



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:** July 9, 2013 – Planning and Land Development Regulation Commission (PLDRC)

**CASE NO:** S-12-036

**SUBJECT:** Special exception for a single-family dwelling for the owner or manager of an existing principal use on General Commercial (B-4) zoned property.

**LOCATION:** 151 East Wisconsin Avenue, Orange City

**APPLICANTS:** Jerry Brewer

**OWNERS:** Leslie W. “Les” Hammond

**STAFF:** John H. Stockham, ASLA, Planner III

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## I. SUMMARY OF REQUEST

The applicant is requesting a special exception for only one single-family dwelling for the owner or manager of an existing permitted principal use, which is boat sales, on General Commercial (B-4) zoned property.

The applicant has an existing boat sales and service business on the property, and requests a special exception to be able to reside on the property. The B-4 zoning classification allows boat sales as a permitted principal use with service as an ancillary use.

*Staff recommendation:* Forward to county council for final action with a recommendation of approval subject to the staff recommended conditions.

## II. SITE INFORMATION

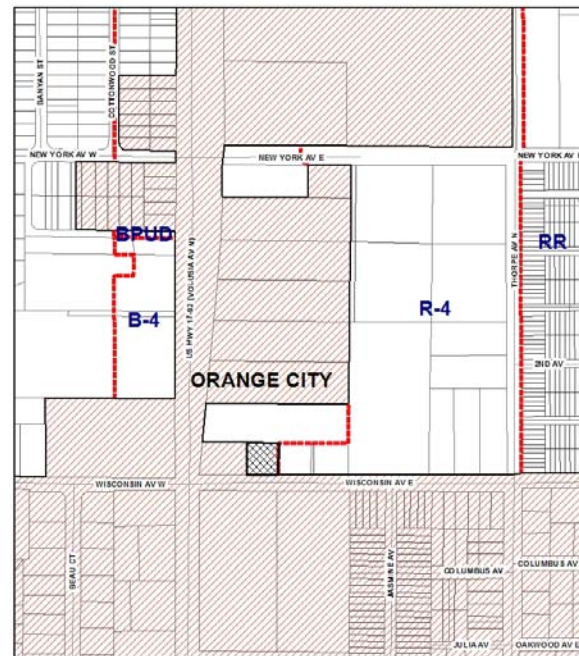
1. Location: The property is located on the north side of Wisconsin Avenue, approximately 150 feet east from its intersection with Volusia Avenue, adjacent to the municipal limits of Orange City.
2. Parcel No(s): 8002-02-00-0081
3. Property Size: 18,225 square feet
4. Council District: 1
5. Zoning: B-4
6. Future Land Use: Commercial
7. ECO Overlay: No
8. NRMA Overlay: No
9. Adjacent Zoning and Land Use:

DIRECTION	ZONING	FUTURE LAND USE	CURRENT USE
North:	B-4	Commercial	Retail sales/service and residential
East:	R-4	Urban Medium Intensity	Vacant lot
South:	Orange City	Orange City	Undeveloped land
West:	Orange City	Orange City	Commercial/ Residential mix

### 10. Location



AERIAL MAP



ZONING MAP

### III. BACKGROUND AND PREVIOUS ACTIONS

In 2010, the applicant relocated his boat repair service business and applied for a Business Tax Receipt (BTR) for this property. During the review of the BTR, staff found that the boat repair service was not a permitted principal use and a zoning enforcement official determination was requested in order to assist the applicant in obtaining the BTR. In the December 9, 2010, zoning enforcement official determination (attached), it was determined that the boat repair service could be at this location as an ancillary use to an allowed permitted principal use of boat sales in the General Commercial (B-4) zoning classification, provided a final site plan was approved through the Land Development office. In addition, this letter gave specific information on available options and processes in order for the applicant to be able to reside and operate his business on the property. The applicant has chosen the option to apply for a special exception to allow a residence for an owner or manager of a permitted principal use.

The site is a nonconforming commercial property because the lot does not meet the minimum one-acre lot area requirement of the B-4 zoning classification. The adjoining property is in common ownership as confirmed by the attached letter from Mr. Vukelja dated June 27, 2013. However, it is zoned Urban Single-Family Residential (R-4) with a future land use designation of Urban Medium Intensity (UMI), which is not compatible with commercial development. Staff has provided an option to the applicant that would resolve the nonconforming lot issue, which would include a comprehensive plan map amendment and rezoning of the adjoining property. The applicant does not want to pursue that option at this time as he is currently under contract for the subject property.

The applicant has submitted a site plan that demonstrates there is adequate area for the proposed uses and allow for stormwater management, off-street parking, boat storage, landscape buffers on the subject property without using the adjoining property.

