



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-14-005

**SUBJECT:** Variance to the minimum rear yard requirement for an accessory  
structure on Rural Agriculture Estate (RA) zoned property.

**LOCATION:** 2240 West Dale Circle, Deland

**APPLICANT:** James M. Russell

**OWNER(S):** James M. Russell

**STAFF:** William Gardner, Activity Project Manager

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## **I. SUMMARY OF REQUEST**

The applicant is requesting a variance to complete the review of a building permit application for a proposed 400-square-foot accessory structure. A 400-square-foot concrete slab was poured during the construction of the single-family dwelling and is located 32.5 feet off the rear property line. Plan review indicates the accessory structure will be installed on the concrete slab which is located in the rear yard, thus requiring a 45 foot setback. The applicant is requesting a variance to the minimum required rear yard from 45 feet to 32.5 feet for the proposed 400-square-foot accessory structure.

The requested variance is:

A variance to the rear yard requirement from 45 feet to 32.5 feet for a proposed 400-square-foot accessory structure on Rural Agriculture Estate (RA) zoned property.

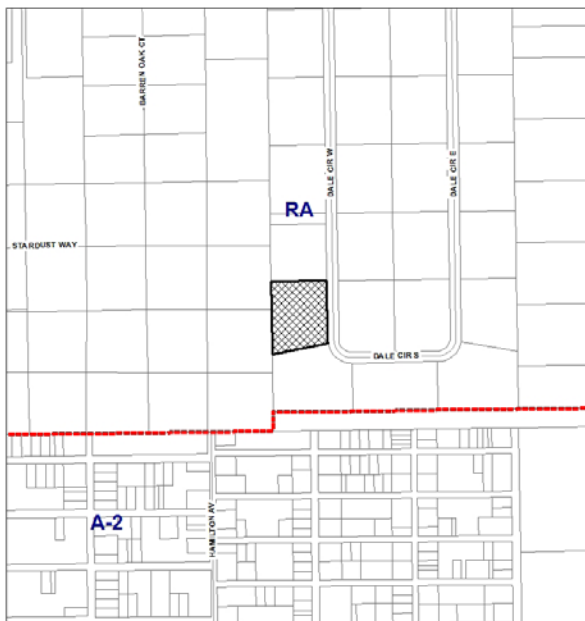
*Staff recommendation:* Approval

## II. SITE INFORMATION

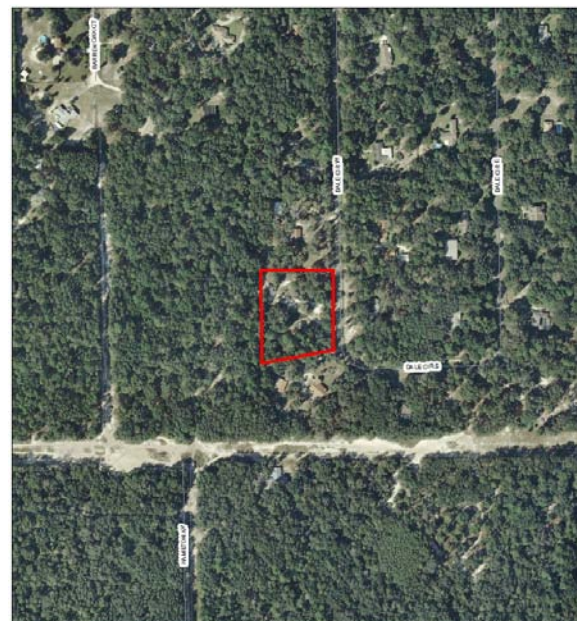
1. Location: The property is located on the south side of McGregor Road approximately 3,000 feet east from its intersection with South Spring Garden Avenue, DeLand.
2. Parcel No(s): 7032-06-00-0100
3. Property Size: 2.50 acres
4. Council District: 1
5. Zoning: Rural Agricultural Estate (RA)
6. Future Land Use: Rural (R)
7. ECO Overlay: No
8. NRMA Overlay: No
9. Adjacent Zoning and Land Use:

| DIRECTION | ZONING | FUTURE LAND USE | CURRENT USE                           |
|-----------|--------|-----------------|---------------------------------------|
| North:    | RA     | R               | Developed with single-family dwelling |
| East:     | RA     | R               | Developed with single-family dwelling |
| South:    | RA     | R               | Developed with single-family dwelling |
| West:     | RA     | R               | Vacant single-family parcels          |

