



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:** November 12, 2013 - Planning and Land Development Regulation Commission (PLDRC)

**CASE NO:** V-14-004

**SUBJECT:** Variance to allow the cumulative square foot area of all accessory structures to exceed the maximum allowed; and variances to the minimum yard requirements for an accessory structure on Urban Single-Family Residential (R-4) zoned property.

**LOCATION:** 5087 Upson Avenue, DeLeon Springs

**APPLICANT:** Delbert and Carolyn Fox, owners

**OWNERS:** Delbert and Carolyn Fox

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

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## I. SUMMARY OF REQUEST

The applicants are requesting variances to allow for the permitting of an existing accessory structure, which will resolve code enforcement issues. The accessory structure is assumed to have been constructed as a garage apartment in 1977, at the same time the single-family residence was built. The garage apartment was converted to a guesthouse in 2006. These and other renovations never received building permits, and the applicants are now trying to receive building permit approval to resolve code enforcement violations.

The requested variances are:

Variance 1: A variance to section 72-277(d) to allow the cumulative area of all accessory structures from the maximum allowed 1,076.6 square feet to 1,171.72 square feet; and,

Variance 2: A variance to the rear yard requirement from 20 feet to 11.3 feet; and

Variance 3: A variance to the side yard requirement from 8 feet to 4.8 feet for an accessory structure on Urban Single-Family Residential (R-4) zoned property.

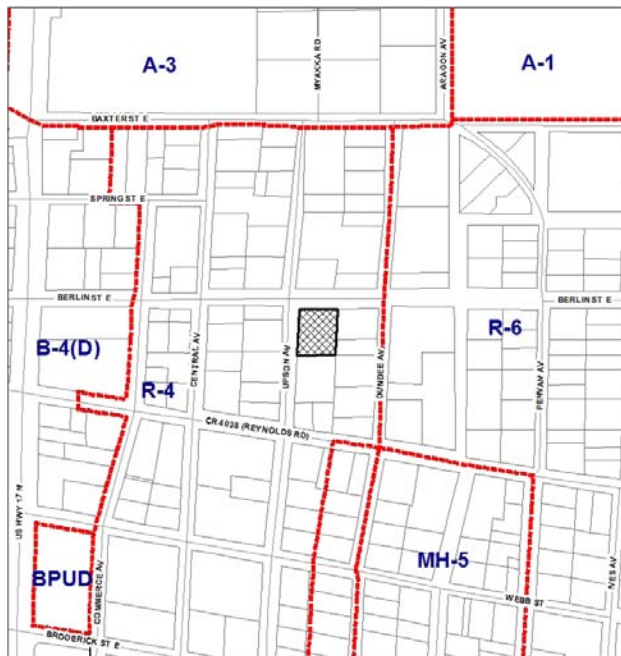
*Staff recommendation:* Approval, subject to the staff recommended conditions.

## II. SITE INFORMATION

1. Location: The property is located on the southeast corner of Upson Avenue and Berlin Street, in the DeLeon Springs area.
2. Parcel No(s): 6943-01-12-0060
3. Property Size: ±27,360 square feet
4. Council District: 1
5. Zoning: Urban Single-Family Residential (R-4)
6. Future Land Use: Rural Community (RCOMM) -DeLeon Springs
7. ECO Overlay: No
8. NRMA Overlay: No
9. Adjacent Zoning and Land Use:

DIRECTION	ZONING	FUTURE LAND USE	CURRENT USE
North:	R-4	RCOMM	Two-Family Residential
East:	R-4	RCOMM	Single-Family Residential
South:	R-4	RCOMM	Single-Family Residential
West:	R-4	RCOMM	Single-Family Residential

### 10. Location Maps:



Zoning Map



Aerial Map

### III. BACKGROUND AND PREVIOUS ACTIONS

The subject parcel consists of three lots from the Beardsley's DeLeon Springs plat, recorded in 1886, and measures approximately 180 feet wide by 152 feet deep. According to the Property Appraiser's information, the parcel was developed with a single-family residence in 1977. There is no history of a building permit for the residence. However, the county did not have a reliable system of documenting building permits until 1980. The current owners purchased the property in 1978. According to the survey submitted by the applicant, the size of the residence is 2,153.2 square feet.

There are three accessory structures on the property, a 65.6-square-foot shed, a 872.48-square-foot one-story frame building, and a 233.64-square-foot shed that is located in front of the one-story frame building. The subject of this variance is the one-story frame building, which was according to the statements submitted by the applicant, originally built as a garage apartment. There is no record of the structure existing in the Property Appraiser's office, and there is no building permit history for this structure.



The zoning code limits the cumulative size of accessory structures on lots zoned with an urban residential classification that are less than one acre to 50% of the size of the principal structure. Altogether, there is a total of 1,171.72 square feet of accessory structures on the property, which is 95.12 square feet more than what is allowed per code (or 54% of the size of the principal structure). Approval of variance 1 will resolve this issue.

