



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: August 11, 2015 - Planning and Land Development Regulation Commission (PLDRC)

CASE NO: V-15-047

SUBJECT: Variance to the side yard requirement for an accessory structure (floating dock) on Urban Single-Family Residential (R-4) zoned property.

LOCATION: 24 Lake Ruby Drive, DeLand

APPLICANT: F.A. (Alex) Ford, Jr., Esq.

OWNERS: Michael J. & Lisa L. Stearns

STAFF: William C. Gardner, Activity Project Manager

I. SUMMARY OF REQUEST

The applicant is requesting a variance to the minimum side yard requirement for a floating dock, to allow for the processing of an after-the-fact building permit. The property is approximately 0.83 acres and is zoned Urban Single-Family Residential (R-4).

The requested variance is:

A variance to section 72-278(5) for the south side yard from the required 15 feet to 1.0-foot for an existing accessory floating dock on Urban Single-Family Residential (R-4) zoned property.

Staff recommendation: Denial.

II. SITE INFORMATION

1. Location: The property is located on the west side on Lake Ruby Drive at the intersection with West Park Drive, and fronts on Lake Byron, east of the City of DeLand.
2. Parcel No(s): 7001-03-53-0080
3. Property Size: ±0.83 acres
4. Council District: 3
5. Zoning: Urban Single-Family Residential (R-4)
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-4	ULI	Single Family Residence
East:	R-4	ULI	Single Family Residence
South:	R-4	ULI	Single Family Residential
West:	R-4	Water	Lake Byron

10. Location Maps:



AERIAL MAP



ZONING MAP

III. BACKGROUND AND PREVIOUS ACTIONS

The subject parcel is located in the Daytona Park Estates subdivision (Lot 8, Block 53, Section C) that was platted in 1955, and developed with a single-family residence in July 1990. The parcel is irregularly shaped with a narrow property extension to Lake Byron to the west that provides approximately 50 feet in width along the lake frontage. The current owner purchased this property in September 1998.

The accessory structure, or wood dock, consists of a two-foot by 30-foot wood walkway that begins at the lake shoreline and then connects to a 37-foot long wood dock. The total length of the structure from the shoreline to the end of the wood dock is 67 feet. The total area of the wood dock is approximately 220 square feet. Per survey dated June 11, 2015, the dock is located within the southerly 15-foot side yard and its extension of the subject property line, and nearly 35 square feet of the dock is located within the water surface of the projected rear yard area of the adjacent property to the south (7001-03-53-0090). A section of the wood dock also extends 5.80 feet beyond the shared side lot line extension into the water onto the adjoining Parcel 7001-03-53-0090 to the south. The survey also indicates that the closest edge of the dock measures 18.22 feet from the adjacent Parcel 7001-03-53-0060 to the north. The owner did not apply for a building permit before constructing the dock. If a permit had been obtained, the owner would have been made aware of the minimum side yard requirement.

The wood dock is built as a floating dock that is secured to the lake bottom by four metal rods. The wooden walkway is affixed to the lake bottom, but it is not compliant with the applicable state building code requirements.

The applicant is proposing to relocate the floating dock to the requested side yard variance of 1.0 foot off the south property line. The existing dock footprint (ten feet by seven feet) will be modified to a width of six feet (six feet by seven feet) such that the new dock footprint will meet the required 15-foot side yard along the north property line. The four metal rods will be re-installed to prevent dock movement beyond the requested one-foot side yard along the south property line and within the 15-foot side yard along the north property line.

The owners were found in non-compliance (CEB-15-061) by the code enforcement board on May 20, 2015 with an order for compliance by June 15, 2015. The property remains in violation while the request of the variance is being processed.

IV. REVIEW CRITERIA AND ANALYSIS

The purpose for the variance is to allow for an after-the-fact building permit to be sought by the applicant for the floating dock. 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. With this variance case, a segment of the dock's wood walkway is setback at the shoreline a sufficient distance, but the extension of the dock into the water is angled such that it encroaches beyond the south side lot line by 5.80 feet.

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 unique conditions that exist to this parcel in that it is irregularly shaped and it has a narrow shoreline width for waterfront access that are comparable to the adjacent properties along Lake Byron. With approximately 50 feet in width at the waterfront yard to access the lake, and the required minimum side yards at 15 feet, the area that could be permitted for a dock is limited to 267 square feet with a maximum width of approximately 15 feet along the shoreline. Based on the owner's survey, an accessory structure could be built as a wedge-shaped dock into the water for a distance of 40 feet but would limit the buildable area as a functional dock. The narrowing shape of the parcel towards the waterfront yard; the required 15-foot side yards and limited land area width at the shoreline provides the physical conditions that are peculiar to the subject land. See Exhibit Developable Area For Dock Site Plan.

Staff finds that the variance application does meet this criterion.

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

The special conditions with the layout and irregular configuration of the parcel are not the result of actions of the owner. This section of Daytona Park Estates subdivision was platted in 1955 prior to the applicant's purchase of the developed property. However, the applicant is responsible for the placement and construction of the dock without a building permit or variance approval.

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 relocated to meet code (side yard) and would likely result with a minimal dock area sited partially in shallow water closer to the shoreline with limited access to the lake water surface. Since the dock will be modified with a smaller deck area, is designed to float, and is minimally secured to the lake bottom, it could be relocated. The terms of the ordinance would not exert an unnecessary hardship on the applicant.

Staff finds that the variance application 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.

The dock would not have been built at the current waterfront area location without the need of a variance had a building permit application been reviewed prior to construction. However, the requested one-foot variance is not the minimum side yard obtainable for the modified dock if re-positioned closer to the shoreline. Based on the submitted site plan by the applicant, the 37-foot dock is positioned near the shoreline indicating a one-foot side yard along the south property line and meeting the required 15-foot side yard along the north property line. Utilizing the applicant's survey, staff has determined that the re-positioned dock can attain a south side yard of approximately 9± feet. As shown on the applicant's site plan, the proposed side yards are incorrectly measured from the dock to the property lines. A revised site plan needs to be submitted that accurately depicts the required side yards from the floating dock at a reasonable minimum variance other than the requested one-foot.

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.

The general intent and purpose of this ordinance is to allow for the placement of a structure at the required minimum side yard. Although the north side yard requirement at 15 feet can be met, granting the one-foot variance along the south property line will not be in harmony with the zoning code considering the floating dock can be relocated with a variance at a greater than before acceptable side yard.

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

V. STAFF RECOMMENDATION

Staff finds that the application does not meet all five criteria to grant the requested variance. Therefore, staff recommends denial of a variance to section 72-278(5) for a south side yard from the required 15 feet to 1.0-foot for an accessory floating dock on Urban Single-Family Residential (R-4) zoned property.