### IV. REVIEW CRITERIA AND ANALYSIS

Section 72-293 *special exceptions* allows some uses or structures as a permitted special exception only when listed as permitted special exceptions in division 7 and meeting all requirements as set forth in division 11.

Per section 72-415(8) *reasons for denial*, the commission may recommend denial and county council may deny any special exception application for one or more of the following reasons:

***a. It is inconsistent with the purpose or intent of this ordinance.***

The zoning code provides for protection of property values, compatibility of uses, and the safekeeping of public welfare. The previous owner had a homestead exemption from the Property Appraiser on the property from 1999 until it was sold in 2004 to the current owner who did not maintain a residence on the property. Therefore, the nonconforming use was abandoned and a special exception for a single-family dwelling for an owner or manager of

a permitted principal use is necessary for the applicant to reside on-site with his commercial business.

Staff finds that this application can be consistent with the purpose and intent of the zoning code, provided that the requirements of the December 9, 2010, zoning determination are met.

***b. It is inconsistent with any element of the Comprehensive Plan.***

Staff finds that the proposed special exception is consistent with the comprehensive plan since the property was used both commercially and residentially in the past and is abutting commercial on the west and residential on the east.

***c. It will adversely affect the public interest.***

The proposed special exception should not adversely affect the public interest since the property is already developed and was used both commercially and residentially in the past. Staff has recommended conditions to ensure the commercial use is contained on the commercial zoned property and does not spread to the adjoining residentially zoned property under common ownership.

***d. It does not meet the expressed requirements of the applicable special exception.***

The only expressed requirement is that this proposed special exception is an accessory use to a permitted principal use, which on this property is the sale of boats. This permitted principal use has requirements per the zoning determination letter dated December 9, 2010, that must be met, i.e. site plan approval.

Staff finds that the expressed requirements can be met provided the applicant complies with all the requirements of the December 9, 2010, determination letter.

***e. The applicant will not be able to meet all requirements imposed by federal, state, or local governments, or by the county council.***

The applicant should be able to meet all the requirements imposed by federal, state, or local governments, or by the county council.

***f. Notwithstanding the provisions of article XIV of the land development code [appendix A], it will generate undue traffic congestion.***

Since the traffic generation of a residential use is less than the generation of a commercial use, staff finds that the request will not generate undue traffic congestion.

***g. It will create a hazard or a public nuisance, or be dangerous to individuals or to the public.***

There are no known hazards, public nuisances, or dangers with this proposed use.

***h. It will materially alter the character of surrounding neighborhoods or adversely affect the value of surrounding land, structures, or buildings.***

The single-family home was constructed in 1953 and the property has had a commercial zoning classification since the 1960s. Although the nonconforming use of the dwelling unit has expired, the house was utilized as a residence over the years. The applicant requests that the residential use of the dwelling unit on commercially zoned land be re-established. Therefore, the request will not materially alter the character of the surrounding neighborhood or adversely affect the value of the surrounding land, structures, or buildings.

***i. It will adversely affect the natural environment, natural resources or scenic beauty, or cause excessive pollution.***

The property is already developed and any impacts are addressed through the application of conditions such as restrictions on building additions, requirements for landscape buffers and regulation of off-street parking. Approval of the request will not adversely affect the natural environment, natural resources or scenic beauty, or cause excessive pollution.

## **V. STAFF RECOMMENDATION**

Staff recommends approval of the special exception for one single-family dwelling for the owner or manager of an existing permitted principal use on General Commercial (B-4) zoned property, subject to the following conditions:

1. The applicant shall proceed through site plan review in order to demonstrate that off-street parking, stormwater management, landscaped buffers, driveways, solid waste container enclosures, etc., all meet Chapter 72, Land Planning code requirements. The conceptual plan review and final site plan review shall occur within six months and the applicant must obtain a development order within one year.
2. The owner/manager residence shall only exist if there is a permitted principal use on the property.
3. The owner or applicant shall remove all boats, trailers and other stored items from the adjacent property to the east.
4. The owner shall add a continuous 6-foot high opaque fence between the subject property and the vacant parcel to the east to prevent items from being stored on this adjacent property.
5. The applicant shall obtain all building permits for the site improvements, including any unpermitted sheds or carports.

## **VI. ATTACHMENTS**

- Special exception site plan
- Staff and agency comments
- Application
- Maps

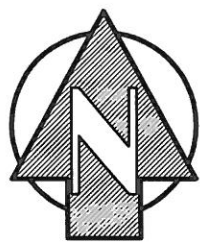
## **VII. AUTHORITY AND PROCEDURE**

Pursuant to section 72-415 of the zoning ordinance, as amended, the county council shall hold a public hearing after due public notice on all recommendations from the commission. It may accept, reject, modify, return or seek additional information on those recommendations. No approval of a special exception shall be made unless, upon motion, four members of the county council concur. The county council will thereafter forward its decision to the applicant.

