

Corrected Staff Report



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-14-021

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

LOCATION: 1 Ocean Dunes Drive, Ormond by the Sea

APPLICANT: Homer Gossett

OWNER: Homer Gossett

STAFF: William Gardner, Activity Project Manager

I. SUMMARY OF REQUEST

The applicant is requesting a variance to legitimize 57-year old setbacks in effect at the time the single-family dwelling was constructed.

The requested variance for a south front yard from the required 20 feet to 10.9 feet for an existing single-family dwelling on Tourist (B-8) zoned property.

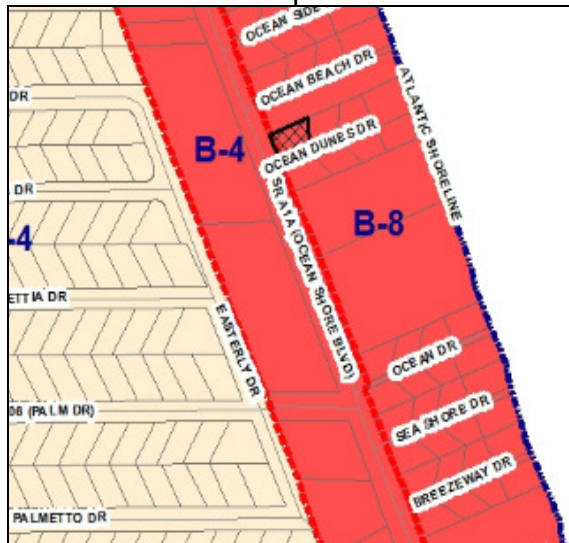
Staff recommendation: Approval subject to staff recommended conditions.

II. SITE INFORMATION

1. Location: The property is located at 1 Ocean Dunes Drive, a portion of Lot 14, O'Byrne Subdivision, in the Ormond by the Sea community.
2. Parcel No(s): ~~3234-07-00-0190~~ 3234-07-00-0140
3. Property Size: \pm 5,828 square-feet
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)	Single-family dwelling
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 property is comprised of portions of lots 19 and 20 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 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, yards (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 variances 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.

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 10.9 feet off the front 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 the variance request meets this criterion.

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

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 1982 according to the warranty deed.

Staff finds that the variance request meets 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.

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 because of dimensional requirements. Literal application of the section 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 section 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 conforming setbacks 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 structure involved, that variance request meets 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 applicant has reasonable use of the land and the single-family dwelling without approval of the requested variances. 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 the variance request meets 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 the requested variance will be in harmony with the code. The approval of the variance should not be injurious to the immediate area.

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

V. STAFF RECOMMENDATION

Staff finds that the requested variance can meet all five of the required criteria for approval. Therefore, staff recommends approval of the variance to the front yard requirement from 20 feet to 10.9 feet for a single family dwelling on B-8 zoned property, subject to the following conditions:

1. The variance is limited to the single-family dwelling as shown on the property survey from J.J. Matejka Surveying, field date 20 November 2013. 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.

VI. ATTACHMENTS

- Written Petition
- Variance 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.

- 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.

- 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.

- 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.

and

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

See attached.

[Signature]
Applicant's Signature

12/05/2013
Date

Barbara G. Cook
Applicant's Signature

11/05/2013
Date

RESPONSES TO WRITTEN PETITION FOR A VARIANCE

- 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?**

This home is part of the O'Byrne Subdivision and was built in 1957. In 1957, the O'Byrne Subdivision was not zoned B-8 – Tourist. The B-8 Tourist zoning classification was recently modified under Ordinance 2013-01 as a result of a settlement agreement between the County of Volusia and Mr. Joseph Kohler. The minimum yard size requirements for Single Family Dwellings and/or the setbacks for Accessory structures to single family dwellings contained in Ordinance 2013-01, make this property non-conforming. Because this property and the majority of the properties impacted by Ordinance 2013-01 cannot meet the proposed single family dwelling minimum yard requirements and/or accessory structures setbacks, County Council passed Resolution 2013-01 waiving variance fees for properties zoned B-8, Tourist Classification, in Neptune Subdivision, O'Byrne Subdivision, and Replat of Ormond by the Sea #4 until March 1, 2014. These circumstances are not the result of actions by the owner(s).

