINE OF OCEAN DUNES DRIVE BEING N66°49'23"E PER DEED

NOTES:

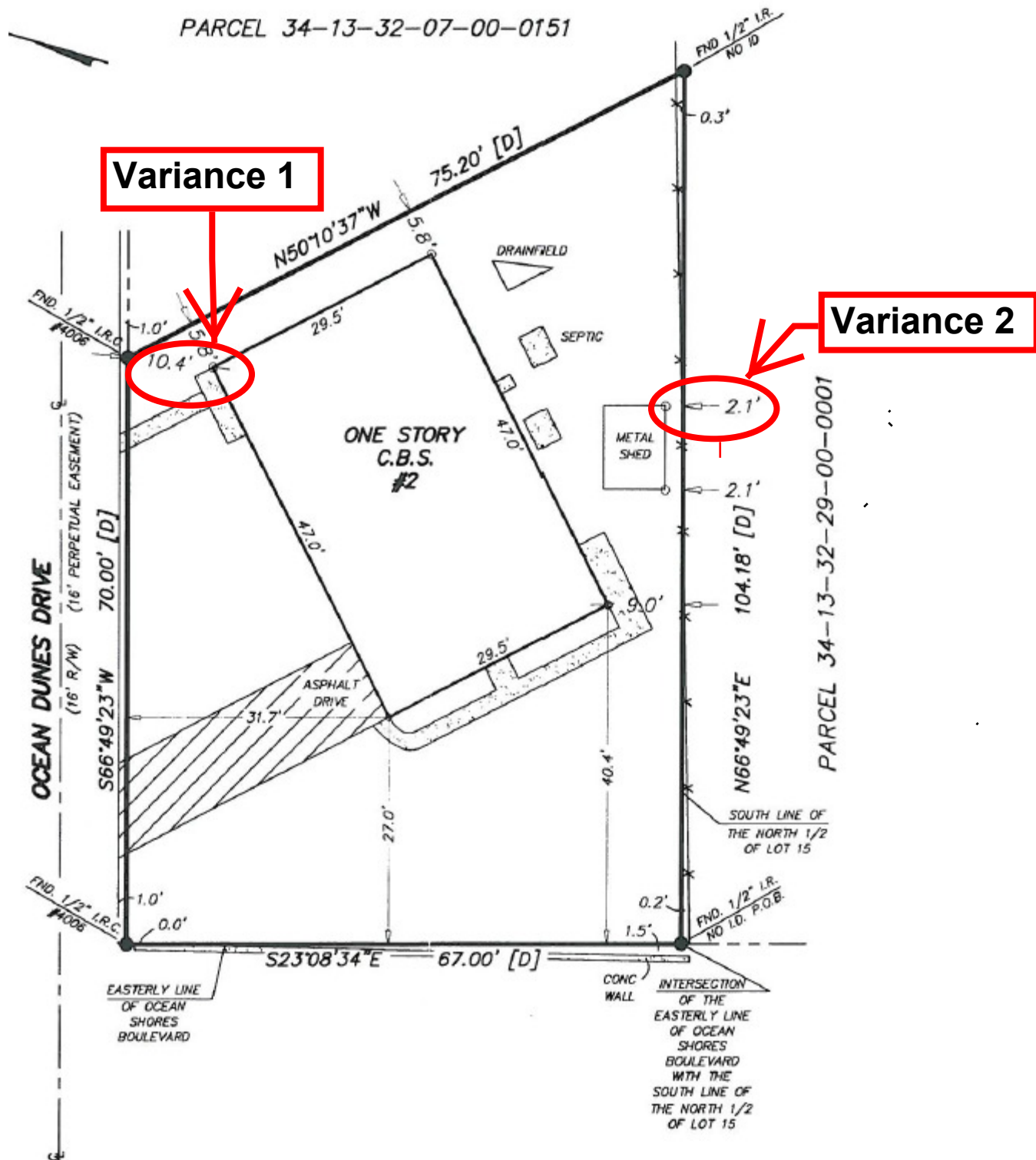
- 1) This survey is based on the legal description as provided by the Client
- 2) This Surveyor has not abstracted the land shown hereon for easements, rights of way or restrictions of record which may affect the title or use of the land
- 3) Do not reconstruct property lines from building ties
- 4) No footing or overhangs have been located except as shown
- 5) No improvements or utilities have been located except as shown
- 6) Not valid without a signature and the authenticated electronic seal or the original raised seal of a Florida licensed Surveyor and Mapper

Certification: I certify that this survey was made under my direction and that it meets the minimum standards set forth by the Board of Professional Land Surveyors and Mappers in Chapter 61G17-6, Florida Administrative Code, pursuant to Section 403.027, Florida Statutes.