The one-story frame structure does not meet both the required rear and side yards of the R-4 zoning classification. The structure is setback 11.3 feet from the eastern rear yard, which is required by the zoning code to have a minimum yard of 20 feet (variance 2), and is setback 4.8 feet from the southern side yard, which is required to have a minimum yard of 8 feet, twenty feet combined (variance 3). In 1977, the required side and rear yard setbacks for garage apartments was 5 feet. The zoning code was changed in 1980 to require that garage apartments meet the same setbacks as a principal structure.

According to statements made by the applicant, the garage portion of the structure was enclosed and converted to habitable space without building permits in 2006. Enclosing the garage changes the use of the structure from a garage apartment to a guesthouse. However, according to the definition of a guesthouse in the zoning code, a guesthouse cannot have a kitchen but may have a wet bar. The applicant has been advised that in order to be an allowed use, the structure's kitchen facilities will need to be downsized to fit the definition of a wet bar.

Shortly after 2006, the 233.64-square-foot shed was erected in front of the guesthouse, blocking what used to be the vehicular access to the garage apartment. That shed was also constructed without a building permit.

In 2012, county code compliance staff received a complaint that there were two principal residences on this parcel. On June 19, 2013, the Code Enforcement Board ordered the owners to bring the structure into compliance with the zoning code and the Florida Building Code. Approval of this variance will allow the applicants to submit building permits for the structure, and to subsequently receive a certificate of occupancy, which will resolve the outstanding code enforcement issues.

#### **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 by the commission. The 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.***

Variance 1: There are special circumstances in that the accessory structures are already located on the property. It is unknown when the 65.6-square-foot shed was constructed, and according to the applicant, the one-story frame structure was constructed in 1977 and the 233.64-square-foot shed was installed in 2006.

Variances 2 and 3: There are special circumstances in that the structure has been in existence in its current location for 36 years. Although the structure has changed uses from a garage apartment to a guesthouse, the encroachment into the setbacks has remained the same.

Staff finds that the requested variances meet this criterion.

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

Variance 1: The 2006 installation of the 233.64-square-foot shed by the applicant placed the cumulative size for accessory structures over the maximum allowed. This structure was not permitted through Volusia County Building and Zoning. Staff is recommending that the shed be permitted and pass inspections in order to meet this criterion.

Variances 2 and 3: According to statements submitted by the applicants, the structure was built prior to their purchase of the property in 1978. Therefore, the special circumstances listed in paragraph i, above, is not the result of the applicant's actions.

Staff finds that the requested variances 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 that the accessory structures be removed and rebuilt to meet the requirements of the zoning code. This would place an undue hardship upon the applicant.

Staff finds that the requested variances 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.***

These variances are requested to resolve issues of nonconformity with an existing accessory structure. The applicant is not requesting to enlarge or expand the accessory structures any more than what is already in place. As long as these variances are used to make the structures conforming, and not to increase the size of the nonconformity, then the variance requests meet this criterion. Therefore, staff is suggesting a condition that the variances are only used for the structures as depicted on the variance site plan, and that no further expansions to the buildings can be provided for without additional variance approval, building permits and inspections.

Staff finds that the requested variances 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: The accessory structures on the property have been in place since 1977 and 2006. The allowance of 95 square feet of additional accessory structures is not anticipated to cause any injury to surrounding area.

Variances 2 and 3: The structure in question has reportedly been in existence since 1977. Approval of these variances will not increase the encroachment of the structure into the required yards any more than what is already in place. However, since the garage apartment has had several renovations without the benefit of building permits and their associated inspections, it is possible that the structure poses a safety hazard. Staff recommends that the structure obtain all applicable building permits and inspections.

In order to comply with the zoning code, the structure must be maintained as a guesthouse and cannot be converted into a dwelling without a change in zoning, or a special exception approval for a garage apartment. Staff is recommending that the structure be maintained as a guesthouse according to the definition as found in the zoning code.

Staff finds that the requested variance can meet this criterion with the staff recommended conditions.

## **V. STAFF RECOMMENDATION**

Staff finds that the requested variances can meet all five criteria with conditions. Therefore, staff is recommending approval subject to the following conditions:

1. The variance is limited to the existing structures as depicted on the variance site plan, which is a modified copy of the boundary survey dated October 10, 2012, prepared by Smith Drafting & Surveying, Inc. No accessory structure shall be enlarged, increased, or extended further to encroach or occupy any greater area of the property without approval of a separate variance, and/or building permits and inspections.
2. The property owners shall obtain all after-the-fact building permits and inspections for the frame guesthouse and the shed in front of the guesthouse within 90 days after the date of variance rendition, unless the Zoning Enforcement Official grants an extension.
3. The accessory structure shall be maintained as a guesthouse in compliance with the floor plan submitted with this variance request dated October 10, 2012, prepared by Superior Drafting & Engineering, Inc., and in accordance with the definition of a guesthouse per the zoning code. Specifically, the kitchen currently found in the structure shall be renovated and reduced to a wet bar as depicted in the submitted floor plan, and shall meet the definition of a wet bar according to the zoning code.
4. The property owner shall combine Lots 6, 7, and 8 of Block 12, Beardsley's DeLeon Springs plat, into one unified building site by submission and completion of a subdivision exemption application through the land development office within 90 days of variance rendition.