- 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?**

Because this property is non-conforming, a variance for the existing minimum yard size and/or existing accessory structure setbacks is being requested. The variance will eliminate issues lenders have with respect to re-financing and financing a non-conforming property. Additionally, the variance affords the owner(s) the right to rebuild the existing structure and/or accessory structures in their current locations should they be partially or completely destroyed.

- 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.**

Granting the requested variance(s) will conform the existing structure and/or accessory structure to Ordinance 2013-01.

Variance Request Information- Property at 1 Ocean Dunes Drive, Ormond Beach, FL 32176

D) The general intent and purpose of the Zoning Ordinance and the Volusia County Comprehensive Plan Ordinance N0. 90-10 is to lesson 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?

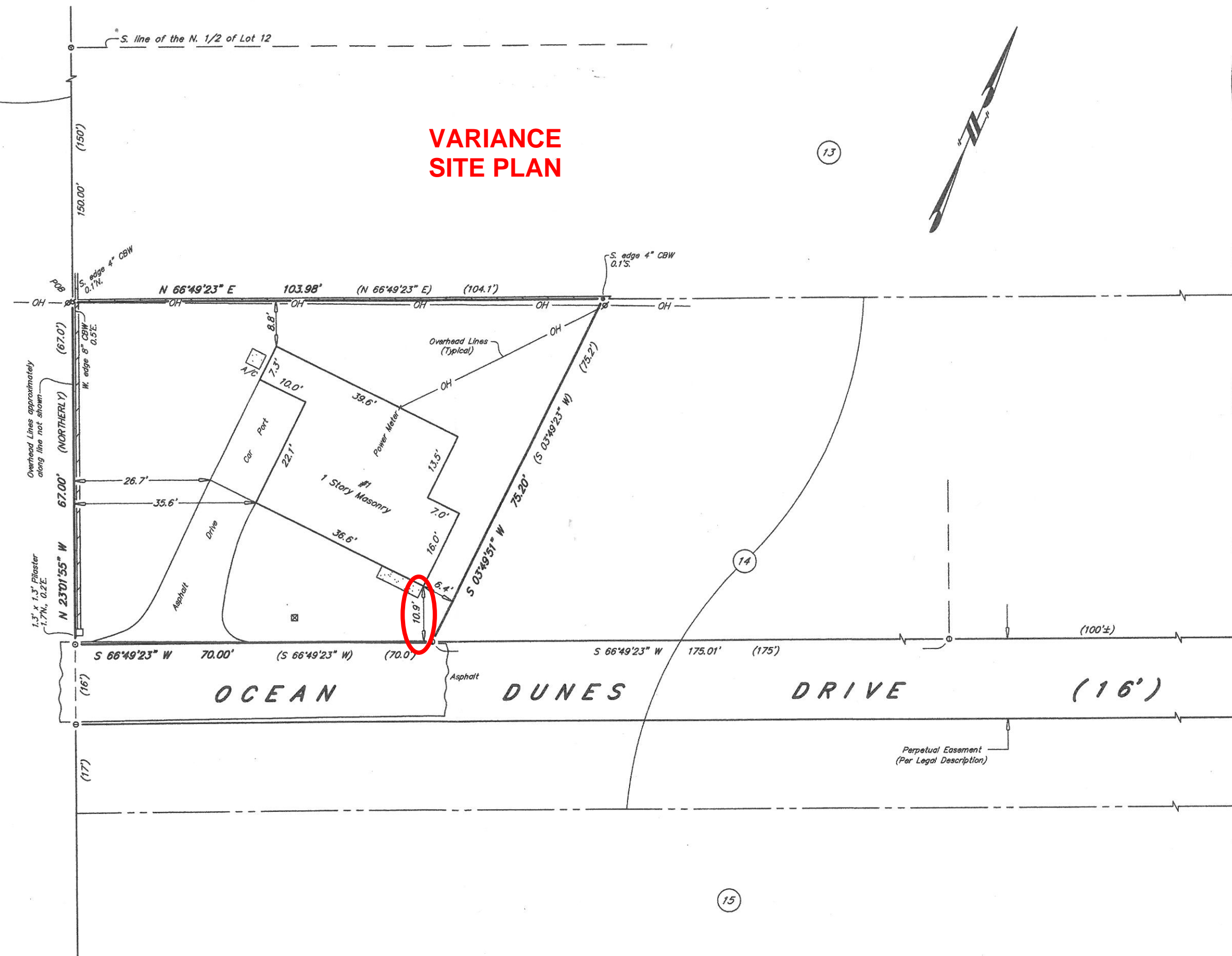
This variance request applies to an already developed property therefore will not impact congestion on the streets, public health, safety, morals, and general welfare; or use of land and governmental services.