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

Any new information to be presented at the county council meeting that was not previously presented to the planning and land development regulation commission for any application will be grounds to return an application to the planning and land development regulation commission for further review. Applicants shall inform and provide staff with the new information prior to the council meeting.

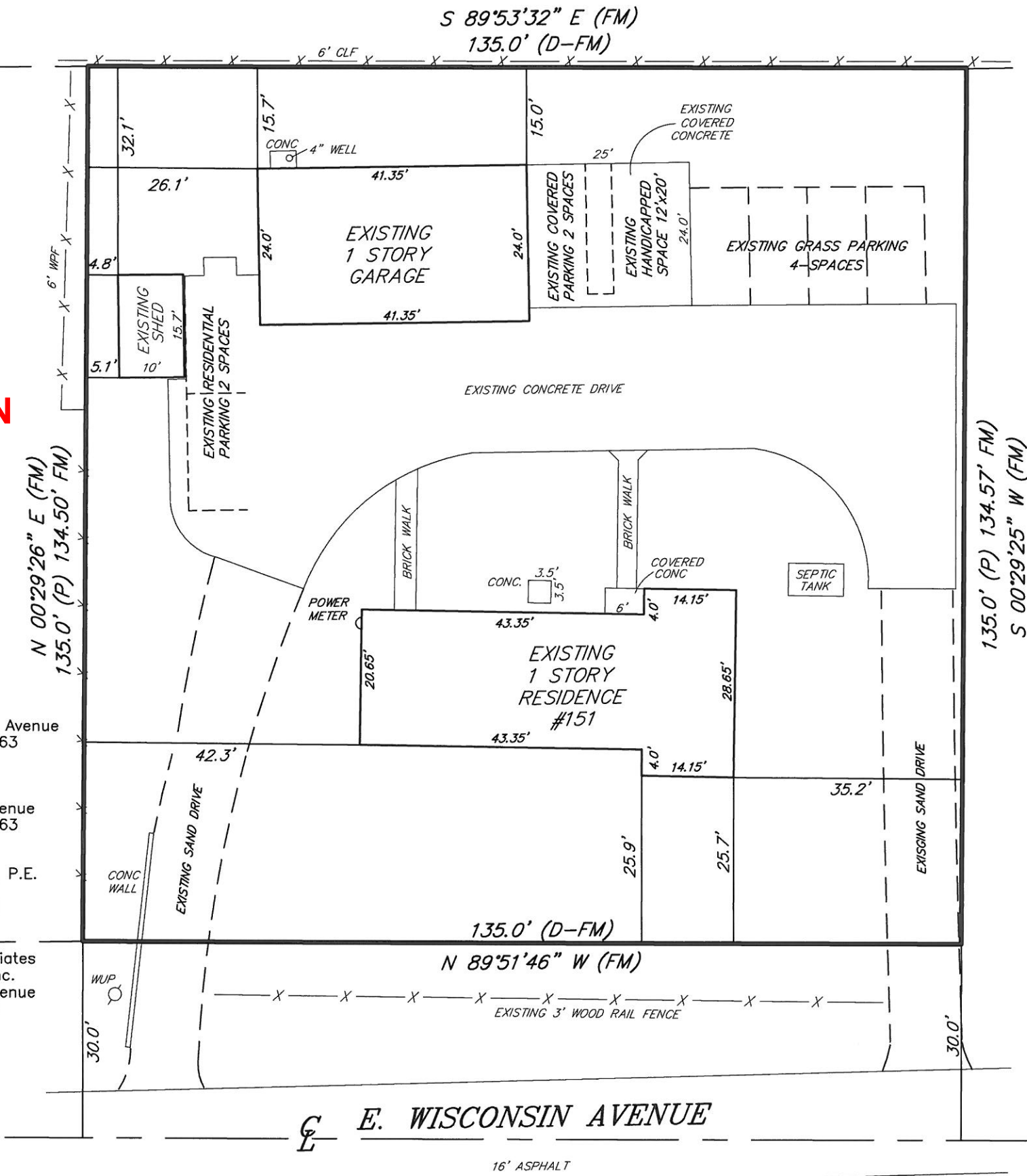




SCALE: 1"=20'

