



INTER-OFFICE MEMORANDUM

TO: Chairman Frank Severino
and PLDRC Members

DATE: October 31, 2013

FROM: Scott Ashley, Senior Zoning Manager
Current Planning

FILE NO: 13-CP-016

SUBJECT: Sixty Five Hundred, LLC rehearing request, Case V-12-043

The applicant Alex Ford, attorney for owner, Sixty Five Hundred, LLC, is requesting the Planning and Land Development Regulation Commission (PLDRC) rehear variance case V-12-043. This application consisted of eight variances. The PLDRC approved requests 1 through 5, and denied requests 6 through 8 of the variance application at its public hearing on February 12, 2013. The applicant for the aggrieved owner is requesting the rehearing to provide the opportunity for the PLDRC to reconsider relevant variance case information. Please see the enclosed applicant letter.

Section 72-381 of the zoning code (Article II, Chapter 72 Land Planning, as amended) provides the procedure for rehearing a decision of the PLDRC or county council. Should the PLDRC decide to rehear the Case, it must state its reasons for doing so and set a date, time and place for another public hearing, upon due public notice.

Should the PLDRC decide to rehear the case, zoning staff suggests that the rehearing occur at the regularly scheduled PLDRC hearing of January 14, 2014, or such later date as the PLDRC may decide.

TB



REQUEST FOR REHEARING


I request a rehearing by the () Planning and Land Development Regulation Commission or the () Volusia County Council (check one) of Case # V-12-043. The hearing was held on 2/12/2013 (mo/day/yr). I filed this request on 3/12/2013 (mo/day/yr), which is within 10 working days after the rendition of decision by the Commission or Council. This request should state in detail what facts or points of law the Commission or Council may have overlooked or misapprehended. You may use additional sheets.

- 1.) The PLDRRC did not consider nor give any weight to the 5 criteria stated on the Variance Application by the applicant, as required for the granting of a variance.
 - 2.) The PLDRRC did not acknowledge that the "existing condition" of the balcony was not self-created, but instead was created by the county when it erred in approving the permit for the original construction in 1984.
- I understand that I must serve by certified mail or hand delivery upon the Chairman of the Commission or County Council and the County Manager and all adjoining property owners previously notified of the hearing, together with a notice stating the date, time, and place my request for rehearing will be orally presented to the Commission or County Council.

If my request is granted, the fee for the rehearing is \$476.00

APPLICANT'S RIGHTS FOR APPEALS AND REHEARING AND RES JUDICATA ARE STATED IN SECTIONS 72-380 AND 72-381 OF CHAPTER 72 - ZONING CODE, AS AMENDED.

This application will be considered at the Commission or County Council public hearing on in the County Council Meeting Room of the Thomas C. Kelly Administration Center, 2nd floor, 123 W. Indiana Avenue, DeLand, FL 32720, at a date and time certain to be determined.

Signature of Applicant: 

----- DO NOT WRITE BELOW THIS LINE -----

Date Received 3/12/13 (mo/day/yr)

Accepted by VS

Hearing Date: 04/09/13

Time Certain: 9:00 a.m.

NOTARIZED AUTHORIZATION OF OWNER

I/We, GERTRUD "TRUDY" BROWNING (SIXTY FIVE HUNDRED, LLC)
(owners name)

as the sole or joint fee simple title holder(s) of the property described as: _____

6510 S. ATLANTIC AV, NEW SMYRNA BEACH, FL 3216905-18-35-01-34-0080
(legal description or parcel number)authorize ALBERT FLORES to act as my agent
(applicant's name)to seek A VARIANCE Rehearing on the above property. I also
(special exception, rezoning, or variance)

understand and authorize Volusia County staff permission to view and enter upon the subject property for the purposes of investigating and reviewing this request.