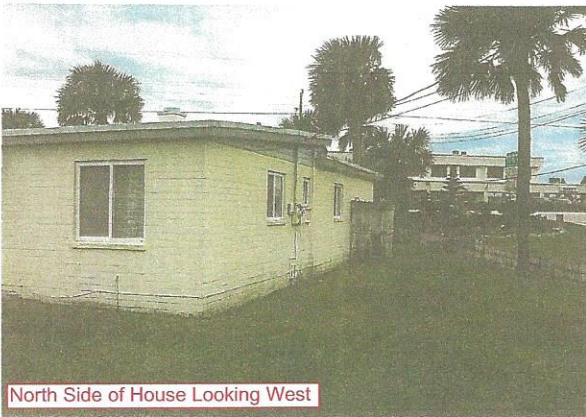
2) Explain how your request for Variance(s) will not be injurious to the surrounding area:

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

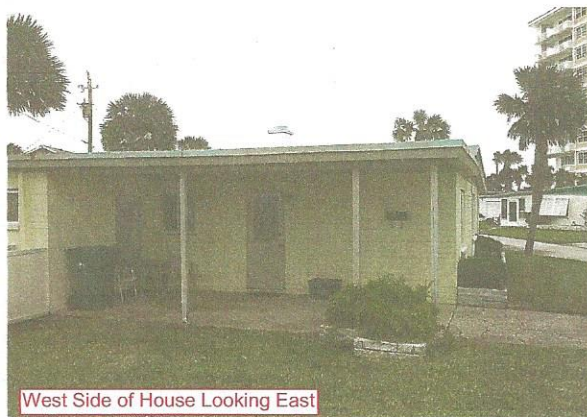
OCEAN SHORE BOULEVARD (80')
(STATE ROAD A-1-A)