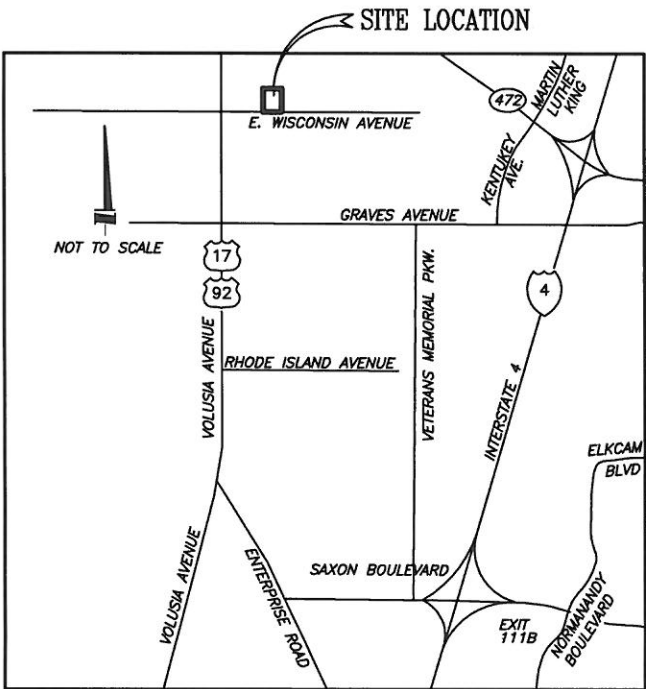
SPECIAL  
EXCEPTION  
SITE PLAN

**Contacts:**  
  
Owner: Leslie W. Hammond  
1990 Massachusetts Avenue  
Orange City, FL 32763  
(386) 801-3362  
  
Applicant: Jerry Brewer  
151 E. Wisconsin Avenue  
Orange City, FL 32763  
(386) 801-3362  
  
Engineer: Gerard J. Ferrara, P.E.  
P.O. Box 2948  
DeLand, FL 32720  
(386) 734-8792  
  
Surveyor: Blackwell & Associates  
Land Surveyors, Inc.  
995 W. Volusia Avenue  
DeLand, FL 32720  
(386) 734-8050



LEGAL DESCRIPTION: (FURNISHED)

THE WEST 135 FEET OF THE EAST 417 FEET OF LOT 8, HOME INVESTMENT COMPANY'S SUBDIVISION, AS RECORDED IN MAP BOOK 5, PAGE 57, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.



LOCATION MAP

SITE DATA

Project Area 18,162 Sq.Ft. 0.417 Acres

EXISTING:  
Building Area 2,450 Sq.Ft. 13.49%  
Impervious Area 4,246 Sq.Ft. 23.38%  
Grass Parking 648 Sq.Ft. 3.57%  
Open Area 10,818 Sq.Ft. 59.56%

Parking Provided: 1 Handicapped space, 1 Paved Parking Space, 2 Residential Spaces, and 4 Grass Spaces = 8 Total Spaces

Project Zoning: B4 (General Commercial)

Project Land Use: Residential/Business

Tax Parcel Number: 8002-02-00-0081

Property Address: 151 E. Wisconsin Avenue, Orange City, FL

Water Provider: On Site Well

Sewer Provider: On Site Septic System

Solid Waste: Owner uses curbside pickup.

This project does not impact the 100 year flood plain

Existing vegetation - Grass & Large Trees

Site has no known archaeological or historic resources.

David A. Vukelja, Esquire

Jarett A. de Paula, Esquire

June 27, 2013

Volusia County  
Attention: John Stockman  
123 West Indiana Avenue, Room 205  
Deland, FL 32720

**Re: Application for Special Exception**

**Subject Property:**

**151 E. Wisconsin Avenue  
Orange City, FL**

**Legal Description:**

**The West 135 Feet of the East 417 Feet of Lot 8, Home  
Investment Company's Subdivision, as recorded Map Book 5,  
Page 57, of the Public Records of Volusia County, Florida**

Dear Mr. Stockman:

Mr. Jerry Brewer, as the contract purchaser/authorized agent for the owner, Leslie W. Hammond, has filed an Application for Special Exception to permit residential use at the subject property. You should already have on file a copy of Mr. Brewer's Notarized Authorization of Owner and, all the other required paperwork – Application for Special Exception, legal description, surveys, fees, etc.

On behalf of Mr. Brewer, I hereby submit this "nonconforming lot letter" to certify that I have examined the Public Records of Volusia County, Florida and that the present owner of the above-described property is Leslie W. Hammond and his contract purchaser is Jerry Brewer. I hereby further certify that since December 16, 2004, the owner of the subject property has owned property adjacent or contiguous to the subject property. Those lots are described as follows: [(a) Lot 8 Exc St Rd & Exc E 417 Ft Home Investment Co Sub per OR 4252 PG 0736, 135 feet x 173 feet, acquired in 1997; and (b) The West 120 feet of the East 282 feet of Lot 8, Home Investment Company's Subdivision, a subdivision according to map in Map Book 5, Page 57, Public Records of Volusia County, Florida, 80 feet x 173 feet, acquired in 1997. December 16, 2004 is the date checked by Zoning Activity personnel.