Staff recommends a 30-day continuance in order for the applicant and owner to be able to update the survey and submit a revised to-scale site plan showing the correct location of the floating dock (modified) and revised application for the requested variance(s).

VI. ATTACHMENTS

- Written Petition
- Survey and Survey Detail Of Dock
- Variance Site Plan
- Developable Area For Dock Site Plan
- Reviewer Comments
- Site Photographs
- Map Exhibits

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.

CURRENT PLANNING
ACTIVITY

JUN 12 2015

RECEIVED

Sterns, Michael and Lisa

WRITTEN PETITION FOR A VARIANCE

Applicants seek a variance to Section 72-278 (5) of the Zoning Ordinance of Volusia County (the "Dock Ordinance"), in order to allow them to have a very modest dock on their lakefront property. The specific request is for a variance to the fifteen (15') feet setback in order to permit the dock to be within one (1) foot of the extension of the Applicants' southerly lot line into the water and within eleven (11) feet of the extension of the northerly lot line into the water.

The proposed walkway is four (4') feet wide. It will terminate in a ten (10') feet wide by seven (7') feet deep platform, as generally depicted on the attached sketch. It is presently impossible for Applicants to have a reasonably sized dock under the provisions of the Dock Ordinance as interpreted by County staff. That is because the angles of the upland lot lines extend into the water at severe angles and their lot's frontage on the lake is less than forty (40') feet at the water's edge. In fact, approximately ten (10) feet from the water's edge the extensions of the two lot lines come together to a point where no dock is physically possible, because the two 15' setbacks overlap. As interpreted by County staff, the Dock Ordinance will only allow a tiny, triangular shaped dock. (See attached sketch)

The requested variance is offset towards the setback from the southerly lot line's extension into the water for two primary reasons: First, the neighbor on the south side has expressly agreed with the request. (See attached letter of support) Second, the neighbors to the north might also want to build a dock some day. Given the angles and locations of those neighbors' lot lines, they will also have difficulty placing a reasonable dock on the lake. By offsetting this dock to the south, it will be easier for northerly neighbors to locate a dock on their property so that they can enjoy the lake, as Applicants seek to do.

The Applicants do not find themselves in this situation due to their own actions. The location and severe angles of the lot lines were established by the original sub-divider of the property in the platting of the Daytona Park Estates, Section No. C (copy attached). The subdivision plat was recorded in 1955. It is believed that the plat was recorded prior to the effective date of the Dock Ordinance. Given the Dock Ordinance, as currently interpreted, without the requested variance the Applicants will not be able to enjoy having a dock on their property reasonably equivalent to those enjoyed by other waterfront property owners on this lake and on other lakes and waterways throughout Volusia County.

The requested variances are tied to location of the lot line extensions, and the length of dock necessary to get it to the approximate end of the aquatic vegetation line. Applicants have requested the minimum variances necessary to get reasonable relief from the Dock Ordinance. A lesser variance would not get the dock past the line of aquatic vegetation, and would result in unnecessary disturbance of same.

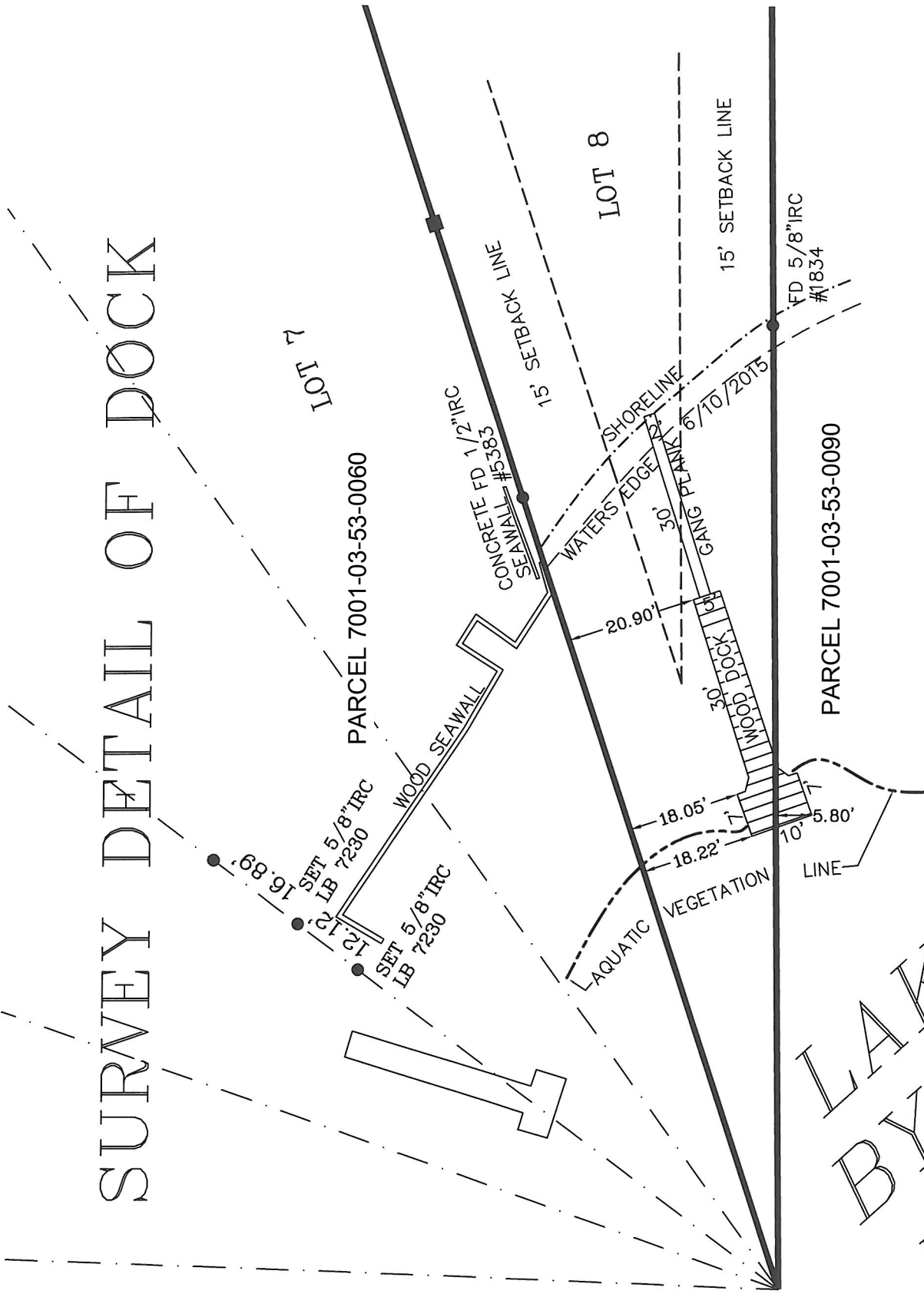
This request is consistent with the general intent and purpose of the Zoning Ordinance of Volusia County and the Volusia County Comprehensive Plan, and will not be injurious to the surrounding area because it is consistent with other docks in existing development patterns. Further, the proposed location of the variance is such that it will allow both of the adjoining property owners to have a reasonable dock on their lots, without encroachment of the proposed dock into the area where such future docks might be desirable.