VARIANCE
SITE PLAN

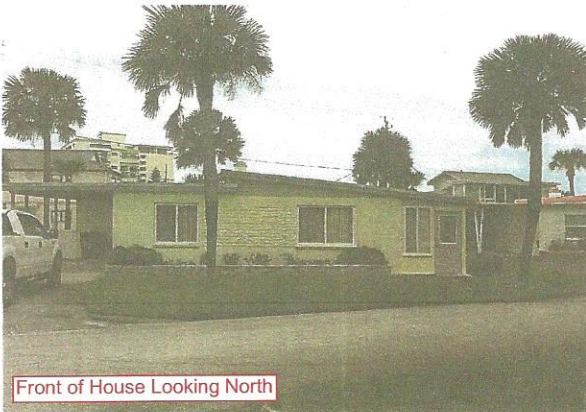




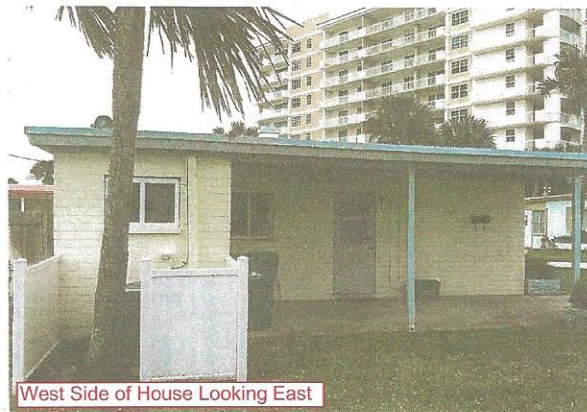
North Side of House Looking West



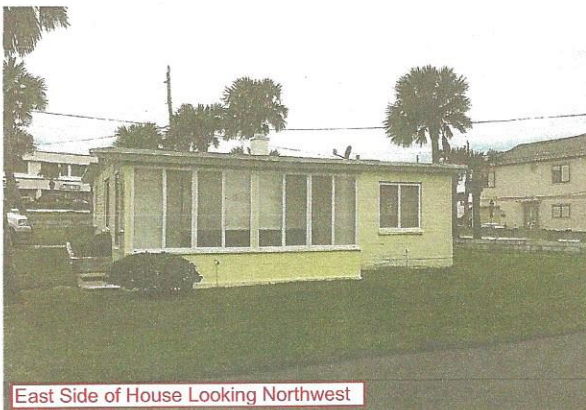
West Side of House Looking East



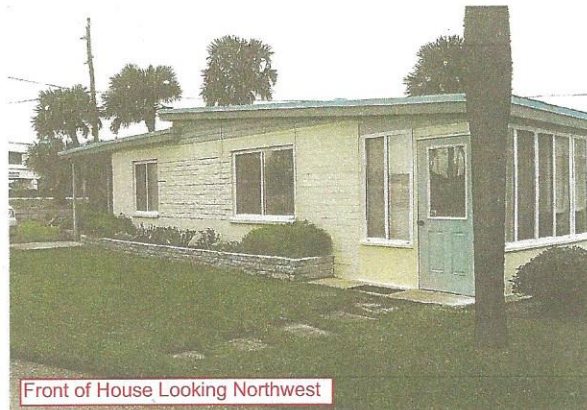