## **VI. ATTACHMENTS**

- Variance Site Plan
- Written petition
- Floor Plan
- Letter of Support
- Review Comments
- Site Photos
- Maps

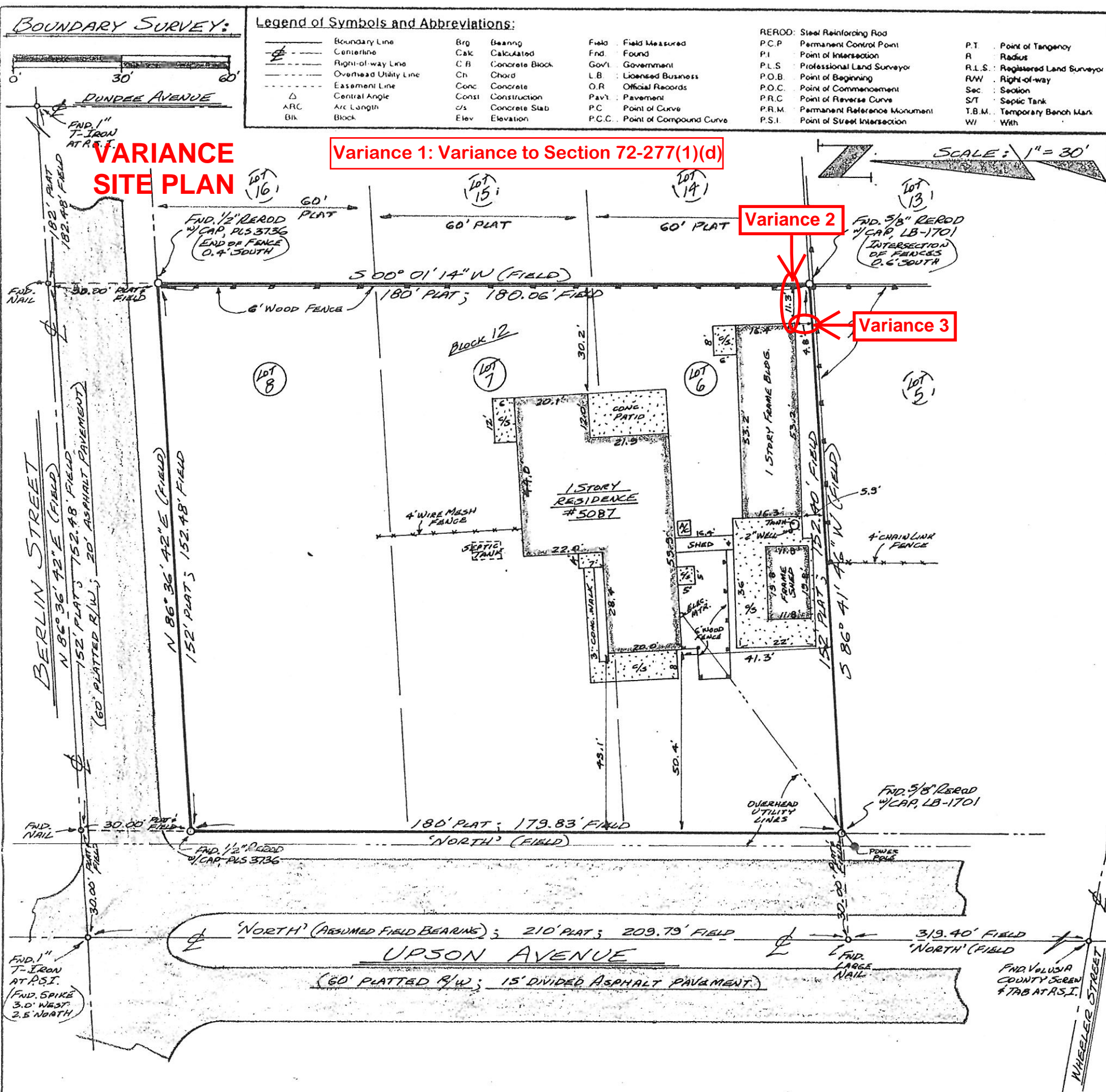
## **VII. AUTHORITY AND PROCEDURE**

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.





DESCRIPTION: (Per O.R. Book 6271, Page 1671; Volusia County, Florida)

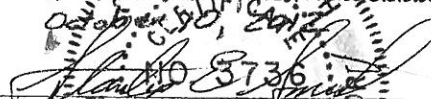
Lots 6, 7 and 8, Block 12, BEARDSLEY'S DELEON SPRINGS, according to the plat thereof as recorded in Map Book 1, Page 37, of the Public Records of Volusia County, Florida.