### 10. Location Maps:



LOCATION MAP



AERIAL MAP

### III. BACKGROUND AND PREVIOUS ACTIONS

The applicant obtained a building permit in April 2012 for a single-family dwelling and a certificate of occupancy was issued in August 2013. In addition to the dwelling construction, a 400-square-foot concrete slab was poured for a proposed accessory structure with an interpretation for a required 25-foot side yard. The survey submitted with the building plans represented West Dale Circle to the east, a front yard and McGregor Road to the north but was misinterpreted also as a front yard for the subject parcel thus identifying the required side yard for the accessory structure. The accessory structure was not installed nor part of the initial building permit. A new building permit application was filed on August 19, 2013 for the accessory structure and during the review, staff discovered that the west property line was a rear yard requiring a minimum of 45 feet and not a side yard as previously interpreted. Therefore, the applicant is requesting a variance to the minimum required rear yard from 45 feet to 32.5 feet.

The RA classification is not included in the exceptions to the minimum yard or lot coverage requirements per Sec. 72-277(1) whereas accessory structures may be located in rear or side yards not less than five feet from the lot lines.

### 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 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.***

The subject parcel has typical yards such as one front yard on West Dale Circle, two side yards and one rear yard. With the intent to install an accessory structure after completing the construction of the single-family dwelling, the minimum yard size requirements for the concrete slab was previously reviewed by county staff and was erroneously given the side yard requirement of 25 feet during the building permit review for the single-family dwelling, which afterwards is when the concrete slab was poured. The accessory structure will be located 32.5 feet from the rear property line instead of the minimum 45 foot requirement.

Although the yard requirements would apply in all circumstances with regards to the dwelling placement or any accessory structures, the variance request of 32.5 feet for the proposed accessory structure was originally misinterpreted and approved for the side yard of 25 feet thus causing the proposed structure to be in noncompliance with the rear yard minimum requirement of 45 feet.

Staff's misinterpretation of the required type of yard created the special circumstance in which an incorrect interpretation of the 25 foot side yard requirement for the concrete slab now has rendered a rear yard requirement of 45 feet for the accessory structure.

Staff finds the application meets this criterion.

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

The zoning review for the single-family dwelling building permit also included an interpretation for a minimum side yard requirement of 25 feet for the 400-square-foot concrete slab that would be poured during the single-family dwelling construction. The accessory structure requires a minimum 45-foot rear yard off the west property boundary, but due to the previous misinterpretation by staff for a minimum 25-foot side yard requirement was interpreted and is not a result from the actions of the applicant.

Staff finds the application 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.***

If the requirements of the zoning ordinance were enforced to comply with the minimum rear yard of 45 feet would necessitate the applicant to excavate the concrete slab and pay out an additional \$1,800.00 for a new 400-square-foot concrete slab per applicant's written petition. The applicant was given incorrect information for the required minimum yard size but still constructed the concrete slab an additional 7.5 feet beyond the 25 foot side yard. An unnecessary and undue hardship would be rendered if literal interpretation was enforced even though the applicant's good faith effort and reliance on the misinterpretation of information was provided by staff.

Staff finds the application 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 is requesting the variance in order to complete the review of the building permit for an accessory structure. With the 20' x 20' concrete slab already in place based on the previously interpreted side yard requirement of 25 feet, the westerly portion of the slab is located beyond the 25 foot minimum side yard at 32.5 feet thus a difference of 7.5 feet. To meet the minimum required rear yard of 45 feet, 12.5 feet of the slab could be removed leaving 7.5 feet for the building. If reasonable, a new pour of concrete at a width of 12.5 feet could be added to the remaining slab to accommodate the 400-square-foot accessory structure. The requested variance at the minimum of 32.5 feet will make possible the rational use of the structure.

Staff finds that the requested variance does 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.***

Granting this requested variance is in harmony with the general intent and purpose of the zoning ordinance and will not affect the intent and purpose of the comprehensive plan.