Applicants specifically raise to the attention of the PLDRC that they seek to legitimize an existing condition. They have an existing "float dock" which is floating off the shoreline of their property. This merits some explanation because it is important for the PLDRC to understand

that Applicants did not intentionally violate County code. In or around 1999, Applicants constructed a "float dock", which they did not (and still do not) believe was a dock or other structure under the Volusia County Land Development Code. Subsequently, they replaced that "float dock" with a new one of the same size and configuration as requested in this application. That "float dock" was not, in the Applicants' opinion, subject to the setback requirements. It remained on the lake without objection until 2014 when new neighbors moved into the area and objected. After lengthy discussion among the Applicants, the neighbors and County staff, county staff decided that the "float dock" was subject to the Dock Ordinance. Applicants believe it is fair to say that County staff was not, itself, unanimously certain whether the "float dock" fell under the Dock Ordinance. Code enforcement proceedings were ultimately brought against Applicants. The Code Board determined that the float dock is subject to the setback requirements, and that it is in violation. Thus, while the Applicants are seeking to remedy an existing situation, they have not intentionally violated the Dock Ordinance.

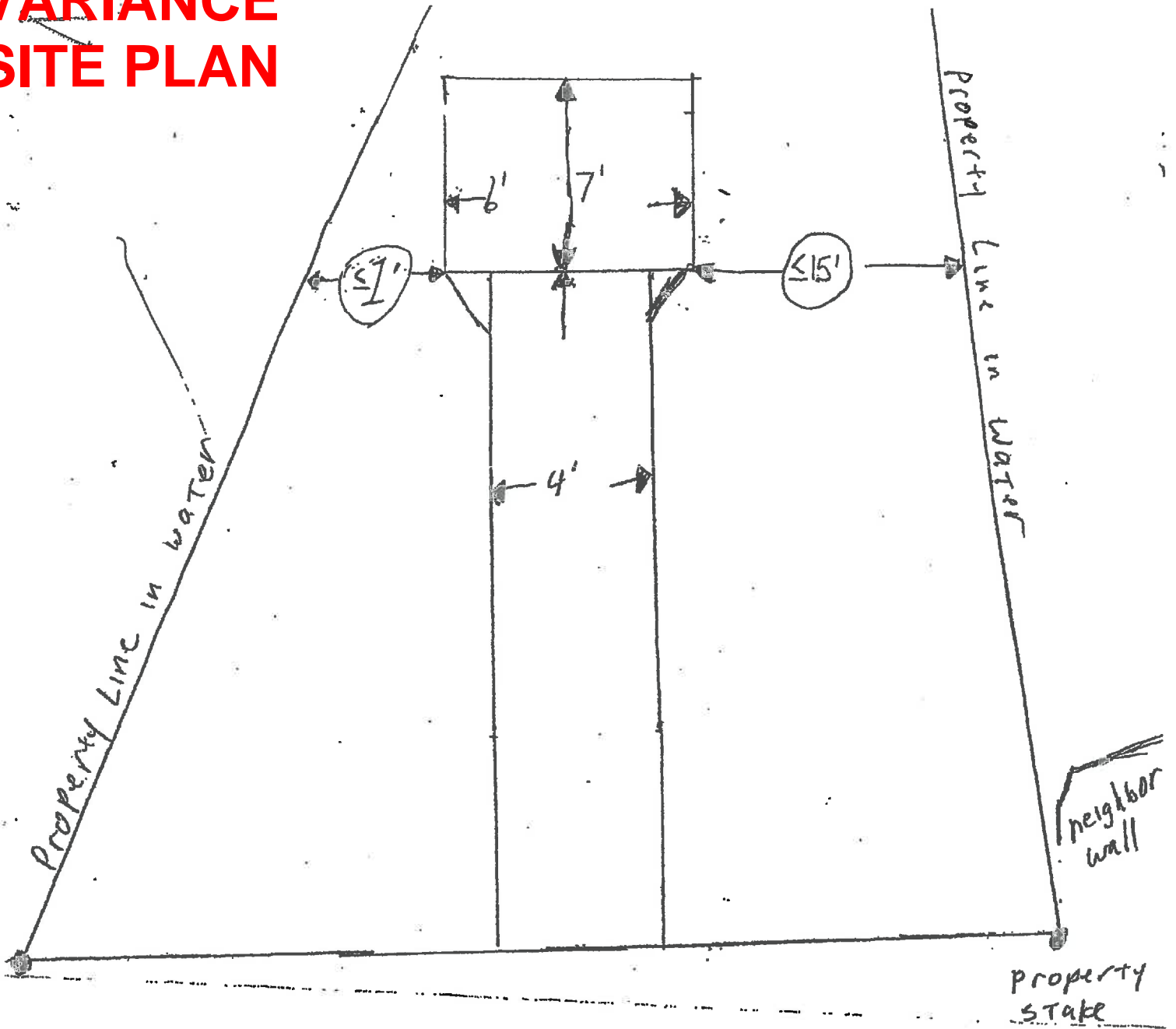
The Applicants plan to continue with the "float dock" style, but request that approval also allow a permanent dock affixed to the property, and not be limited to the "float dock" style.