My application will be heard at a public hearing on 04/04/2013 (mo/day/yr) before

the Planning and Land Development Regulation Commission (PLDRC) and on

N/A (mo/day/yr) before the Volusia County Council (if applicable), unless

continued or rescheduled at the public hearing.

x Gertrud Browning
OWNER'S SIGNATUREx _____
OWNER'S SIGNATURESTATE OF FLORIDA
COUNTY OF YOLUSIAThe foregoing instrument was acknowledged before me this 12th day of Mar., 2013,
(date)by Gertrud Browning, who is personally
(name of person acknowledging)known to me or who has produced FDL B455-280-42-911-1 as
(type of identification)

identification and who did not take an oath.

Valerie J. Braddock
NOTARY PUBLIC, STATE OF FLORIDA

Type or Print Name:

VALERIE J. BRADDOCK

Commission No.: _____

My Commission Expires: _____

VALERIE J. BRADDOCK
MY COMMISSION # EE 012014
EXPIRES: October 16, 2014
Bonded Thru Budget Notary Services



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

February 13, 2013

Albert Flores
1030 Druid Drive
Maitland, Florida 32751

RE: PLDRC rendition letter for variance case V-12-043
Parcel Nos.: 8505-01-34-0080, 8505-01-13-0080, 8505-01-13-0090,
and 8505-01-34-0460

Dear Mr. Flores:

At its hearing of February 12, 2013, the Planning and Land Development Regulation Commission (PLDRC) took the following final actions:

Approved:

Variance 1: A variance to Section 72-206(1) *Nonconforming Lots* to separate parcels 8505-01-34-0080, 8505-01-13-0080 and 8505-01-13-0090 (Property A) from parcel 8505-01-34-1460 (Property B);

Variance 2: A variance to a rear yard setback from the required 5 feet to 4.4 feet for an existing accessory storage shed structure (Structure 1);

Variance 3: A variance to a front yard setback from the required 25 feet to 19.4 feet;

Variance 4: A variance to a north side yard setback from the required 7 feet to 5.6 feet; and

Variance 5: A variance to a south side yard setback from the required 7 feet to 6.3 feet for an existing elevated deck (Structure 2) on Urban Single-Family Residential/Indian River Lagoon Surface Water Improvements and Management Overlay Zone (R-9W) zoned property, subject to the following conditions:

1. The property owner or authorized agent(s) shall combine Lots 8 and 9, Block 34, and Lot 8 Block 13 and Lot 9 Block 13 in Bethune Volusia Beach Unit 4 of 7, into one 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. The unified parcel shall have a minimum lot width of 50 feet as defined by the zoning code and shall be consistent with this approved variance.
2. Variance 2 is limited to the existing 14.2 feet (wide) by 16.3 feet (231.4 square feet) accessory shed (Structure 1) as shown on the variance site plan. Structure 1 shall not be enlarged, increased, or extended to further encroach or occupy any greater area or other part of the rear yard of the property, as defined by the zoning code, without approval of a separate variance(s) and building permits.
3. The property owner or authorized agent(s) shall obtain and complete a building permit and all required inspections for Structure 1 within 90 days of the date of variance rendition, unless the property owner requests and is granted an extension by the Zoning Enforcement Official.
4. Variances 3, 4 and 5 are limited to the existing attached, unenclosed, elevated (second-floor) 6.5 foot (wide) by 38 foot (247 square feet) deck (Structure 2) as shown on the variance site plan. Structure 2 shall not be enclosed, or converted into living area or enlarged, increased, or extended to further encroach or occupy any greater area or other part of the front and/or side yard(s) of the property, as defined by the zoning code, without approval of a separate variance(s) and building permit(s) and inspections.

and

Denied:

Variance 6: A variance for a front yard setback from the required 25 feet to 13.9 feet;

Variance 7: A variance for a north side yard setback from the required 7 feet to 5.6 feet; and

Variance 8: A variance for a south side yard setback from the required 7 feet to 6.3 feet (Variance 8) for a proposed elevated deck (Structure 3) on Urban Single-Family Residential/Indian River Lagoon Surface Water Improvements and Management Overlay Zone (R-9W) zoned property based on the staff report.