The proposed accessory structure will not cause any injury, create any safety hazards, or deprive the reasonable use of the land to any nearby property owners or the general public. The requested variance will allow the structure to be 12.5 feet less than the required 45-foot rear yard but the structure will be buffered by a considerable amount of existing trees, shrubs and new landscaping so not to be injurious to the immediate area because it will be compatible with the existing lot and ownership pattern of the Community Center Development subdivision.

Staff finds that the application meets this criterion.

## **V. STAFF RECOMMENDATION**

Staff finds that the application meets the five applicable criteria for approval of the requested variance. Therefore, staff recommends approval of the variance to the minimum rear yard requirement from 45 feet to 32.5 feet for a 400-square-foot accessory building on Rural Agriculture Estate (RA) zoned property.

## **VI. ATTACHMENTS**

- Variance site plan
- Written petition
- Reviewer comments
- 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?

Initially, a 25' setback was approved. I spent \$1800-  
to pour the slab. Moving the slab would cost as much.  
Live oaks prevent me from moving it farther away from  
property border.

- 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?

Id have to remove the slab at considerable expense  
Im not sure where Id move it to to make it  
functional

- 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:

I poured the slab to build a storage shed based on  
the initial approval of the county for that use

- 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

and

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

Both neighbors on Dale Circle have given written approval. The land adjacent to the setback is vacant and undeveloped. Old live oaks prevent me from moving the slab closer to the house.