SURVEY DETAIL OF DOCK



LAKE
BYRON
LAKE RUBY
PER PLAT

VARIANCE SITE PLAN

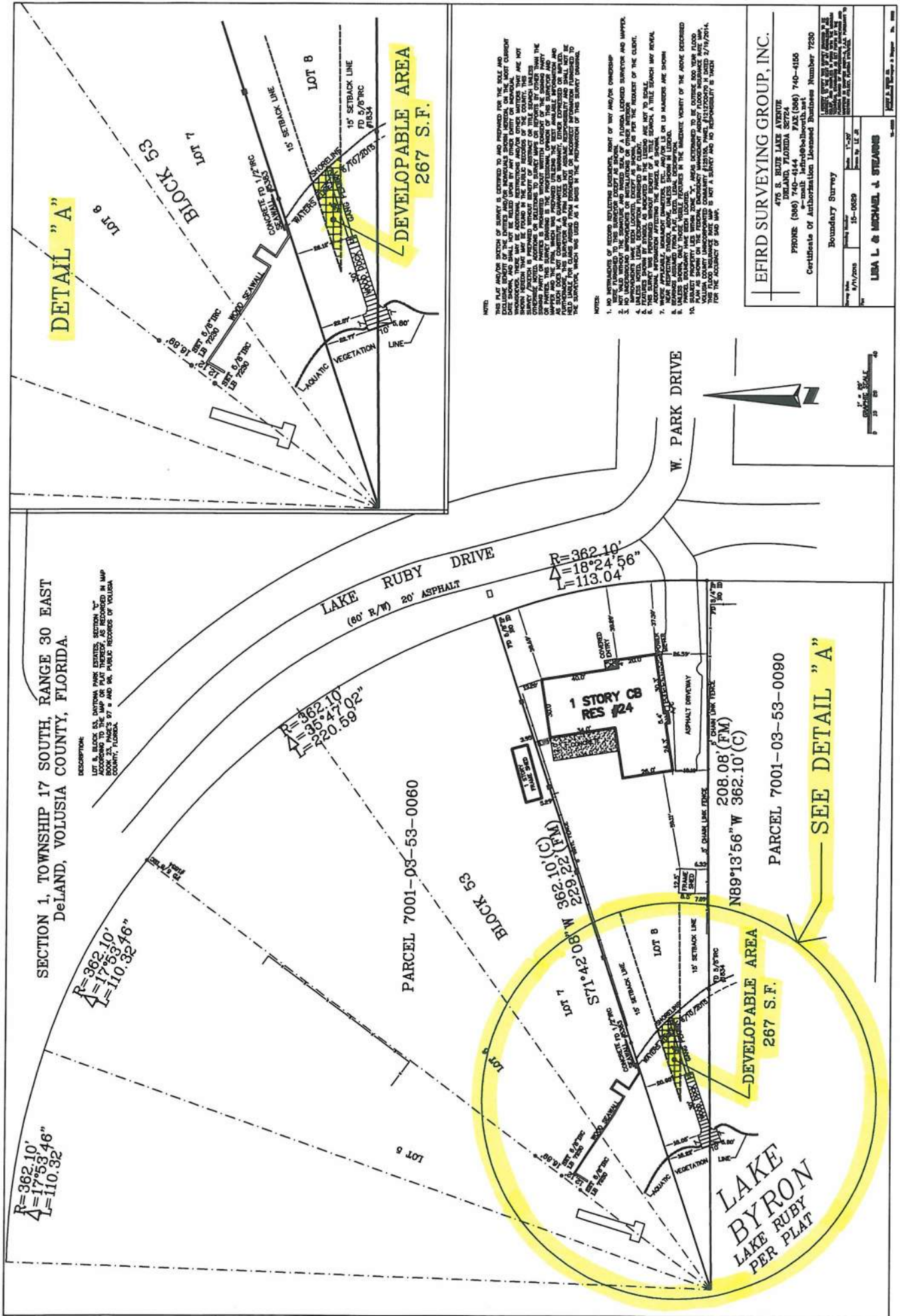


PROPOSED DOCK (Not to Scale)

NOTE: Dock currently is floating and not permanently connected to the shore. Applicant currently intends to maintain that status but application includes right to future conversion to permanent dock.

CURRENT PLANNING
ACTIVITY
JUL 24 2015
RECEIVED

DEVELOPABLE AREA FOR DOCK



SECTION 1, TOWNSHIP 17 SOUTH, RANGE 30 EAST
DeLAND, VOLUSIA COUNTY, FLORIDA.

DESCRIPTION:
LOT 6, BLOCK 53, DUNSTON PARK ESTATES, SECTION 17,
TOWNSHIP 17 SOUTH, RANGE 30 EAST, MAP
BOOK 23, PAGE 57, AND P.M. PUBLIC RECORDS OF VOLUSIA
COUNTY, FLORIDA.

DETAIL "A"

DEVELOPABLE AREA
267 S.F.

SEE DETAIL "A"

NOTE:
THIS SURVEY HAS BEEN CONDUCTED IN ACCORDANCE WITH THE FLORIDA SURVEYING AND MAPPING ACT AND THE RULES AND REGULATIONS OF THE BOARD OF SURVEYING AND MAPPING. THE SURVEYOR HAS EXERCISED DUE CARE AND SKILL IN THE CONDUCT OF THIS SURVEY AND HAS BEEN REASONABLY ASSURED OF THE ACCURACY OF THE RESULTS THEREOF. THE SURVEYOR'S LIABILITY IS LIMITED TO THE ACCURACY OF THE SURVEY DATA PROVIDED TO HIM BY THE CLIENT. THE SURVEYOR DOES NOT WARRANT THE ACCURACY OF ANY DATA PROVIDED TO HIM BY THE CLIENT. THE SURVEYOR'S LIABILITY IS LIMITED TO THE ACCURACY OF THE SURVEY DATA PROVIDED TO HIM BY THE CLIENT. THE SURVEYOR DOES NOT WARRANT THE ACCURACY OF ANY DATA PROVIDED TO HIM BY THE CLIENT.

- NOTES:
- NO INSTRUMENTS OF RECORD REFLECTING EXISTING RIGHT OF WAY ARE/ARE OVERLAP
 - NOT VALID WITHOUT THE SIGNATURE AND SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
 - NO INSTRUMENTS OF RECORD REFLECTING EXISTING RIGHT OF WAY ARE/ARE OVERLAP
 - ALL DISTANCES ARE IN FEET AND DECIMALS THEREOF.
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EFIRD SURVEYING GROUP, INC.
475 S. BLUE LAKE AVENUE
DELAND, FLORIDA 32724
PHONE: (888) 444-7400 FAX: (888) 740-4155
e-mail: info@efirdd.com
Certificate of Authorization Licensed Business Number 7230