NOTES :

- 1) Property Address: 5087 Upson Avenue  
DeLeon Springs, Florida 32130
- 2) Volusia County Parcel Number:  
6943 - 01 - 12 - 0060.
- 3) Residence attached to Well, located in Right-Side yard,  
(on concrete slab), as shown.
- 4) Residence equipped with Septic Tank, located in  
Left-Side Yard, as shown. (Location per Client).

FLOOD CERTIFICATION:

According to the Federal Emergency Management Agency's 'Flood Insurance Rate Map', Community Panel Number 125155-0455-G, Effective Apr. 15, 2002, the property described and depicted hereon lies in Zone 'X' ("Areas determined to be outside 500-year floodplain."), and does not lie within any 'Special Flood Hazard Area'.

CERTIFIED TO		Delbert Fox and Carolyn Fox	I hereby certify that this map depicts a survey performed under my supervision, and is correct to the best of my knowledge and belief; and that this survey meets the minimum technical standards set forth by the Florida Board of Professional Land Surveyors, in Chapter 61G17-6, Florida Administrative Code, pursuant to Section 72.027, Florida Statutes.  
<b>SMITH DRAFTING &amp; SURVEYING, INC.</b> 157 MAGNOLIA WAY DELAND, FL 32724 (386) 734-7047		DELTONA, FL (386) 789-2855	
DRAWN BY	S.E. Smith	REVISIONS:	
CREW CHIEF	S.E. Smith		
SCALE	1" = 30'		
DATE	October 10, 2012		
WO #	10 - 2174 - 12		

**NOT VALID UNLESS SEAL IS EMBOSSED**

Note. No instruments of record reflecting easements, limitations, ownerships, reservations, restrictions and/or right-of-ways, if any, have been provided to this surveyor, except as shown. No underground installations or utilities have been located, except as shown.

BEARDSLEY'S DELEON SPRINGS (Bk. 12)



**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?

STRUCTURE BUILT BY PREVIOUS OWNER / PREVIOUS TO OUR  
PURCHASE. STRUCTURE HAD LIVING QUARTERS FROM  
DAY IT WAS BUILT / 1977-78 // VOLUSIA COUNTY TAX ASSESSER  
AND APPRAISERS DID NOT ADD IT TO TAX ROLL UNTILL  
1980 / THEY NOTED IT AS SHED (36 YEAR AGO)  
(COUNTY RESPONSIBLE)

- 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?

WE HAVE VIEWED OTHER PROPERTIES WITH SAME SET UP,  
WITH SAME BASIC LAND USE IN OUR AREA AND  
CLASSIFICATION R-4 (ZONING ALLOWS QUEST HOUSE OR  
GARAGE APT. IN R-4 ZONING WHEN THIS BUILDING WAS  
BUILT. WE HAVE A LARGE FAMILY WITH GRAND CHILDREN  
& PARENTS WHO WANT TO VISIT US.

- 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:

STRUCTURE IS AT SAFE DISTANCE TO BE SECURE  
AT NIGHT OR FOR ANY EMERGENCY IF NEED BE.  
LOCATION OF STRUCTURE LEAVES ENOUGH ROOM FOR  
PARKING, WITHOUT HAVING TO PARK ON STREETS OR  
COUNTY WRIGHT-A-WAYS, BY VISITORS, ETC.  
STRUCTURE IS WITH IN 1,000 (ONE THOUSAND FT.) OF FIRE STATION  
NEIGHBORS HAVE NO PROBLEM OF WERE #41  
THIS STRUCTURE IS LOCATED. I CAN SUPPLY AFFIDAVIT  
TO THAT FACT.

Thank you Robert Fox

- 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 see section "C"

and

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

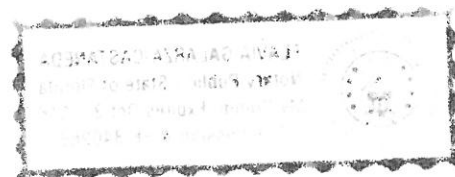
IT WILL NOT INTERFERE WITH NEIGHBORING PROPERTY  
OR BUILDING, NO WATER RUN OFF TO ANY OTHER  
PROPERTY. NO OVER HANG OF OTHER NEIGHBORING  
PEOPLES PROPERTY, NOR HAVING TO ~~HAVE~~ ACCESS FROM  
OTHER PEOPLES PROPERTY.