  
Applicant's Signature

9/13/13  
Date

\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Date

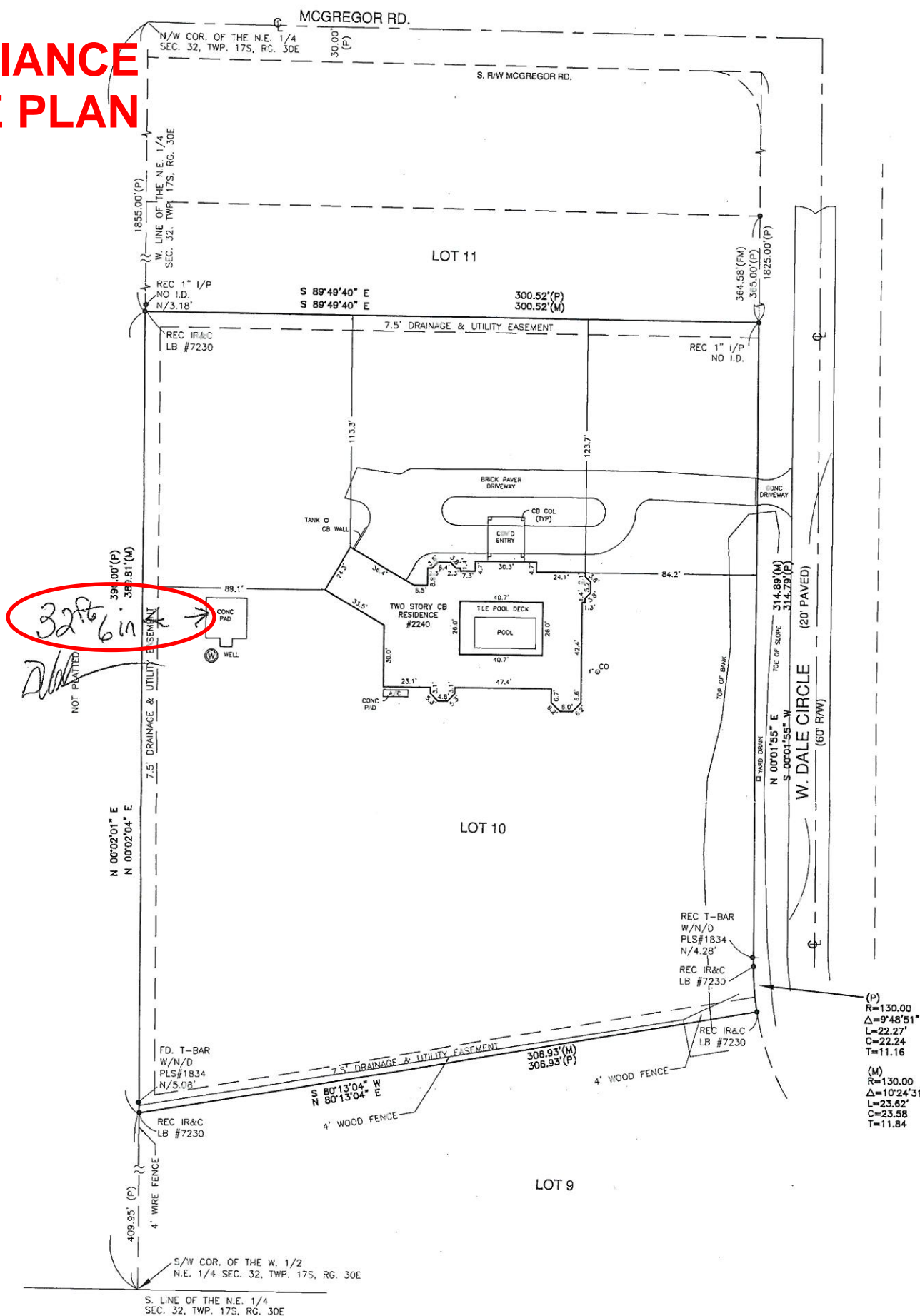
9/12/13

I am requesting a variance for a 20'x20' metal storage shed at my residence 2240 W. Dale Circle, Deland. Initially, a 25' setback was approved. The actual distance is 32'6". The slab was poured for this reason. Both neighbors have given written approval.

James M. Reed



# VARIANCE SITE PLAN



## ABBREVIATIONS:

|      |                |
|------|----------------|
| C    | CHORD          |
| @    | CENTERLINE     |
| COR  | CORNER         |
| (M)  | FIELD MEASURED |
| I/P  | IRON PIPE      |
| IR&C | IRON ROD & CAP |
| L    | LENGTH         |
| N/D  | NAIL & DISK    |
| N/W  | NORTHWEST      |
| (P)  | PER PLAT       |
| R    | RADIUS         |
| REC  | RECOVERED      |
| RG   | RANGE          |
| R/W  | RIGHT OF WAY   |
| SEC  | SECTION        |
| T    | TANGENT        |
| TWP  | TOWNSHIP       |
| Δ    | CENTRAL ANGLE  |

## DESCRIPTION:

LOT 10, COMMUNITY CENTER DEVELOPMENT, AS RECORDED IN PLAT BOOK 36, PAGE 97, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

## SURVEY REPORT:

1. This survey represents a survey made on the ground under the supervision of the signing surveyor, unless otherwise noted.
2. No Title data has been provided to this surveyor unless otherwise noted.
3. All easements of which the surveyor has knowledge of, or has had furnished to him, has been noted on the survey map.
4. Underground improvements or underground foundations have not been located except as noted on survey map.
5. According to the Federal Emergency Management Agency, Flood Insurance Rate Map, Number 12127C0805 G, having an effective date of April 15, 2002, this property lies in Zone "X".
6. Bearings shown hereon are assumed based on the West line of W. Dale Circle, having a bearing of N00°01'55"E (per plat).

## REVISIONS

|      |                      |       |          |
|------|----------------------|-------|----------|
| Rev. | FOUNDATION/FINAL     | Date: | 08/09/13 |
| Rev. | STAKE FRONT LOT LINE | Date: | 06/05/13 |
| Rev. | BUILDING STAKE OUT   | Date: | 05/16/12 |

THIS SURVEY MAP AND REPORT OR THE COPIES THEREOF ARE NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

Job No: E-9227  
Field Date: 3/9/12 & 4/2/12  
Drawn By: AMJ  
Field By: RL/WKP  
Scale: 1"=40'

William F. Menard  
Professional Surveyor  
& Mapper  
Florida Registration #5625

BOUNDARY SURVEY  
FOR  
PHIL KEAN DESIGNS  
OF  
2240 W Dale Circle

**HLSM** LLC  
Henrich-Luke-Swaggerty-Menard  
Professional Surveyors & Mappers

165 Middle Street, Suite 1101  
Lake Mary, Florida 32746  
P. (407) 647-7346  
P. (407) 647-8097  
WWW.FloridaLandSurveyor.com