Boundary Survey

LIBA L. & MICHAEL J. STEARNS

Inter-Office
Memorandum



TO: Bill Gardner, Activity Manager **DATE:** July 8, 2015

FROM: Brenda Borgiet, Environmental Specialist II

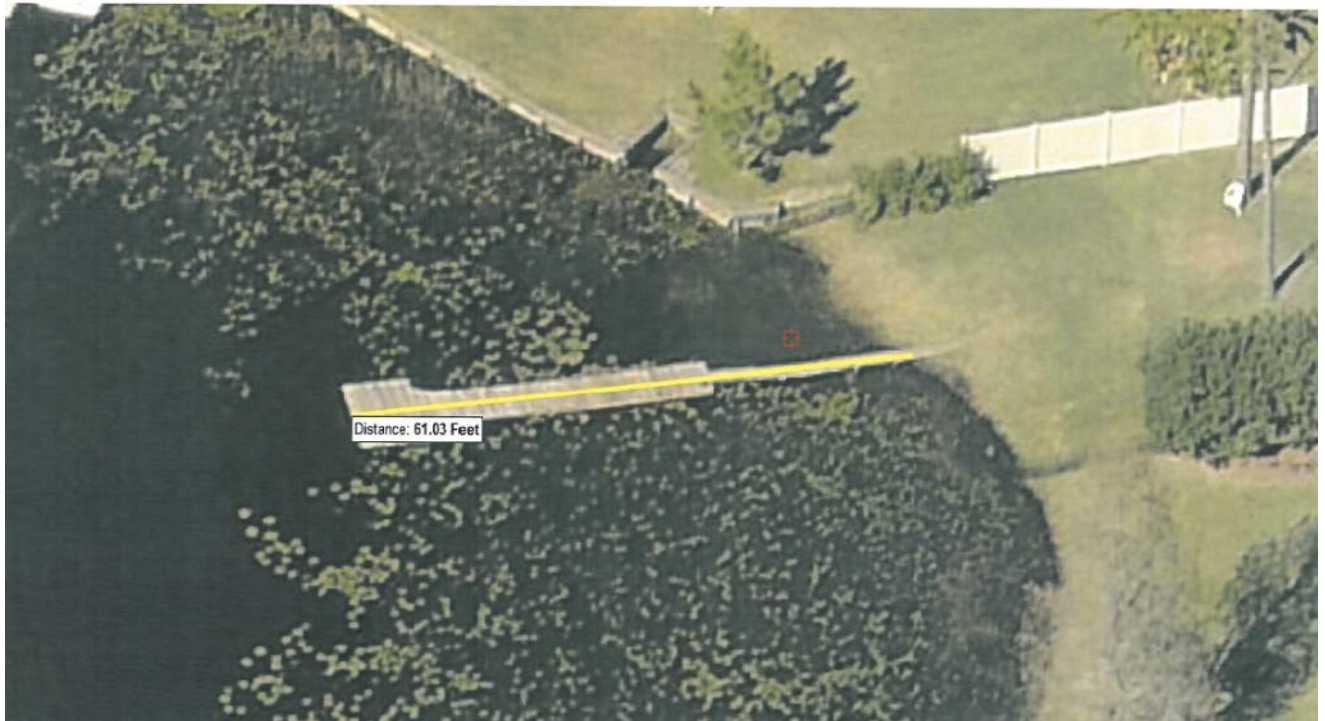
SUBJECT: Planning & Land Development Regulation Commission meeting for
Date: August 11, 2015
Parcel #: 7001-03-53-0080
Case #: V-15-047, Lisa and Michael Stearns, owners

Environmental Permitting (EP) has reviewed the variance application and conducted a site inspection for this project back on July 23, 2014. The parcel is an owner occupied developed property. The property lies along Lake Ruby and is subject to a twenty-five (25) foot wetland buffer.

The property consists of a single-family residence and a new dock which extends into Lake Ruby. The new dock was constructed without permits, and is a violation of the Volusia County Wetland Ordinance. A wetland alteration permit application (20140731028) has been submitted for the dock and is currently under zoning review.

EP has no objection to this variance request for dock setbacks. However, an issued wetland alteration permit must be obtained in order to resolve the wetland violation. The applicant will need to pay all associated wetland permit fees, including a late fee of \$390 plus wetland mitigation, prior to permit issuance. Mitigation fees will be determined by EP staff at the time of wetland permit review.