I want to thank you for your assistance. If you require anything further, please let me know and I will be happy to comply.

Sincerely,

David A. Vukelja

cc: Jerry Brewer



8/23/12

To whom it may concern

I Jerry Brewer Am requesting a special exception to be aproved by the board for and owner/manager residence at 151 E Wisconsin Ave in Orange City

There are other conjoining propertites that have this benifit. I have lived in this house for 2 yrs and would like to continue. My home, bussiness for myself and my fiancée would be good. I'm 53 yrs old and settled to one place is best for this economy. I would not and can not afford two locations. Our plans are to buy this property but need to know that zoning is ok for our needs. I have already had well, septic inspections and are up to date. Please take all this in cosideration

Thank you  
Jerry Brewer

**REVIEW STAFF COMMENTS**

**BREWER**  
**S-12-036**

**Volusia County Health Department**

**Kurt Jennings**

**September 18, 2012**

**Comments:**

Sewage disposal for this property was reviewed under application 64-SW-1283117. The existing septic system was approved for use for a two bedroom residence and a boatmotor repair shop.

Potable water is supplied by a "Registered Limited Use Commercial" well. The well is overdue for an annual water bacterial test. Contact Brian Volkman at (386) 736-5082 for water test information.

**City of Orange City**

**Jim Kerr**

**February 5, 2013**

**Comments:**

City staff has reviewed the application for a special exception at 151 East Wisconsin Avenue for Case No. S-12-036. City staff concurs with and supports John Stockham's report, as well as the six conditions of approval, and further makes the following comments.

1. Even though the abutting residential property to the east is vacant at this time, City staff recommends that the fence (condition #4) on the east side of the subject property be opaque when installed.
2. City staff would like to request the opportunity to provide comments on the site plan at such time as it is submitted to the county, as per condition #1.



**Growth and Resource Management Department  
Planning and Development Services**

December 9, 2010

Mr. Jerry Brewer  
Outback Marine  
151 E. Wisconsin Street  
Orange City, FL 32763

**Re: Business Tax Receipt Application Meeting – Rendition Letter, Outback Marine, Parcel 8002-02-00-0081**

Dear Mr. Brewer:

The purpose of this letter is to provide a rendition of the outcome of the meeting that was held at the County Administration Building on October 28, 2010, pertaining to the Business Tax Receipt (BTR) application that was submitted to the county. In attendance from the Department of Growth and Resource Management were Greg Stubbs, Director; Mary Robinson, Building and Zoning Director; Becky Mendez, Senior Planning Manager; Palmer Panton, Land Development Manager; Scott Ashley, Planning Manager; John H. Stockham, Planner III; and Carol McFarlane, Planner II. Also in attendance were the following two individuals: Jarret DePaula, Esquire, of the law firm of Korey, Sweet, McKinnon, Simpson & Vukelja, PA., and the property owner, Les Hammond. The following items were discussed and determined during the course of the meeting:

1. The Outback Marine boat sales and repair business was recently relocated to the subject address.
2. An application for a Business Tax Receipt (BTR) to run a boat sales and service business on the subject property has been submitted.
3. The subject property is zoned B-4 (General Commercial) and this classification allows boat sales service, but only where said "service" is performed as an accessory (subordinate) use to the principal (primary) use of retail sales.



If service becomes the primary use, then this is in violation of the zoning code and code enforcement action may commence.

4. A special exception application is required for the residential single-family dwelling for an owner or manager of an existing permitted primary use. This application process requires two public hearings.
5. If the intended use of the subject property is mainly a boat repair and servicing location, then a successful rezoning to the B-5 (Heavy Commercial) classification is required. This also requires two public hearings.
6. A final site plan application and approval by the Development Review Committee (DRC) is required to satisfy the land development code requirements for the boat sales and service operation.
7. County land development regulations may include, but not be limited to, such items as: 1) paving of the driveways, 2) landscaping the property perimeters, 3) application of lighting standards and guidelines, 4) meeting stormwater management regulations, and 5) meeting the standards for off-street parking areas.
8. Another option is to annex the property into the city of Orange City, since the site is adjacent to the city limits and may be eligible for annexation. If this occurs, then Orange City may utilize the County's zoning or rezone to an appropriate city classification.
9. The existing single-family residence may be used as a primary residential use, but only if the commercial use is abandoned. A home occupational license is a permitted use in this case, but not in the following: The existing single-family residence may continue as an ancillary use to the commercial use with an approved special exception for the single-family residence.
10. A signed and sealed land survey, prepared by a Florida registered land surveyor, which is no more than two years old, is required for any rezoning and/or special exception applications.