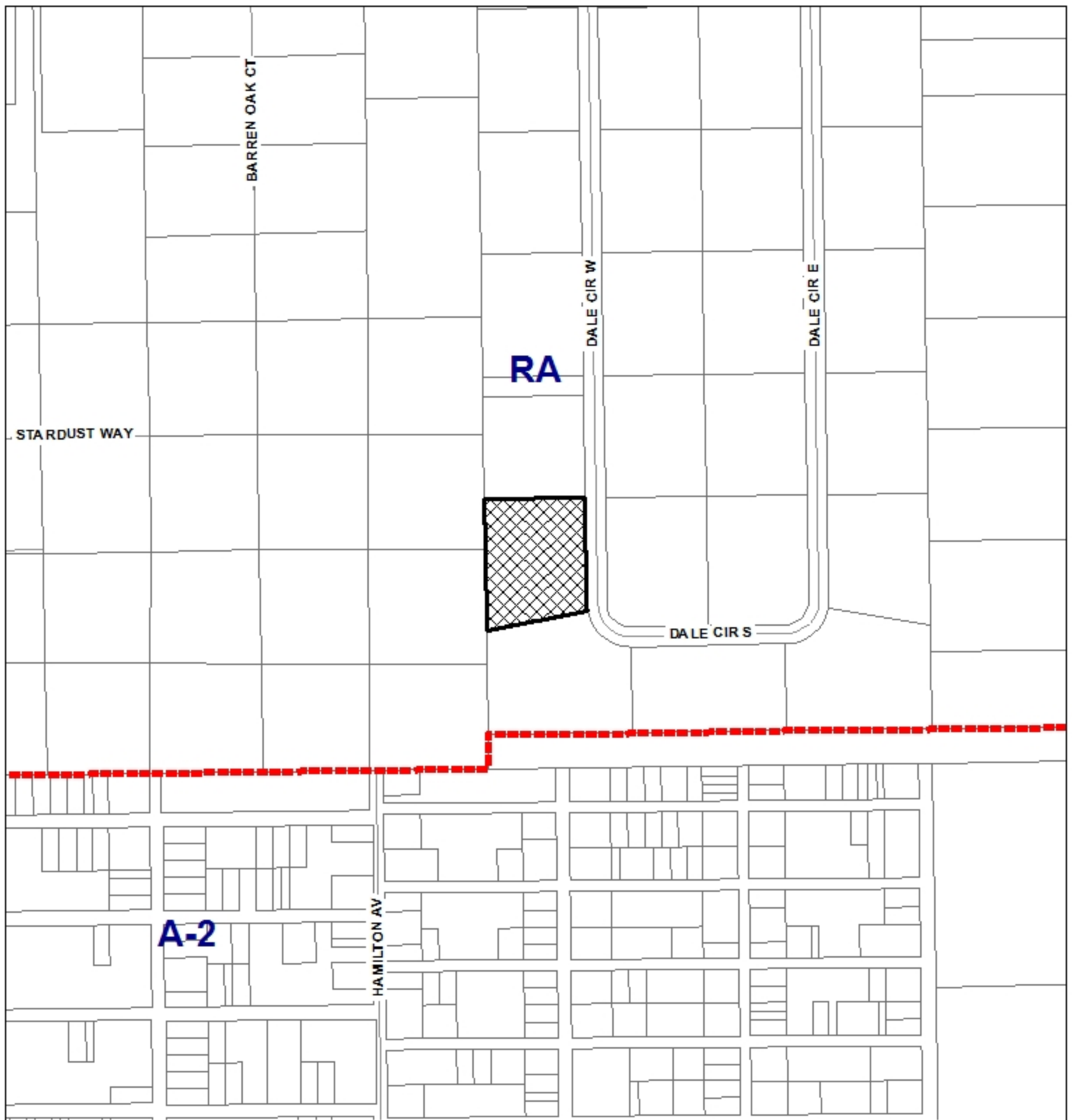
**ECO/NRMA**

ECO NRMA REQUEST AREA

1 inch = 1,000 feet




**VARIANCE  
CASE NUMBER  
V-14-005**



**ZONING CLASSIFICATION**

1 inch = 400 feet

 REQUEST AREA



**VARIANCE  
CASE NUMBER  
V-14-005**