JON M. SHOEMAKER P.S.M. NO. 5144

VARIANCE SITE PLAN





Looking north along east property boundary



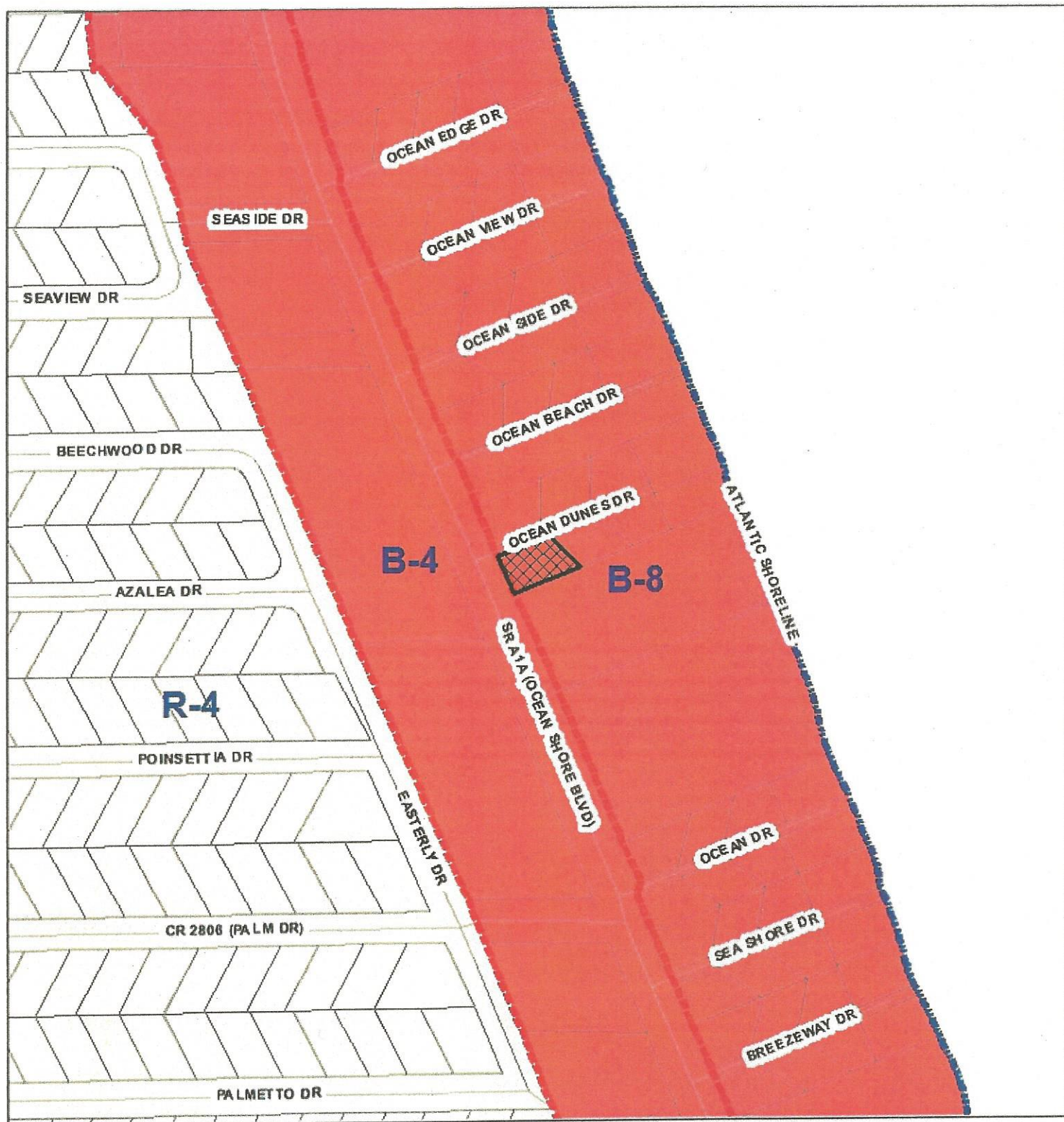
Looking south at front view of dwelling



Looking south along west property boundary



Looking east at accessory structure abutting property boundary