EXPIRATION OF VARIANCE: Per section 72-379, zoning code, if a variance does not begin to serve the purpose for which it was granted within 12 months from the date of rendition, or if its use is abandoned for 12 consecutive months from the date of rendition, it shall expire provided, however, that the zoning enforcement official may extend the variance for up to an additional 12 month period of time if the applicant can demonstrate that a good faith reliance has been on going to accomplish the approved variance. Good faith reliance may include, but is not limited to, the securing of any required permits from other governmental agencies/jurisdictions or the expenditure of substantial funds upon reliance of the approved variance.

Enclosed is a copy of the approved site plan. At permitting time, please submit copies of the approved site plan and this letter. This will assist in obtaining Zoning approval for your building permit application. If modifications are made to this approved plan, those changes must meet the requirements of the applicable regulations of the zoning code.

Pursuant to section 72-378 and 72-381, County Code, any aggrieved party may request an appeal before the county council or a rehearing before the commission within ten (10) days after the rendition of the commission's decision. Please contact Yolanda Somers, Staff Assistant II, at (386) 943-7059 extension 12777, for more information on the procedure for an appeal or rehearing application.

If you have any questions, please contact the Current Planning office at (386) 943-7059.

Sincerely,



Scott Ashley, AICP
Planning Manager

Attachment(s): Approved Variance Site Plan
Rehearing application package
Appeal application package

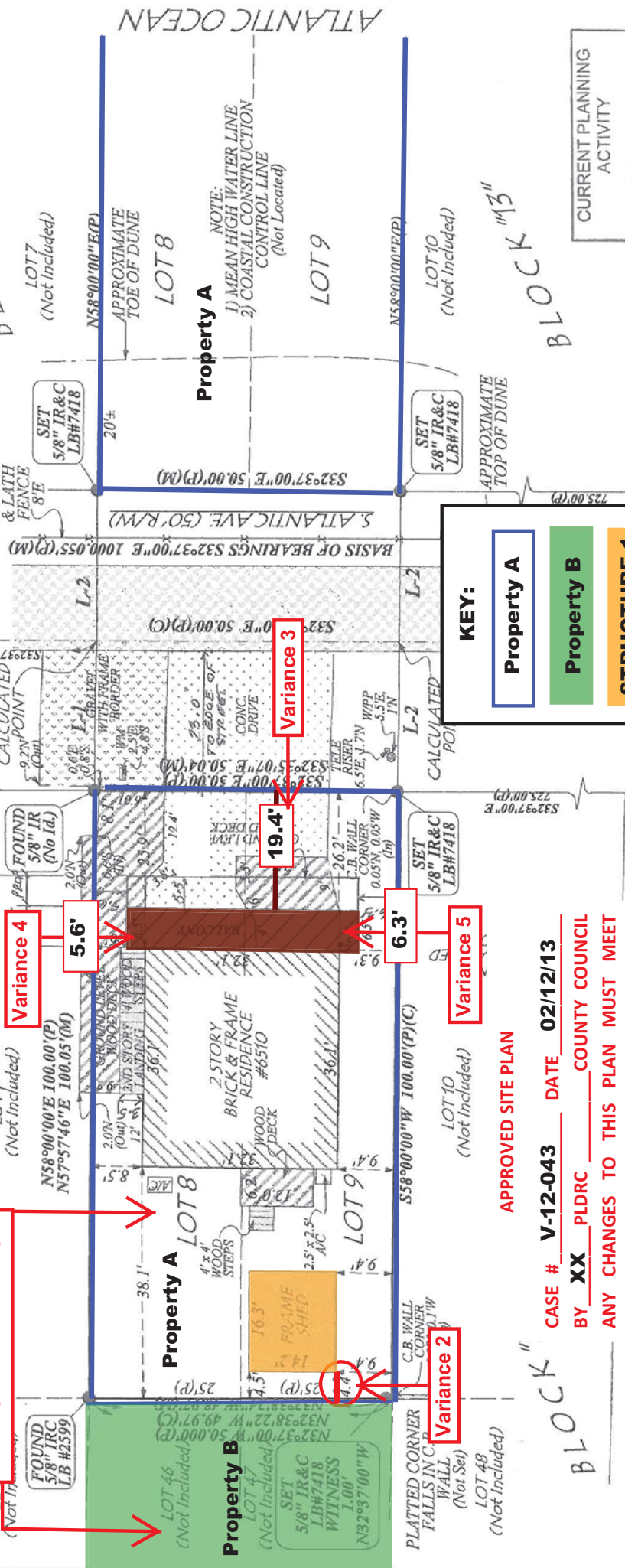
c: Sixty Five Hundred, LLC, 1940 Fairview Shores Drive, Orlando, Florida 32804
Janice Cornelius, Property Appraiser's Office
Case file V-12-043