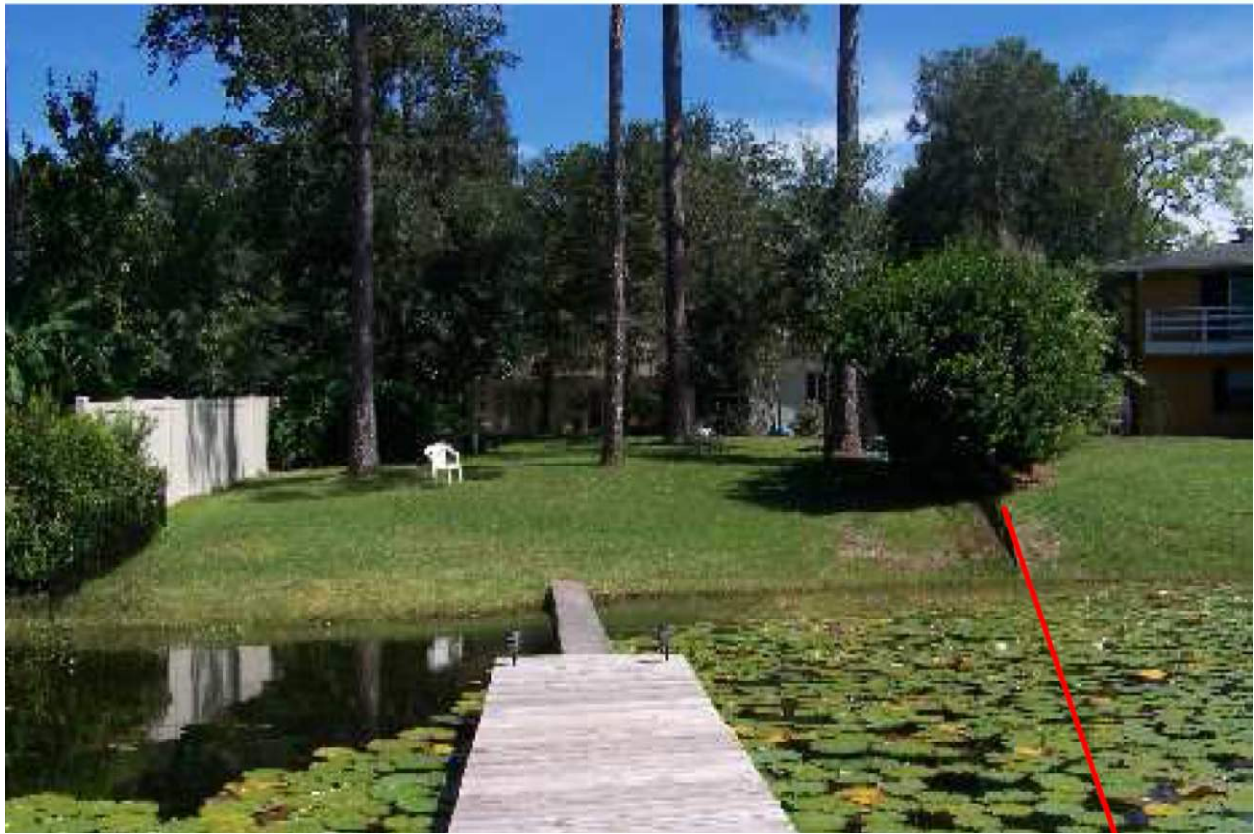
LOOKING NORTH



LOOKING NORTHWEST

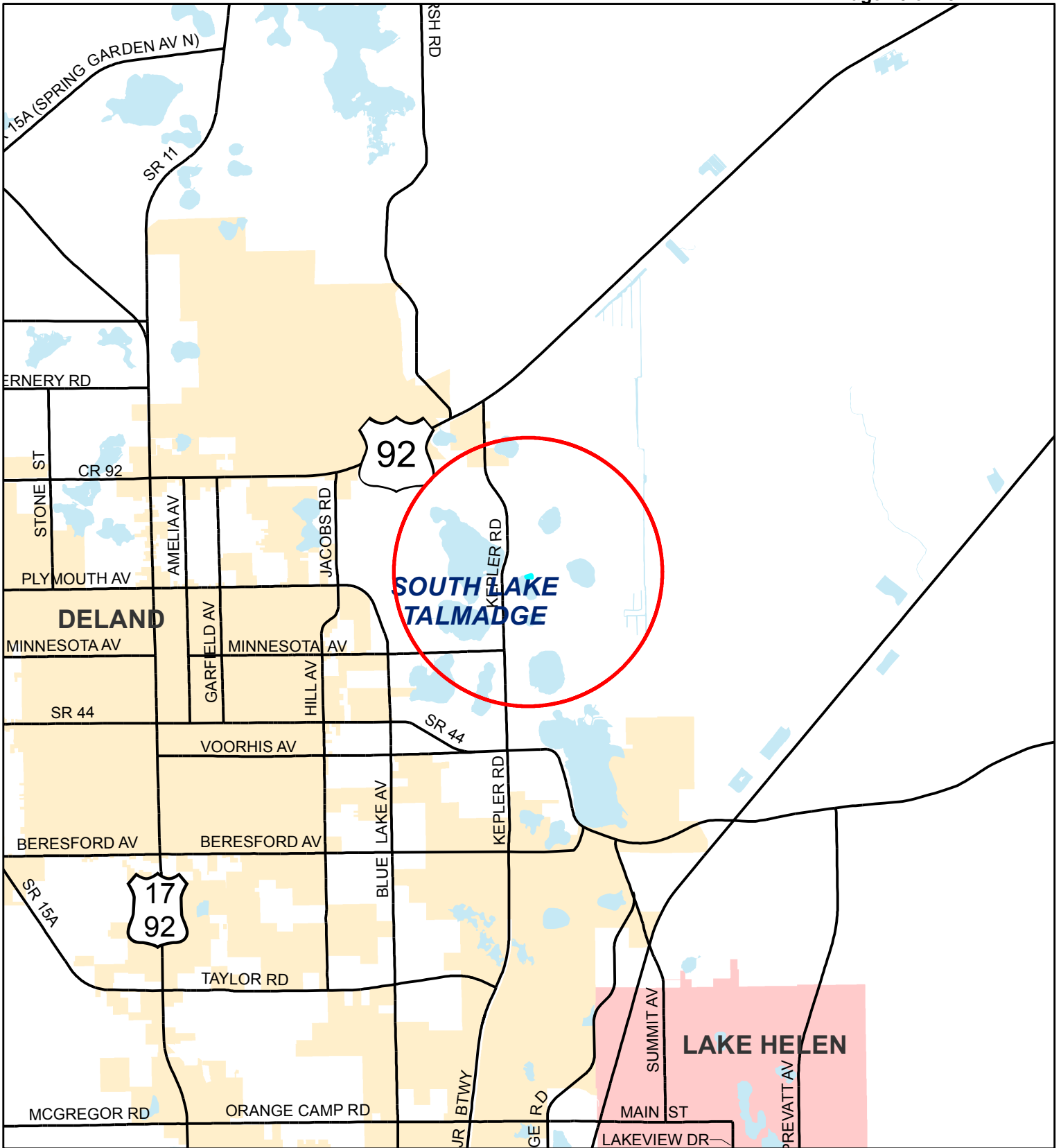


LOOKING EAST TOWARDS SHORELINE




LOOKING SOUTHWEST





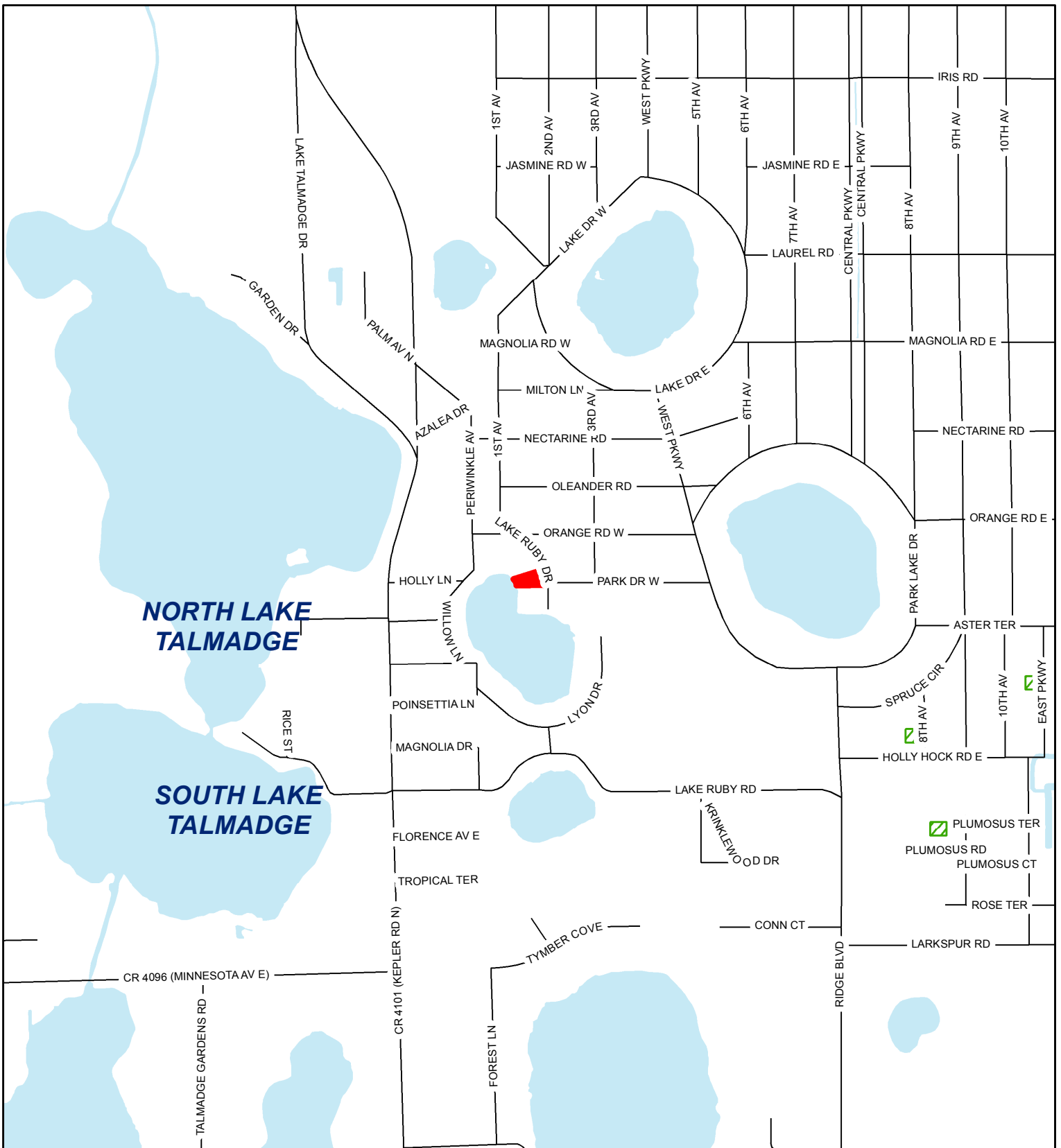
REQUEST AREA LOCATION

1" = 1 MILE

 REQUEST AREA



**VARIANCE
CASE NUMBER