Front of House Looking North



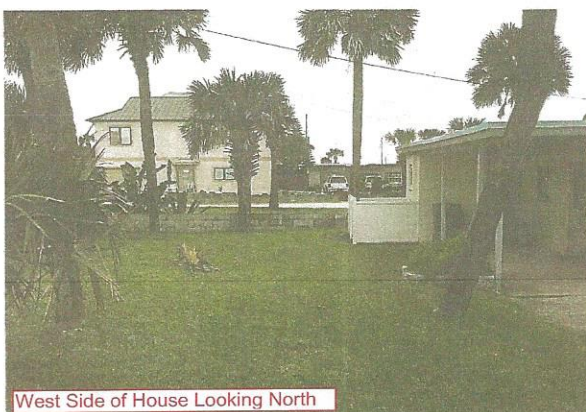
West Side of House Looking East



East Side of House Looking Northwest



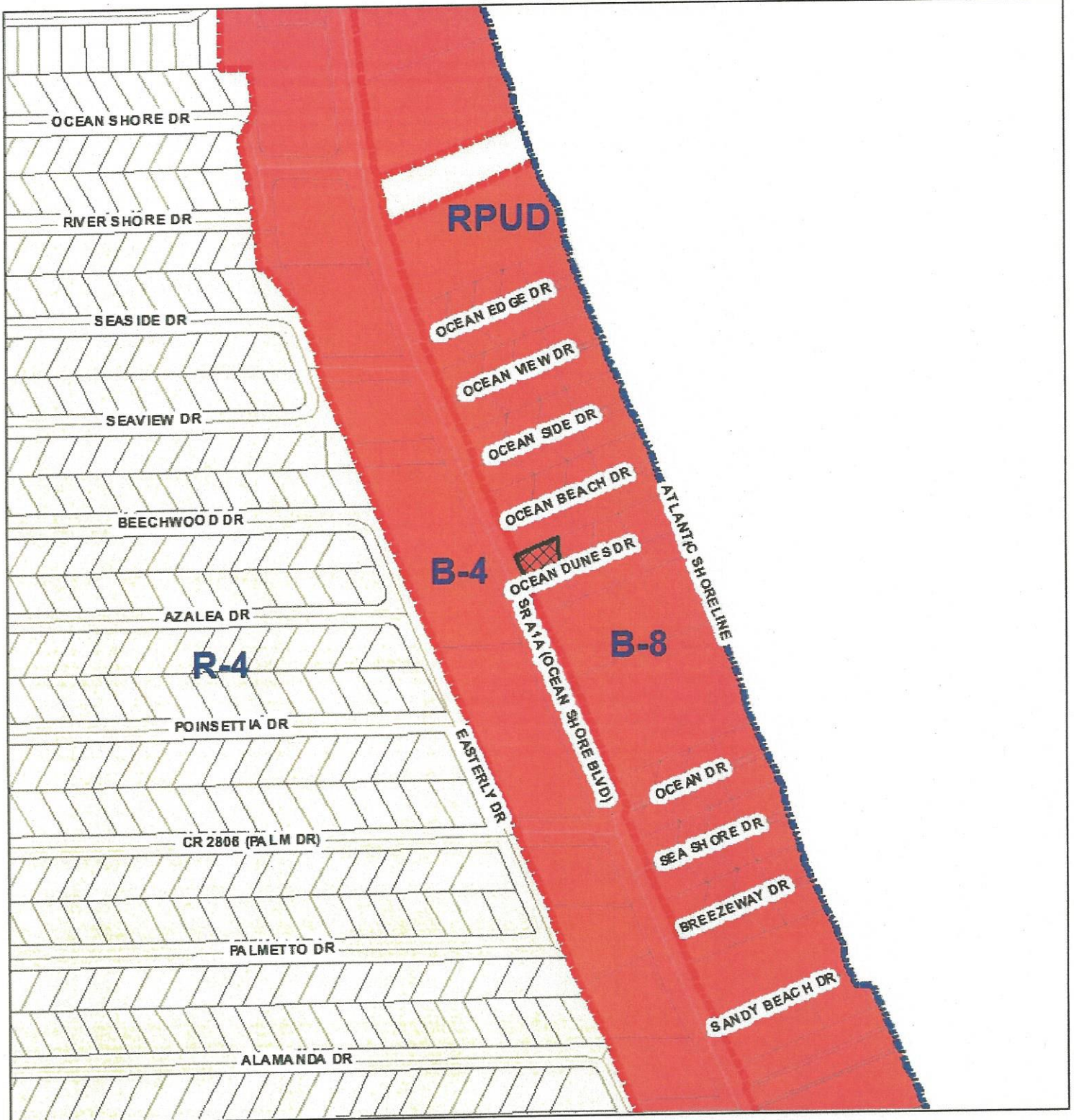
Front of House Looking Northwest



West Side of House Looking North



East Side of House