VARIANCE SITE PLAN

GROUPER AVE. (50' R/W)
(Platted as 14th Street)
C/L



Variance 1: Variance to separate nonconforming property A from Property B



This Plat Is Certified To:

- 1) Sixty five Hundred, LLC
- 2) Professional Title Agency,
- 3) Chicago Title Insurance Company

CASE # **V-12-043** DATE **02/12/13**
BY **XX** PLDRC COUNTY COUNCIL
ANY CHANGES TO THIS PLAN MUST MEET
REQUIREMENTS OF CHAPTER 72, LAND
PLANNING, AS AMENDED. THE SITE PLAN MUST
COMPLY WITH ALL FEDERAL, STATE, AND LOCAL
DEVELOPMENT REGULATIONS.

APPROVED SITE PLAN

KINGFISH AVE. (50' R/W)
(Platted as 15th Street)

CURRENT PLANNING
ACTIVITY
DEC 10 2012
RECEIVED

1" = 20'
GRAPHIC SCALE IN FEET
0' 10' 30'

ATLANTIC OCEAN

NOTE:

- 1) MEAN HIGH WATER LINE
- 2) COASTAL CONSTRUCTION CONTROL LINE (Not Located)

Property A

Property B

Variance 2

Variance 3

Variance 4

Variance 5

BOUNDARY SURVEY-VOLUSIA COUNTY-FLORIDA

THE SURVEY DEPICTED HEREON IS NOT VALID WITHOUT THE SIGNATURE OF A LICENSED FLORIDA SURVEYOR AND MAPPER



REQUEST FOR REHEARING

I request a rehearing by the () **Planning and Land Development Regulation Commission** or the () **Volusia County Council** (check one) of Case # _____.

The hearing was held on _____(mo/day/yr). I filed this request on _____(mo/day/yr), which is within 10 working days after the rendition of decision by the Commission or Council. **This request should state in detail what facts or points of law the Commission or Council may have overlooked or misapprehended.** You may use additional sheets.

I understand that I must serve by certified mail or hand delivery upon the Chairman of the Commission or County Council and the County Manager and all adjoining property owners previously notified of the hearing, together with a notice stating the date, time, and place my request for rehearing will be orally presented to the Commission or County Council.

If my request is granted, the fee for the rehearing is \$476.00

APPLICANT'S RIGHTS FOR APPEALS AND REHEARING AND RES JUDICATA ARE STATED IN SECTIONS 72-380 AND 72-381 OF CHAPTER 72 - ZONING CODE, AS AMENDED.

This application will be considered at the Commission or County Council public hearing on in the County Council Meeting Room of the Thomas C. Kelly Administration Center, 2nd floor, 123 W. Indiana Avenue, DeLand, FL 32720, at a date and time certain to be determined.

Signature of Applicant: _____

----- DO NOT WRITE BELOW THIS LINE -----

Date Received _____ (mo/day/yr) Accepted by _____

Hearing Date: _____ Time Certain: _____



NOTICE OF APPEAL

Chapter 72 – Zoning Code, as amended.

The undersigned, aggrieved person requests appeal to a decision(s) of: _____.