V-15-047**



ECO/NRMA

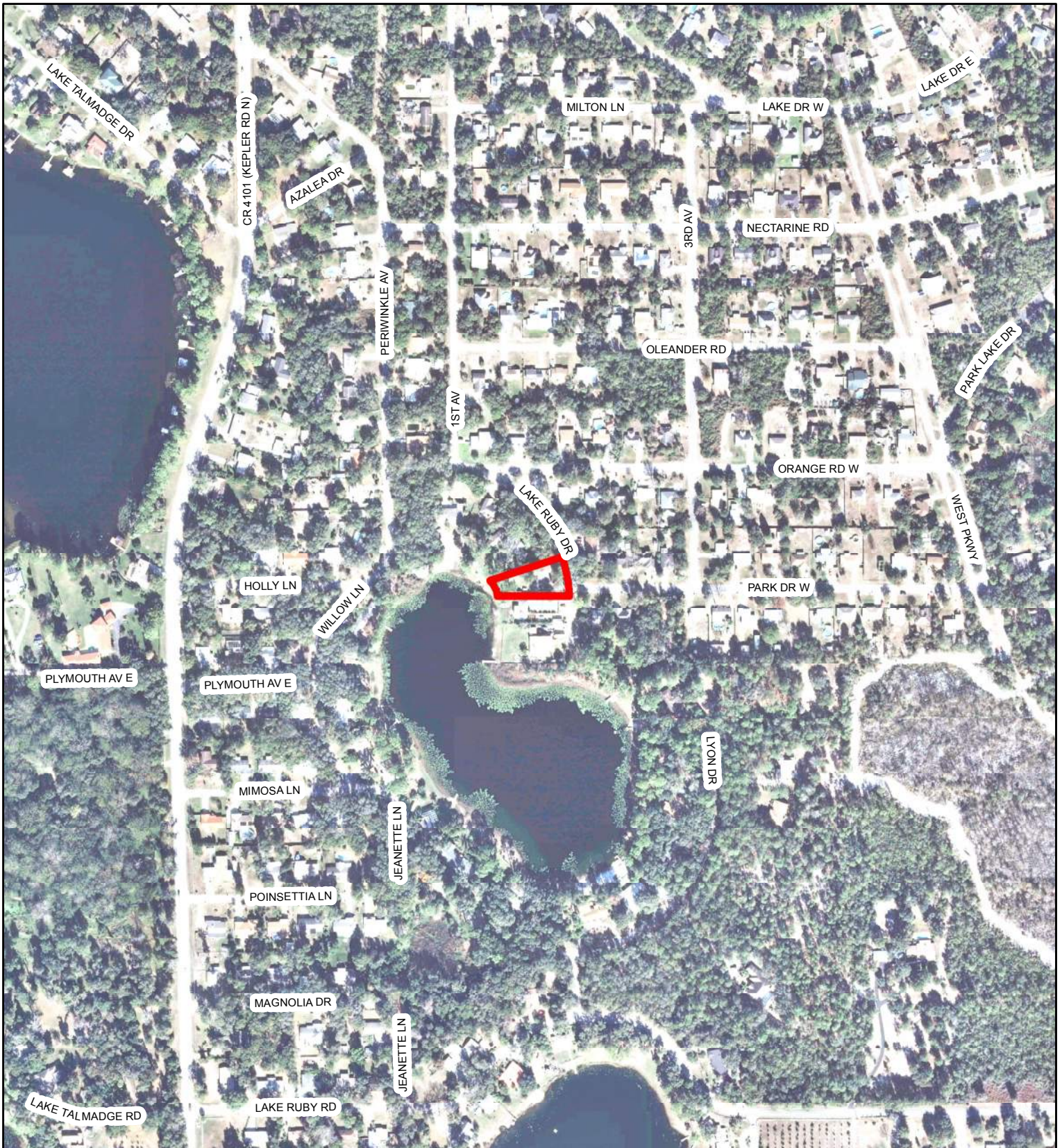
- REQUEST AREA
- ECO
- NRMA

1 inch = 1,000 feet




**VARIANCE
CASE NUMBER**

V-15-047



AERIAL 2012

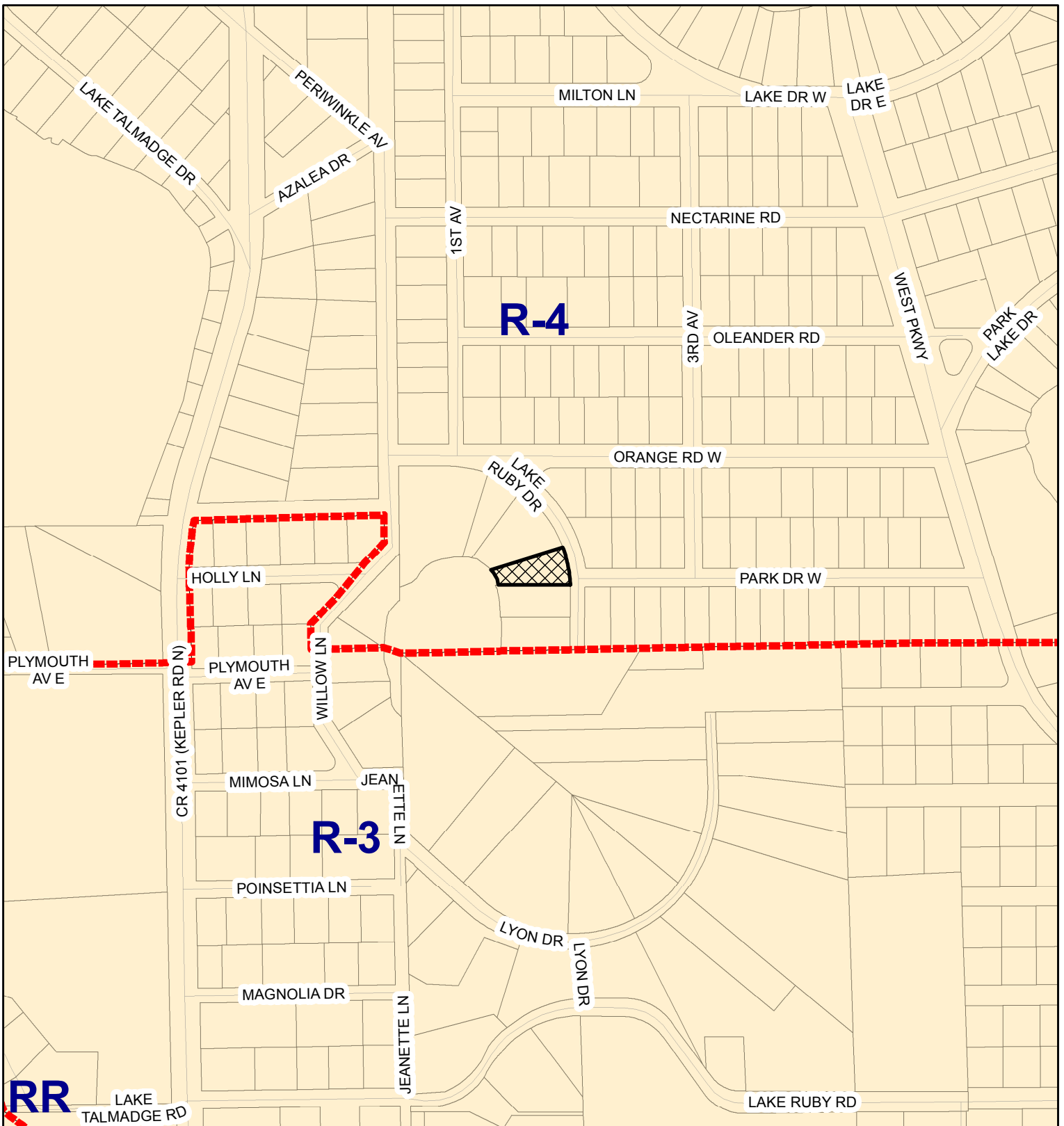
1 inch = 400 feet

 REQUEST AREA



**VARIANCE
CASE NUMBER**