Once again, the following scenarios are possibilities for you to consider:

1. The house can be occupied, but not the commercial building, while a home occupation can prospectively be approved.
2. The commercial building can be used for the retail sales of boats, with ancillary service of those boats only. However, the house can't be used as a dwelling.
3. A special exception to use the house as a single-family dwelling for you, as the manager of the permitted principal use of boat sales and ancillary service, can be applied for however, there is the risk that this may not be granted.

This list is a summary of the points discussed at the meeting. This letter is not to be considered an official transcript or meeting minutes, but rather a rendition of the

directions, facts, and conclusions that were made at the meeting based upon the information known to us at the time. For further explanation, or to start the pre-application process for any of the above-mentioned zoning or special exception requests, please contact Yolanda Somers, Staff Assistant II, at (386) 943-7059, ext. 2777.

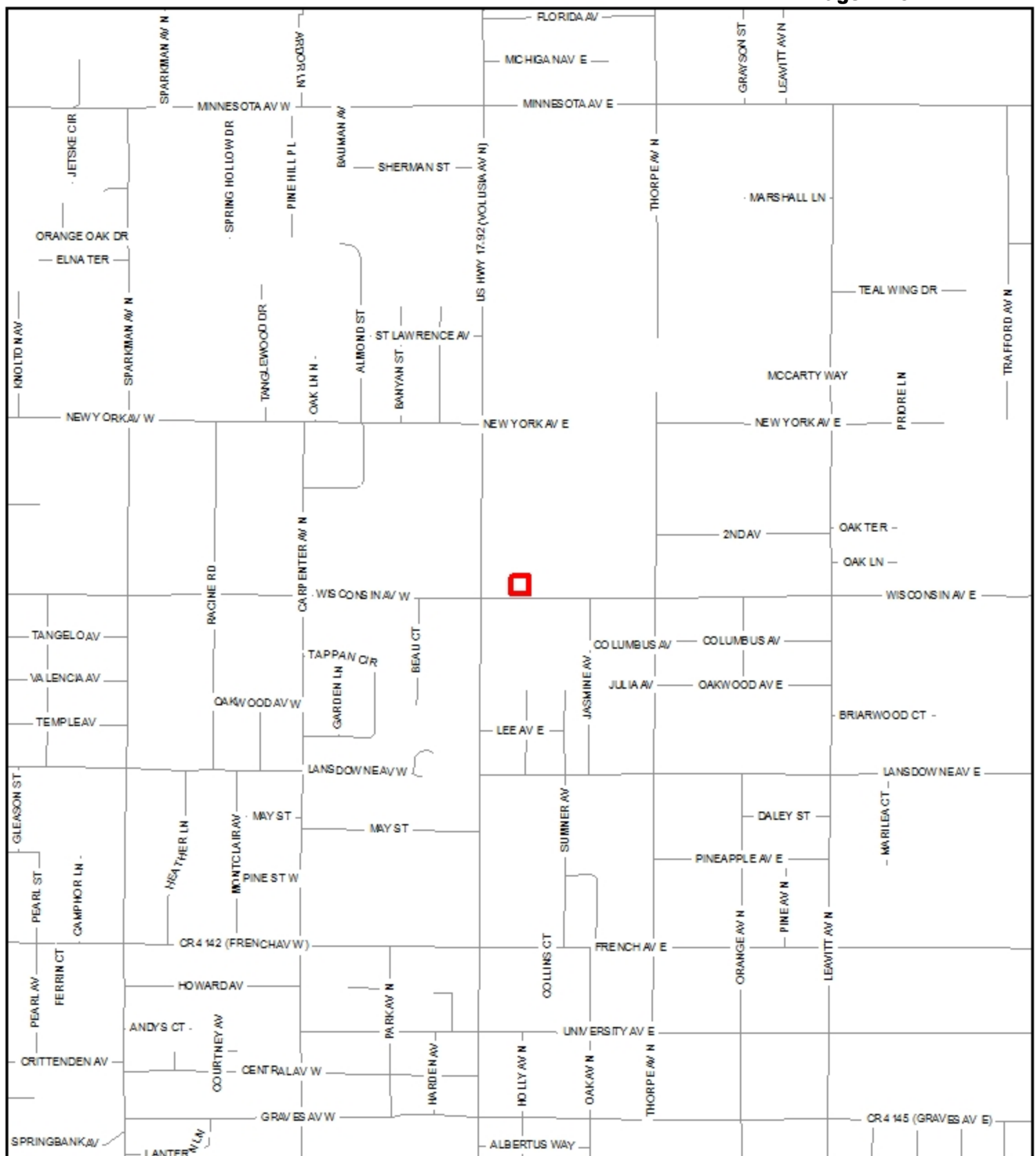
Sincerely,



Gregory K. Stubbs, AICP  
Growth and Resource Management Director

GS/bkm/jhs

Cc: Mary Robinson, Building and Zoning Director  
Becky Mendez, AICP, Senior Planning Manager  
Palmer Pantan, Land Development Manager  
Scott Ashley, AICP, Planning Manager  
John H. Stockham, ASLA, Planner III  
Carol McFarlane, Planner II  
Jarret A. DePaula, Esquire, Korey, Sweet, McKinnon, Simpson & Vukelja, PA.,  
595 West Granada Blvd., Suite A, Ormond Beach, FL 32174-9448  
Les Hammond, 1990 Massachusetts Avenue, Orange City, FL 32763



**ECO/NRMA**

1" = 1000'



REQUEST AREA



ECO



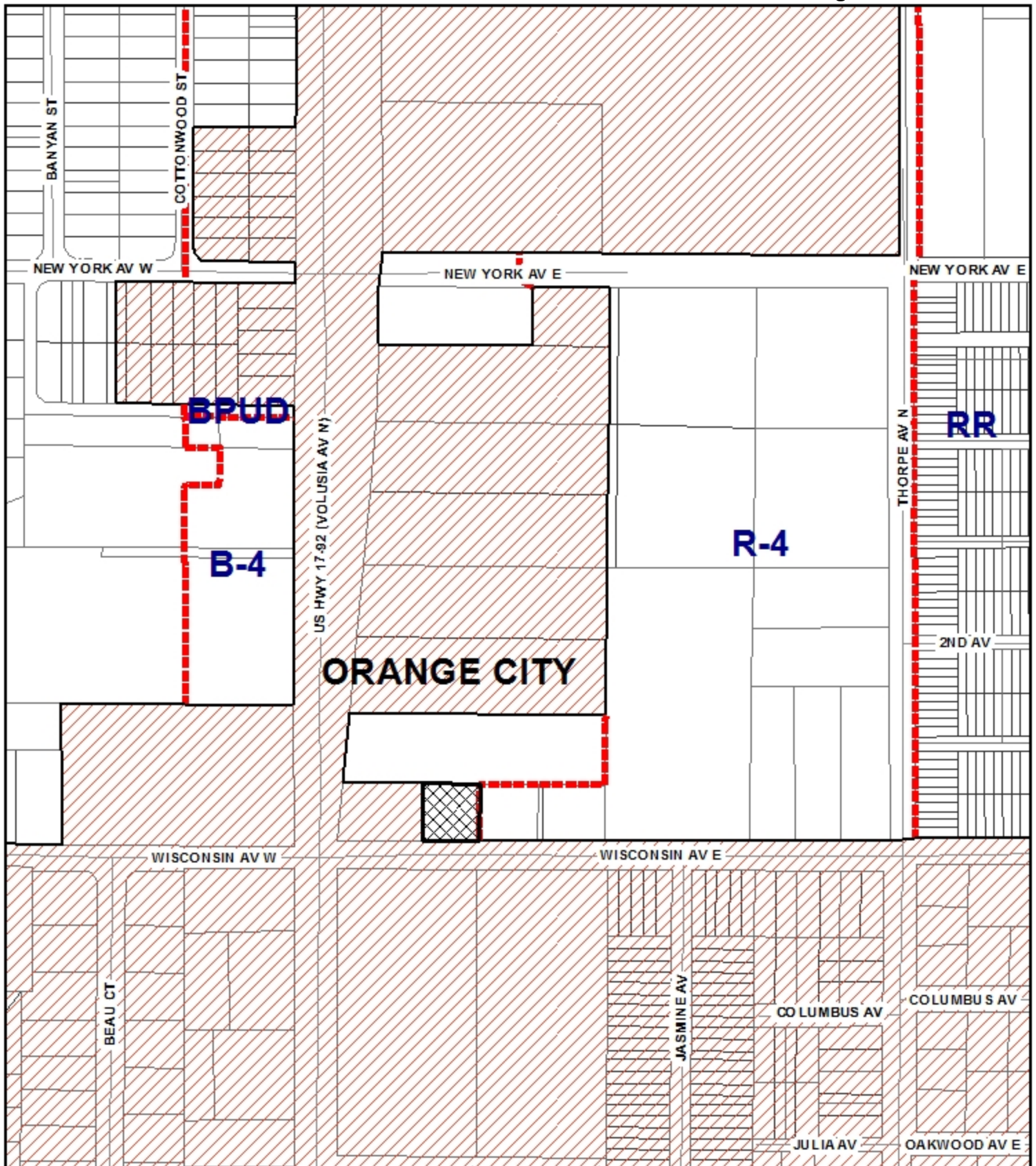
NRMA



**SPECIAL EXCEPTION  
CASE NUMBER**

**S-12-036**





## ZONING CLASSIFICATION

1"= 400'