SECTION A:

The Planning & Land Development Regulation Commission decision on Case No. _____;
the hearing was held on _____ (mo/day/yr). Please state the reason(s) for your
appeal: _____

NOTE: The appeal of the decision of the Commission on a variance shall be on the record made before it.

I request the County Council reverse or modify the decision of the PLDRC to the extent that:

_____.

SECTION B:

What decision was rendered by the Enforcement Official:

_____.

My legal right or pecuniary interest as an aggrieved person has been invaded in that:

I request the County Council reverse or modify the decision to the extent that:

_____.

Where the decision of the Enforcement Official affects a specific property, the following information must be submitted.

The property is located in Section _____, Township _____ South, Range _____ East.

Tax Parcel Number: _____ - _____ - _____ Size of Parcel: _____ sq. ft./acres

Address of Property: _____

This property is located on the N-E-S-W side of _____ Rd./St./Ave.
approximately _____ feet/miles N-E-S-W from its intersection with _____

Rd./St./Ave. The property is near _____ in the community of _____,
and/or adjacent to the City of _____.

CASE NO: _____

Applicant's Name: _____ Phone: (____) _____

Address: _____

Street

City

State

Zip Code

Status: _____ Owner _____ Attorney for Owner
 _____ Agent for Owner _____ Contract Purchaser

If applicant does not own the property, provide the following:

Owner's Name: _____ Phone: (____) _____

Address: _____

Street

City

State

Zip Code

*

*

*

*

*

*

*

- **2 Current Survey s of Property or Copy of Recorded Subdivision Plan (if applicable)**
- **2 Copies of Legal Description (if applicable)**
- **Notarized Authorization of Owner (if applicant is other than owner or attorney for owner)**

THIS SECTION MUST BE FILLED OUT BY ALL APPLICANTS.

This application will be considered at the Volusia County Council Public Hearing on _____ (mo/day/yr), in the County Council meeting room of the Thomas C. Kelly Administration Center, 123 W. Indiana Avenue, DeLand, FL 32720, beginning at _____ a.m.

There is a \$476.00 filing fee for this Appeal.

Section 72-378(d) requires due public notice and notice to any other interested persons before the County Council hearing.

APPLICANT'S RIGHTS FOR APPEALS AND REHEARING AND RES JUDICATA ARE STATED IN SECTIONS 72-380 AND 72-381 OF CHAPTER 72 - ZONING CODE, AS AMENDED.

Signature of Applicant: _____

*

*

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*

*

*

*

DO NOT WRITE BELOW THIS LINE

Date Received: _____ (mo/day/year) Application Accepted By: _____

FILING FEE PAID: \$ _____ CHECK #: _____ RECEIPT NO.: _____

ARSN: _____

Case No.: _____ Name: _____ Date of Appeal Hearing: _____

SCHEDULE FOR 2013

PLANNING AND LAND DEVELOPMENT REGULATION COMMISSION

APPEAL SCHEDULE

<i>PLDRC Meeting</i>	<i>Publication Date for Notice of Appeal</i>	<i>Appeal Hearing Date to the County Council</i>
01/08/13	03/04/13	03/14/13
02/12/13	03/12/13	04/04/13
03/12/13	04/19/13	05/02/13
04/09/13	05/24/13	06/06/13
05/14/13	07/01/13	07/11/13
06/11/13	07/26/13	08/08/13
07/09/13	09/02/13	09/12/13
08/13/13	09/30/13	10/10/13
09/10/13	10/25/13	11/07/13
10/08/13	12/02/13	12/12/13
11/12/13	01/13/14	01/23/14
12/10/13	02/10/14 *	02/20/14*

** Tentative dates*

All Appeals under Section 1002.00 must be taken within 10 working days after rendition of the order, requirement, decision, or determination by filing an application with the Volusia County Current Planning office.

THE APPEAL OF THE COMMISSION'S DECISION ON A VARIANCE SHALL BE ON THE RECORD MADE BEFORE THE COMMISSION. NO NEW EVIDENCE MAY BE INTRODUCED TO THE COUNTY COUNCIL.