V-15-047



ZONING CLASSIFICATION

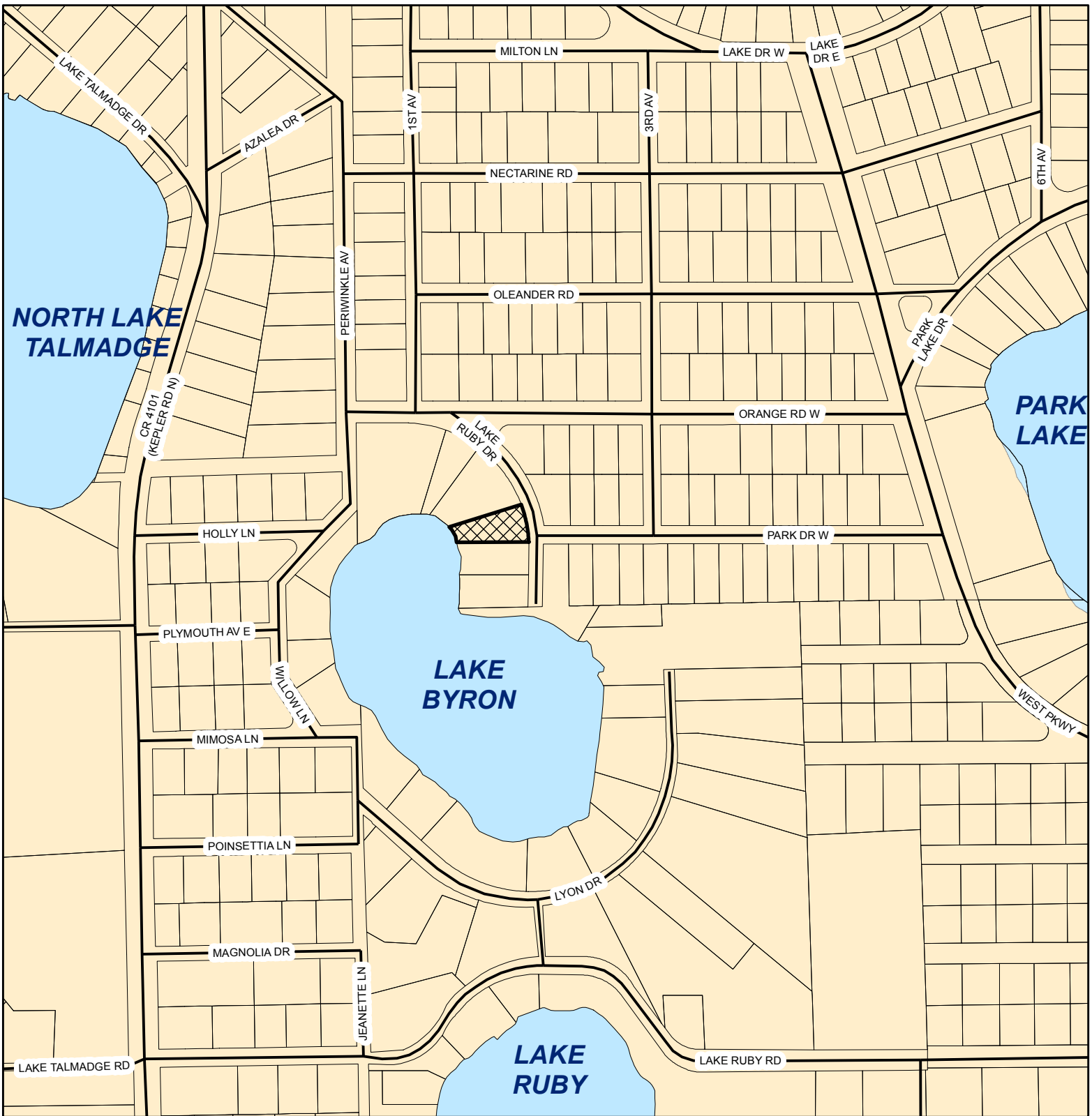
1 inch = 400 feet



VARIANCE CASE NUMBER

RESIDENTIAL
 REQUEST AREA

V-15-047



FUTURE LAND USE DESIGNATION

1 inch = 400 feet

VARIANCE CASE NUMBER

- URBAN LOW INTENSITY
- WATER
- REQUEST AREA



V-15-047