*DeeLut Fox*  
 Applicant's Signature

*07-25-2013*  
 Date

*Casaly Fox*  
 Applicant's Signature

*07-25-13*  
 Date







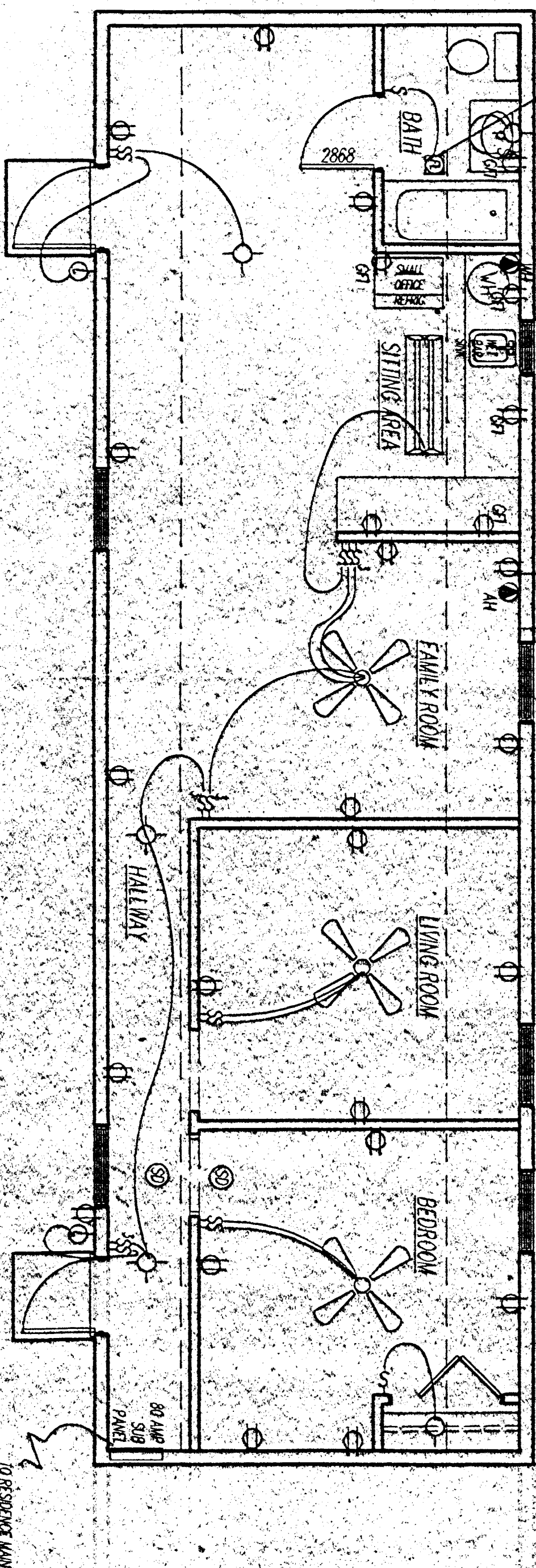


SYMBOLS & LEGEND

- ⦿ = 120 VOLT RECEPTACLE
- GR ⦿ = 120 VOLT/ 15 AMP GFCI RECEPTACLE
- R ⦿ = 240 VOLT OUTLET - RANGE
- ⦿ = 240 VOLT OUTLET
- ⦿<sup>WP</sup> = 120 VOLT WEATHER PROOF RECEPTACLE
- 120 ⦿ = 120 VOLT EQUIPMENT CONNECTION -SPECIAL
- OW ⦿ = 120 VOLT EQUIPMENT CONNECTION -DISHWASHER
- 240 ⦿ = 240 VOLT EQUIPMENT CONNECTION -SPECIAL
- AH ⦿ = 240 VOLT EQUIPMENT CONNECTION -AIR HANDLER/ CONDENSER
- WH ⦿ = 240 VOLT EQUIPMENT CONNECTION -WATER HEATER
- 0 ⦿ = 240 VOLT EQUIPMENT CONNECTION -DRYER
- = FLOOR OUTLET
- ⦿<sup>3</sup> = THREE WAY SWITCH
- S = SINGLE POLE SWITCH
- ✂ = FAN & LIFE
- ⦿ = OUTDOOR LIGHT
- ⦿<sup>4</sup> = 4" RECESSED CAN LIGHT
- ⦿<sup>6</sup> = 6" RECESSED CAN LIGHT
- ⦿ = EXHAUST FAN & LIGHT
- ⦿ = EXHAUST FAN
- ▮ = DOUBLE 4" FLUORESCENT
- ▮ = SINGLE 4" FLUORESCENT
- ▮ = SINGLE 3" FLUORESCENT
- ⦿ = WALL MOUNT FIXTURE
- ⦿ = CEILING FIXTURE
- ⦿<sup>TV</sup> = T.V. JACK
- ⦿<sup>PH</sup> = PHONE JACK
- ⦿ = FLOOD LIGHT
- ⦿ = SMOKE DETECTOR

NOTE:

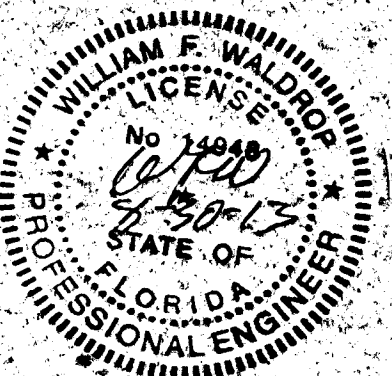
ELECTRICAL SERVICE TO BE DETERMINED BY A LICENSED FLORIDA ELECTRICIAN. PANEL LOCATION TO BE DETERMINED BY BUILDER & ELECTRICIAN. ALL ELECTRICAL WORK TO MEET 2008 NATIONAL ELECTRICAL CODE. ALL ELECTRICAL RECEPTACLES IN BATHROOMS, GARAGE & WITHIN 6 FEET OF KITCHEN SINK(S) TO BE PROTECTED BY GROUND FAULT CIRCUIT (ONE DIRECT-WIRED GFCI RECEPTACLE TO BE PLACED IN EACH PROTECTED CIRCUIT.) SMOKE AND CARBON MONOXIDE DETECTORS TO COMPLY WITH SECTION RJ13 OF THE FBC. SMOKE AND CARBON MONOXIDE DETECTORS SHALL BE 110V UNITS WITH BATTERY BACKUP PER SECTION RJ13.2 FBC. SMOKE AND CARBON MONOXIDE DETECTORS SHALL BE INTERCONNECTED AS PER SECTION RJ13.1 FBC



ELECTRICAL PLAN

SCALE: 1/4" = 1'-0"

AS-BUILT



\* THESE PLANS ARE DESIGNED IN ACCORDANCE WITH THE FLORIDA BUILDING CODE, 2010 RESIDENTIAL AND ARE DESIGNED TO WITHSTAND 150 MPH WIND. RELOCATE AND RESET THE VEC./PSS. WIND PRESSURES LISTED IN THE BUILDING DESIGN CRITERIA TABLE ON THIS PLAN. ACTING IN ANY DIRECTION AND TO 4.0 FT. NORMAL TO THE SURFACES CONSIDERED.

PAGE  
E-1R

PLANS FOR: DALE FOX

5087 UPSON, DELEON SPRINGS FLORIDA 32130

REVISED: 10/12/2012, 07/29/2013

SCALE: VARIES

NO. 1012-2542

DRAWN BY: T. OLNSTEAD



SUPERIOR DRAFTING  
& ENGINEERING INC.

1700 PATTERSON AVE., DELAND FLORIDA 32724

www.superiordraftingengineering.com/ email- tosuperiordrafting6@gmail.com

WILLIAM F. WALDROP NO. #14948  
205 ALEXANDER WDS DR  
DEBARY, FL 32713

PHONE #386-985-3805  
#407-406-1492

FAX #386-985-3805





September 17, 2013

To Whom It May Concern,

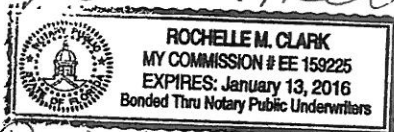
Over 10 years ago, we purchased the property located at 5065 Upson Avenue, De Leon Springs, FL. Our neighbors at 5087 Upson Avenue had/have a guest house that is near the property line. This guest house does not impact our property in any way. We don't object to its' proximity to the line or envision a time when we would.

Sincerely,

Brad Fender and Martha Fender

*Brad Fender Martha Fender*

*Rochelle M. Clark*



*Rochelle M. Clark*  
*com exp 1-13-16*  
*9/19/13*

**REVIEW STAFF COMMENTS**

**FOX**  
**V-14-004**

**LAND DEVELOPMENT**

**John Thomson**

**October 16, 2013**

**Comments:**

The parcel is located on lots 6 - 7, blk 12 of BEARDSLEYS DELEON SPRINGS MB 1 pg 37. These lots are considered vested, but should be combined to create a unified building site under Section 72-537(a)(4)a., LDC.

**CODE ENFORCEMENT**

**Bryan Jiles**

**October 15, 2013**

**Comments:**

We understand that Mr. Fox's application is under review and he is tentatively scheduled to appear before the PLDRC on November 12, 2013.

Due to Mr. Fox's efforts to correct his violations of 2 single family residences on one lot and construction w/o permits, the BZC Staff will request a 3rd amended order of non-compliance and a hearing to impose fine January 15, 2013, at the October 16, 2013 hearing.

**Tom Reynolds**

**October 17, 2013**

**Comments:**

Review of the complaint information, permitting and appraisers records for the property shows extensive construction work without the required prior approvals, permit(s) or inspection approvals.