**AERIAL**

IMAGE YEAR: 2012

1 inch = 300 feet

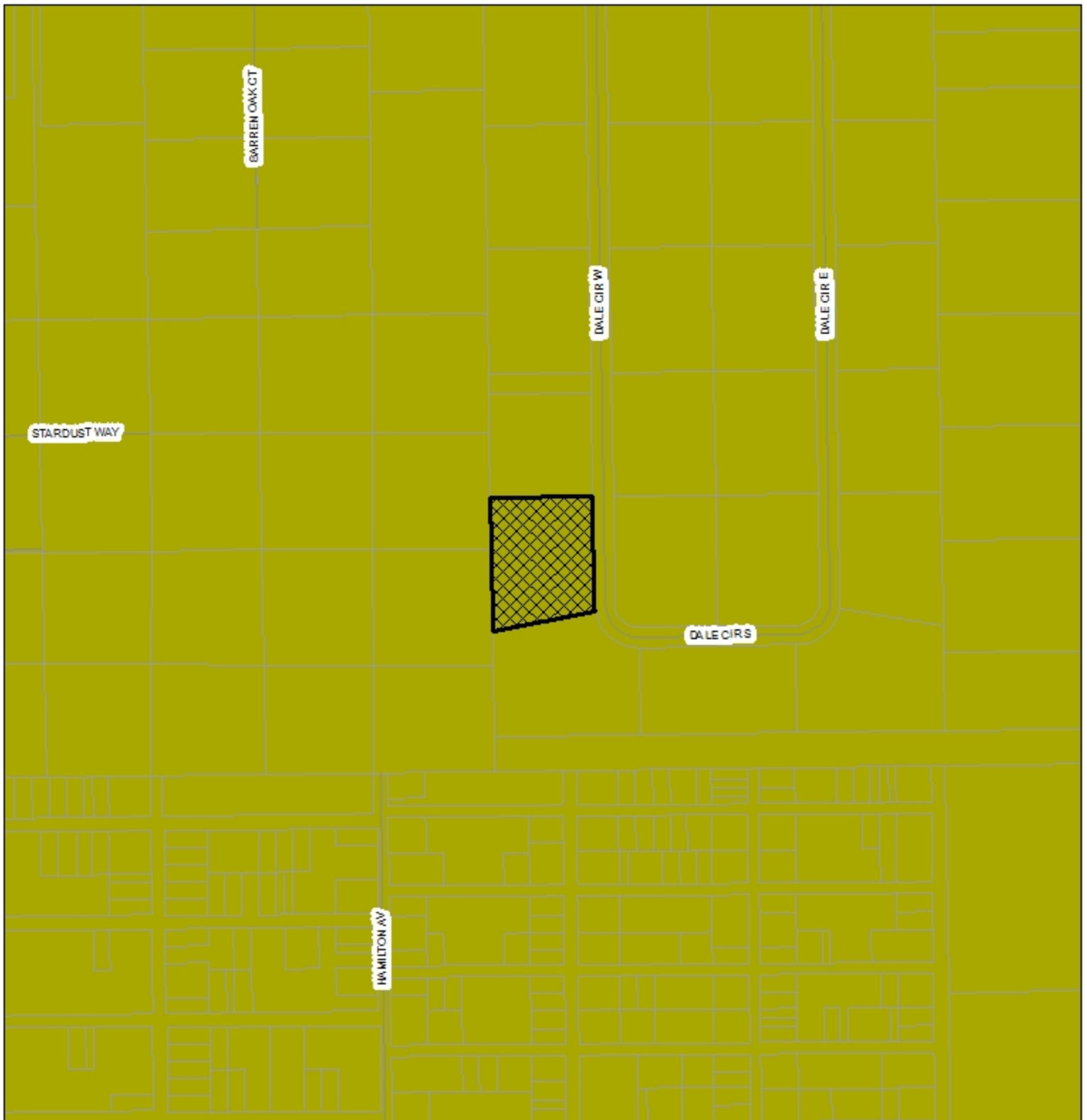
 REQUEST AREA



**VARIANCE  
CASE NUMBER**

**V-14-005**





***FUTURE LAND USE DESIGNATION***

 RURAL (1)

1 inch = 400 feet



***VARIANCE  
CASE NUMBER  
V-14-005***