ZONING CLASSIFICATION

- COMMERCIAL
- RESIDENTIAL
- REQUEST AREA

1 inch = 200 feet



VARIANCE
CASE NUMBER
V-14-026



AERIAL

IMAGE YEAR: 2012

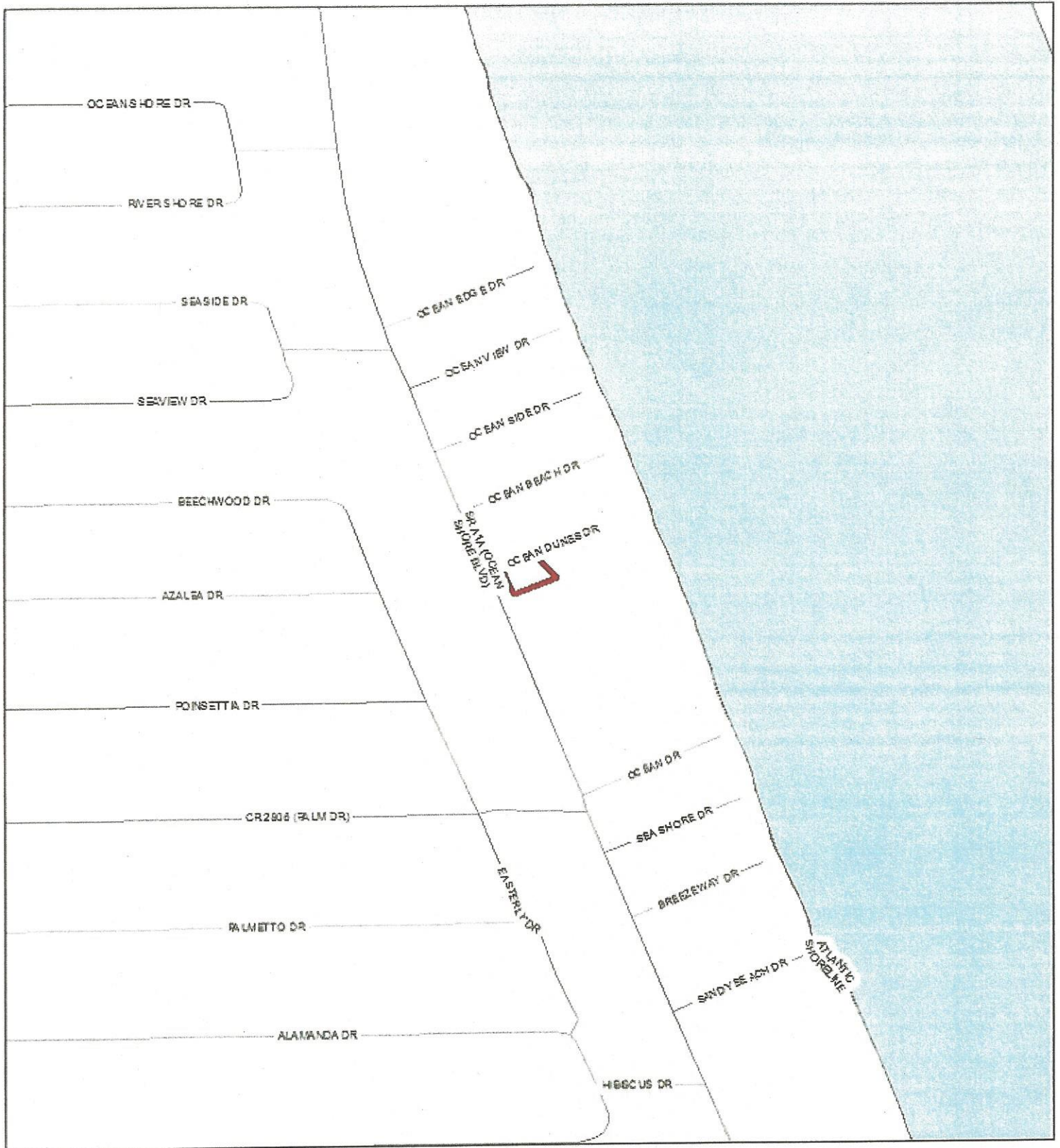
1 inch = 200 feet

 REQUEST AREA




**VARIANCE
CASE NUMBER**

V-14-026