CEB 2013-029 and 2013-030  
Fox, Delbert & Carolyn  
5087 Upson Avenue, Deleon Springs



Photo: Beverly Hancher

CEB 2013-029 and 2013-030  
Fox, Delbert & Carolyn  
5087 Upson Avenue, Deleon Springs



Photo: Beverly Hancher

CEB 2013-029 and 2013-030  
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CEB 2013-029 and 2013-030  
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CEB 2013-029 and 2013-030  
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CEB 2013-029 and 2013-030  
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CEB 2013-029 and 2013-030  
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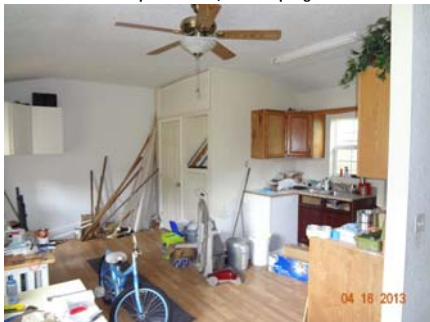


Photo: Beverly Hancher

CEB 2013-029 and 2013-030  
Fox, Delbert & Carolyn  
5087 Upson Avenue, DeLeon Springs

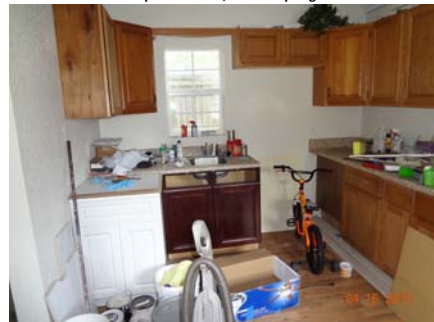


Photo: Beverly Hancher



CEB 2013-029 and 2013-030  
Fox, Delbert & Carolyn  
5087 Upson Avenue, DeLeon Springs