The Filing fee for a Rehearing or Appeal is **\$476.00**. (Resolution 2003-58)

APPLICANTS SHOULD BE PRESENT AT THE PUBLIC HEARING

Excerpt from the minutes of the PLDRC meeting of February 12, 2013. These minutes have been approved by the PLDRC, and are not subject to change.

**PLANNING AND LAND DEVELOPMENT REGULATION COMMISSION
PUBLIC HEARING HELD
February 12, 2013**

V-12-043 – Application of Albert Flores, agent for 6500, LLC, owners, requesting a variances to the front yard for an addition to a single-family dwelling on Urban Single-Family Residential/Indian River Lagoon Surface Water Improvements & Management Overlay (R-9W) zoned property. The property is located at 6510 South Atlantic Avenue, New Smyrna Beach; ±5,000 square feet; 8505-01-34-0080.

Scott Ashley, Planning Manager, presented the staff report. Mr. Ashley reiterated the staff recommendation of approval of Variances 1-5 and denial of Variances 6-8. He also offered clarification on how the setback measurement was determined.

Albert Flores, 1030 Druid Drive, Maitland, Florida, applicant, noted the site had not been modified since the purchase by the current owner. He added the current balcony configuration does not allow furniture. Mr. Flores presented argument for the five (5) review criteria.

Gertrude Browning, 1982 Fairview Shores Drive, Orlando, Florida, property owner, requested the commission reconsider the staff recommended conditions.

Member Young moved to APPROVE Variances 1, 2, 3, 4, and 5 of application V-12-043 subject to the staff recommended conditions and to DENY Variances 6, 7, and 8.

1. The property owner or authorized agent(s) shall combine Lots 8 and 9, Block 34, and Lot 8 Block 13 and Lot 9 Block 13 in Bethune Volusia Beach Unit 4 of 7, into one 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. The unified parcel shall have a minimum lot width of 50 feet as defined by the zoning code and shall be consistent with this approved variance.
2. Variance 2 is limited to the existing 14.2 feet (wide) by 16.3 feet (231.4 square feet) accessory shed (Structure 1) as shown on the variance site plan. Structure 1 shall not be enlarged, increased, or extended to further encroach or occupy any greater area or other part of the rear yard of the property, as defined by the zoning code, without approval of a separate variance(s) and building permits.
3. The property owner or authorized agent(s) shall obtain and complete a building permit and all required inspections for Structure 1 within 90 days of the date of variance rendition, unless the property owner requests and is granted an extension by the Zoning Enforcement Official.

Excerpt from the minutes of the PLDRC meeting of February 12, 2013. *These minutes have been approved by the PLDRC, and are not subject to change.*

4. Variances 3, 4 and 5 are limited to the existing attached, unenclosed, elevated (second-floor) 6.5 foot (wide) by 38 foot (247 square feet) deck (Structure 2) as shown on the variance site plan. Structure 2 shall not be enclosed, or converted into living area or enlarged, increased, or extended to further encroach or occupy any greater area or other part of the front and/or side yard(s) of the property, as defined by the zoning code, without approval of a separate variance(s) and building permit(s) and inspections.

Member Van Dam seconded the motion. Motion CARRIED unanimously (6:0).



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

CASE NO: V-12-043

SUBJECT: Variances to separate nonconforming lots; for setbacks of an existing single-family dwelling and accessory structure; and to construct a proposed addition on Urban Single-Family Residential/Indian River Lagoon Surface Water Improvements and Management Overlay Zone (R-9W) zoned property.