REQUEST AREA



## SPECIAL EXCEPTION

CASE NUMBER


S-12-036



## AERIAL

IMAGE YEAR: 2010

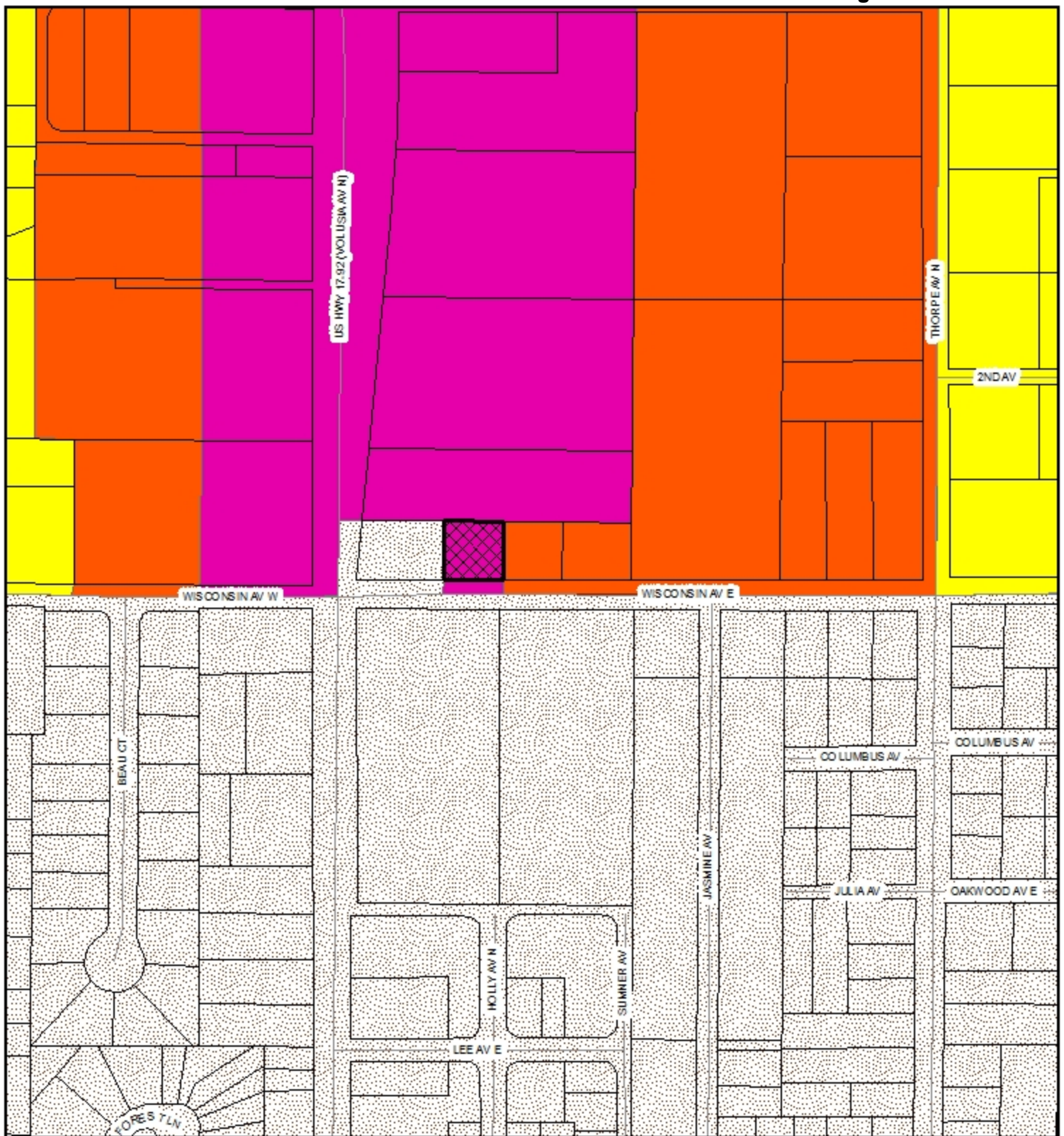
1"= 100'

 REQUEST AREA



**SPECIAL EXCEPTION  
CASE NUMBER**

**S-12-036**



# **FUTURE LAND USE DESIGNATION**

1" = 300'

# **SPECIAL EXCEPTION**

- COMMERCIAL
- URBAN LOW INTENSITY
- INCORPORATED
- URBAN MEDIUM INTENSITY

REQUEST AREA

**CASE NUMBER**  
S-12-036