Photo: Beverly Hancher



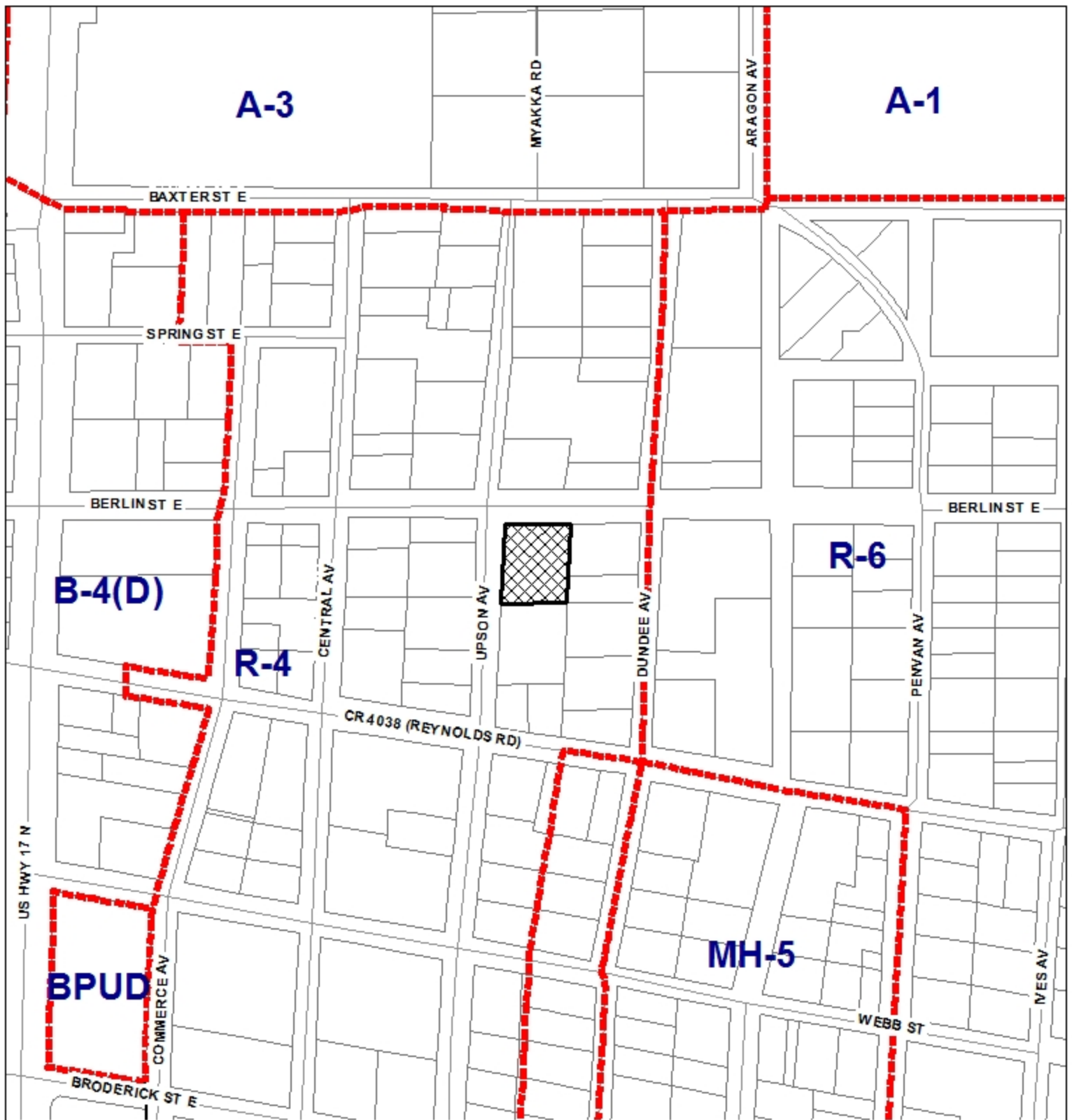
**ECO/NRMA**

ECO NRMA REQUEST AREA

1 inch = 1,000 feet




**VARIANCE  
CASE NUMBER  
V-14-004**



**ZONING CLASSIFICATION**

1 inch = 300 feet

 REQUEST AREA

12

**VARIANCE  
CASE NUMBER  
V-14-004**






**AERIAL**

IMAGE YEAR: 2012

1 inch = 300 feet

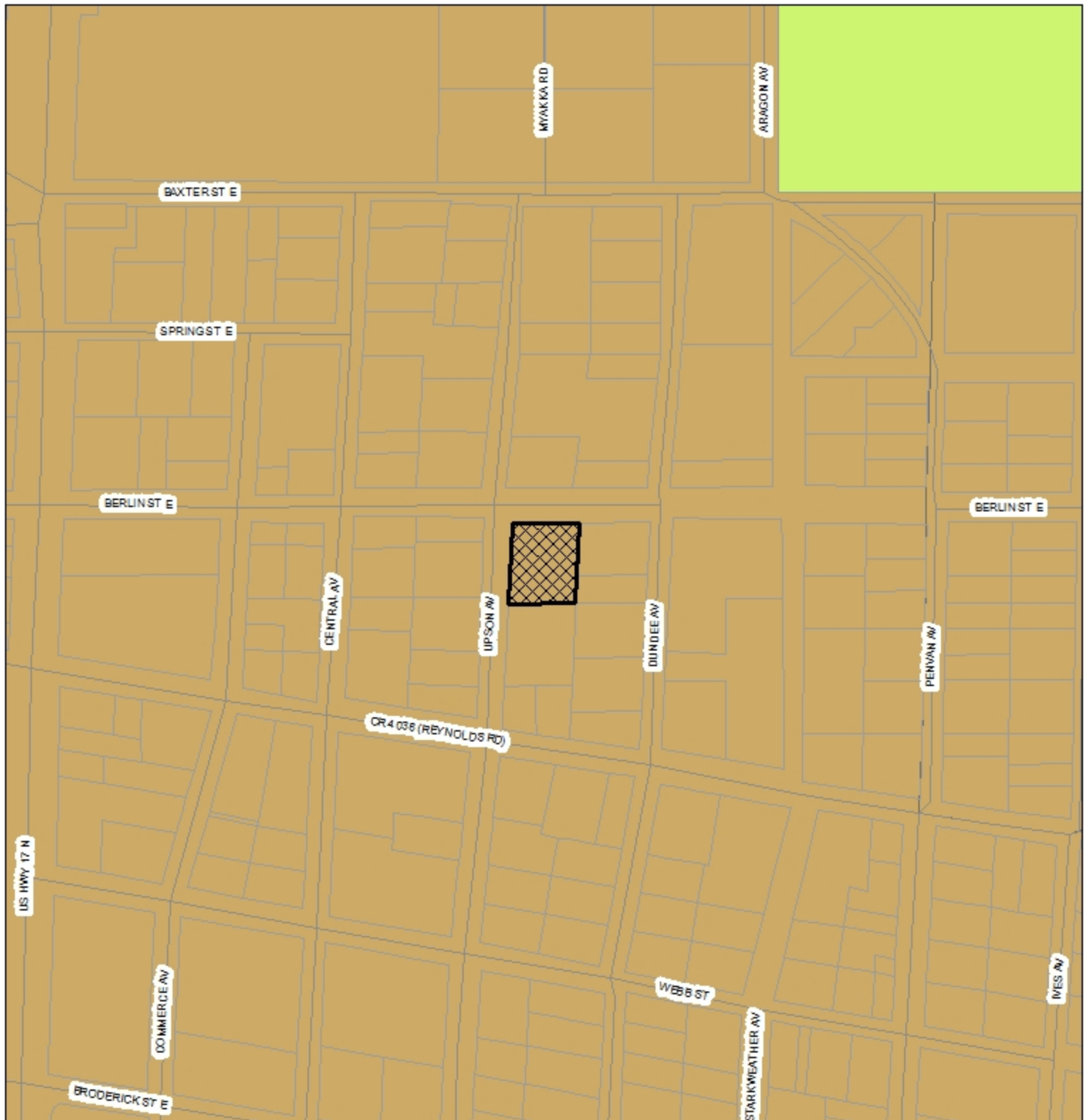
 REQUEST AREA



**VARIANCE  
CASE NUMBER**

**V-14-004**





# **FUTURE LAND USE DESIGNATION**

1 inch = 300 feet

AGRICULTURE RESOURCE (1)
  RURAL COMMUNITY (2)



**VARIANCE**  
**CASE NUMBER**  
**V-14-004**