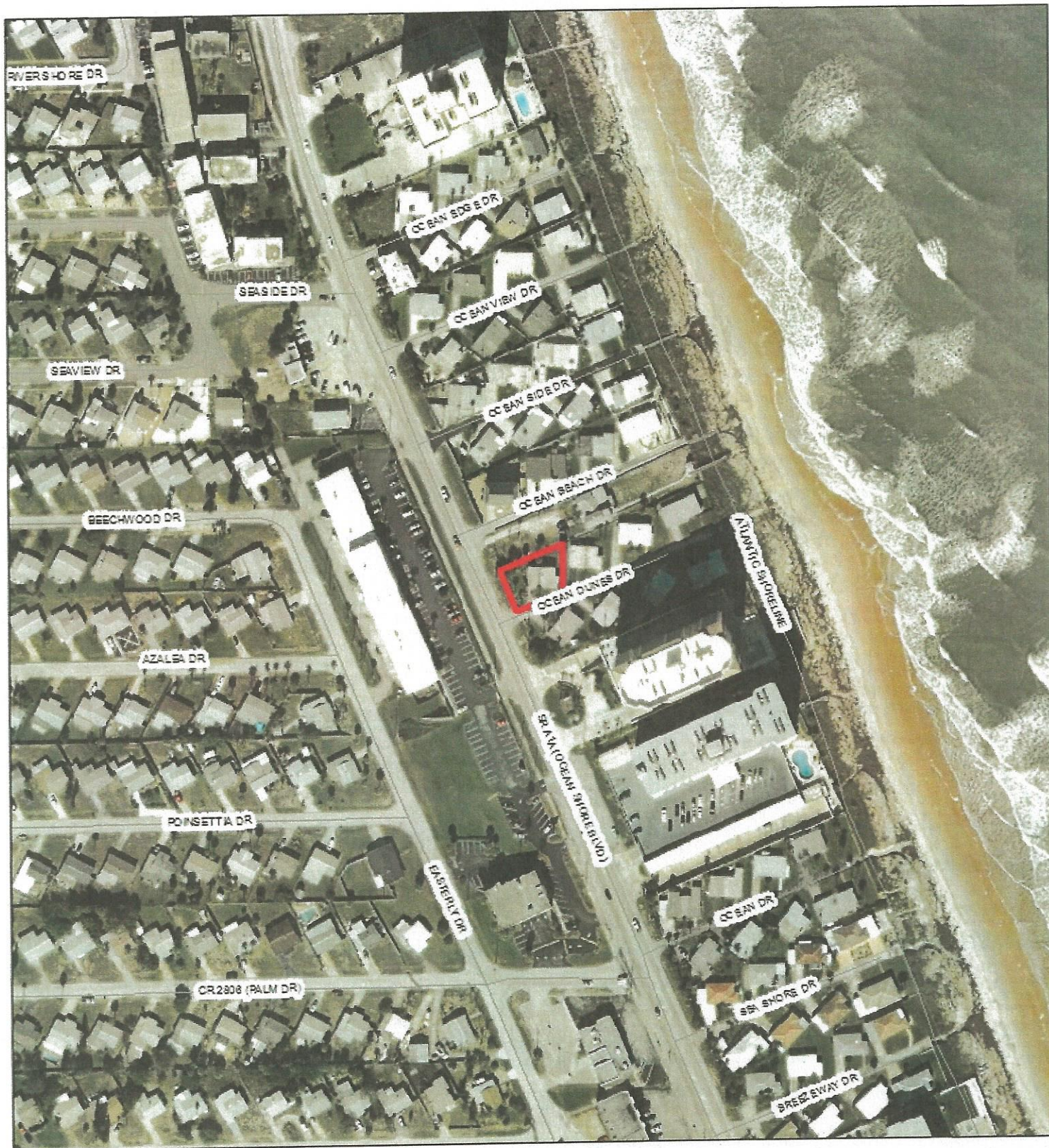
ZONING CLASSIFICATION

- COMMERCIAL
- RESIDENTIAL
- REQUEST AREA

1 inch = 300 feet



**VARIANCE
CASE NUMBER
V-14-021**



AERIAL

IMAGE YEAR: 2012

1 inch = 200 feet

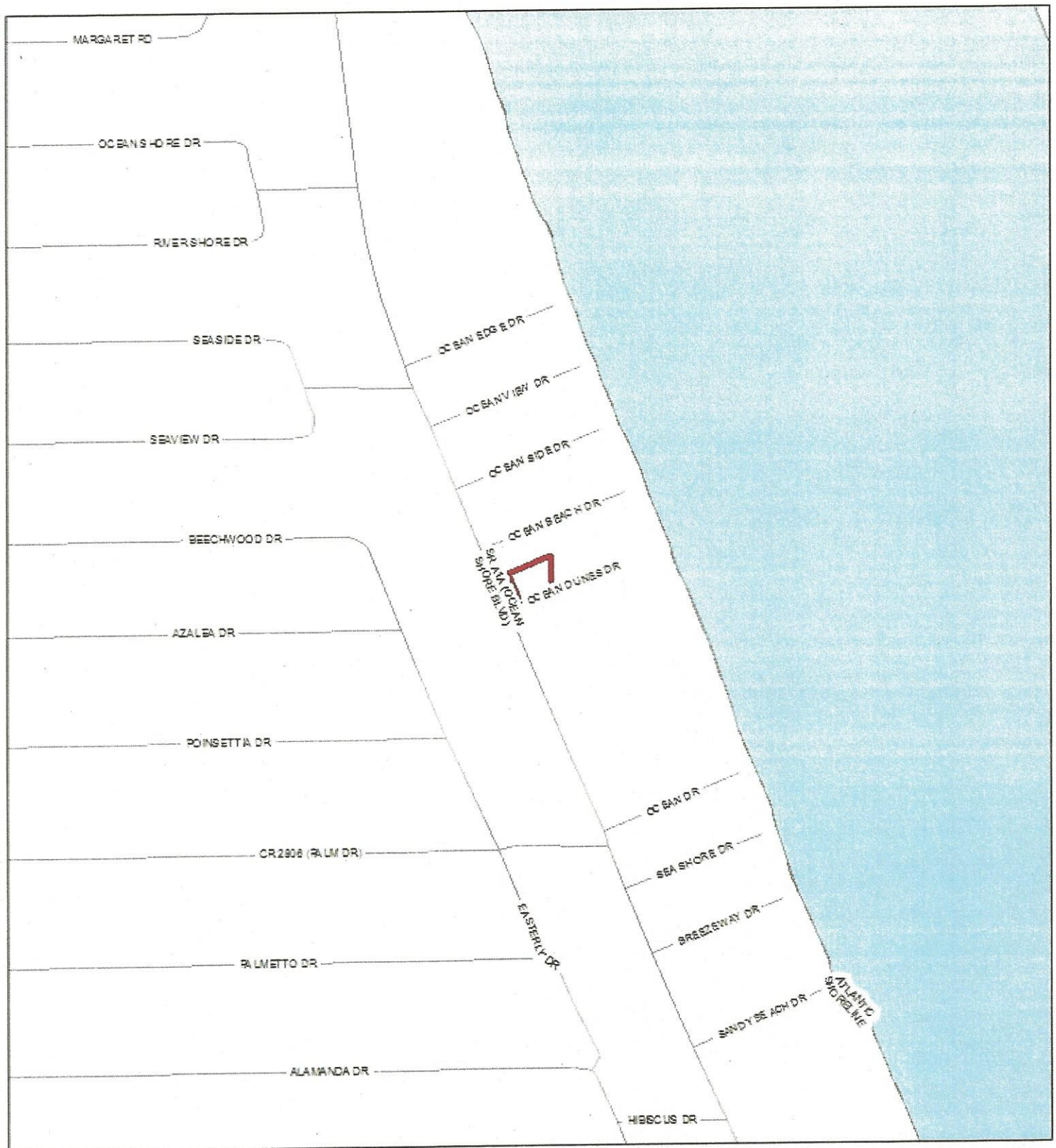


REQUEST AREA



**VARIANCE
CASE NUMBER**

V-14-021



ECO/NRMA

 ECO
  NRMA
  REQUEST AREA

1 inch = 300 feet



VARIANCE
CASE NUMBER
V-14-021



FUTURE LAND USE DESIGNATION

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

1 inch = 300 feet



**VARIANCE
CASE NUMBER
V-14-021**