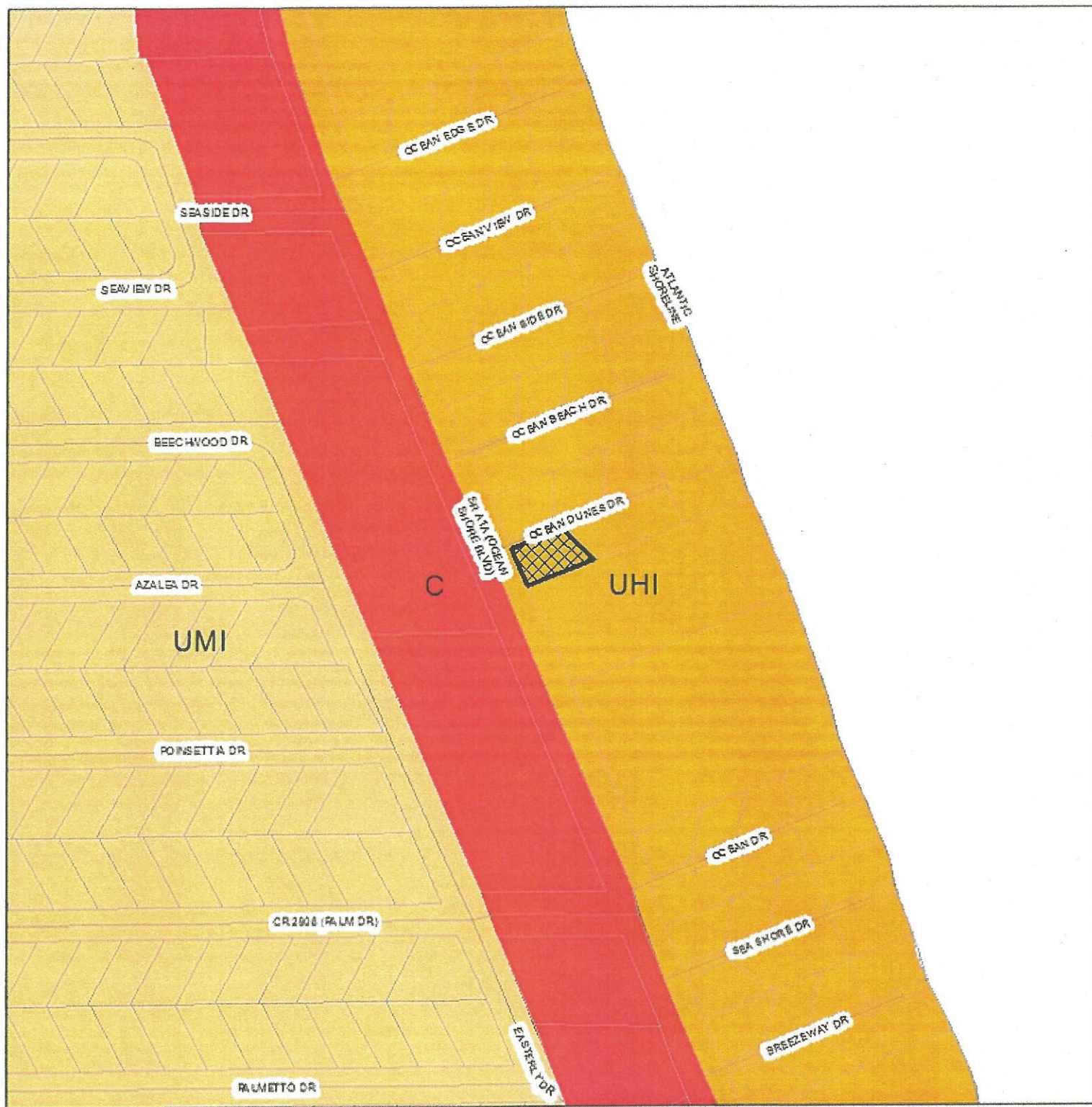
ECO/NRMA

 ECO
  NRMA
  REQUEST AREA

1 inch = 300 feet



VARIANCE
CASE NUMBER
V-14-026



FUTURE LAND USE DESIGNATION

- COMMERCIAL (1)
- URBAN MEDIUM INTENSITY (1)
- URBAN HIGH INTENSITY (1)
- REQUEST AREA

1 inch = 200 feet



**VARIANCE
CASE NUMBER
V-14-026**