LOCATION: 6510 South Atlantic Avenue, Bethune Beach

APPLICANT: Albert Flores, agent for owner

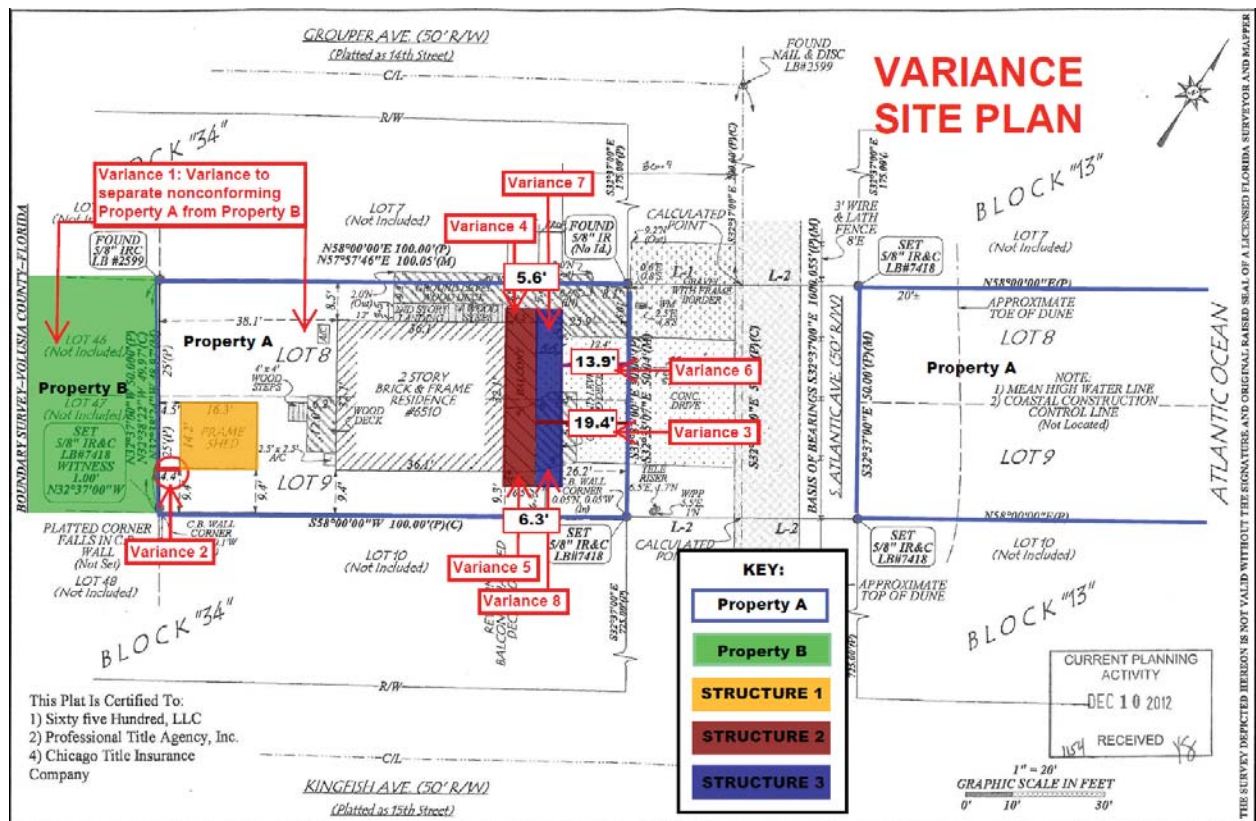
OWNERS: Sixty Five Hundred LLC

STAFF: Christian Nagle, AICP, Planner II

I. SUMMARY OF REQUEST

The applicant is requesting a number of variances to bring the subject property into compliance with the setback requirements of the R-9W zoning classification and with the applicable accessory structure setback requirements of Section 72-277 zoning code. This case is the result of the owners' desire to build an addition. During the staff analysis it was determined that the existing residence did not meet building setbacks, and a storage shed did not meet setbacks nor have a building permit. The structures were found to have non-compliant setbacks or lack of permitting that have necessitated the following variances:

- Variance 1: A variance to Section 72-206(1) *Nonconforming Lots* to separate parcels 8505-01-34-0080, 8505-01-13-0080 and 8505-01-13-0090 (Property A) from parcel 8505-01-34-0460 (Property B); and
- Variance 2: A rear yard setback variance from the required 5 feet to 4.4 feet for an existing accessory storage shed structure (Structure 1); and
- Variance 3: A front yard setback variance from the required 25 feet to 19.4 feet for an existing elevated deck (Structure 2);
- Variance 4: A north side yard setback variance from the required 7 feet to 5.6 feet for Structure 2; and



II. SITE INFORMATION

1. Location: The property is located on both sides of South Atlantic Avenue ± 175 ft. south of its intersection with Grouper Avenue, Bethune Beach.
2. Parcel No(s): 8505-01-34-0080, 8505-01-13-0080, 8505-01-13-0090, and 8505-01-34-0460
3. Property Size: $\pm 5,948$ square feet
4. Council District: 3
5. Zoning: Urban Single-Family Residential/Indian River Lagoon Surface Water Improvements and Management Overlay Zone (R-9W)
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-9W	ULI	Single-family dwelling
East:	N/A	N/A	Atlantic Ocean
South:	R-9W	ULI	Vacant property
West:	R-9W	ULI	Vacant property

10. Location Maps:



ZONING MAP



2012 AERIAL MAP

III. BACKGROUND AND PREVIOUS ACTIONS

The property consists of three nonconforming parcels (8505-01-34-0080, 8505-01-13-0080, 8505-01-13-0090-Property A). Parcel 8505-01-34-0080 contains a three-story single-family dwelling, a front elevated (second-story) deck, and a 231.4 square foot accessory storage shed. This parcel is 50 feet (wide) by 100 feet, and is on the west side of South Atlantic Avenue. Parcels 8505-01-13-0080 and 8505-01-13-0090 are vacant beachfront parcels located across South Atlantic Avenue from the dwelling.

The parcels are nonconforming because they do not comply with the R-9W zoning classification's 75-foot minimum lot width and a 7,500 square feet minimum lot area requirements. Subsection 72-177(2) *Parcels of land divided by right-of-way* of the zoning code, considers the property as one parcel or lot for determining building permit and setback requirements and minimum lot size.

Property A is contiguous to a vacant, nonconforming (50-foot wide by 100-foot) R-9W zoned parcel 8505-01-34-0460 (Property B), which is under separate ownership. Property B fronts on County Road A1A west of Property A. James Lee and E. Dover Lee owned both Property A and Property B, from January 2003 to October 2010, until they sold Property A to current owner Sixty Five Hundred LLC in October 2010. Subsequently, Mr. and Ms. Lee sold Property B to separate owners in November 2010.

Subsection 72-206(1) of the code specifies that adjoining, nonconforming lots that abut in single ownership on or after a certain code amendment date are considered an undivided lot for the purposes of the zoning code. To implement this code requirement, property owners are required to obtain approval of a lot combination during the building permit application process or they can apply for a variance. The applicant seeks relief from code subsection 72-206(1) *Nonconforming lots*, to separate lots required to be combined by code.

Variance 2 pertains to an existing 14.2 feet (wide) by 16.3 feet (231.4 square feet) accessory shed (Structure 1) on the property that encroaches 7.2-inches into a required rear yard. Subsection 72-277(1) requires an accessory shed structure to be located at least 5 feet from a rear property line. Property Appraiser's records include a smaller 224 square feet storage building on the property in 1988. However, staff found no record of a required building permit for Structure 1.

Variances 3, 4 and 5 pertain to an existing elevated (second-floor), 6.5 foot (wide) by 38 foot (247 square feet) deck (Structure 2) that is attached to the front of the subject single-family dwelling. Structure 2 already encroaches into the required 25-foot front yard with a 19.4-foot setback from the front property line. Variance 3 seeks to remedy Structure 2's 5.6-foot encroachment into the front yard. The applicant needs Variances 4 and 5 to remedy Structure 2's existing non-compliant 1.4-foot encroachment into the north side yard and the structure's 0.7-foot (8.4-inch) encroachment into the south side yard. Structure 2 is only set back 5.6 feet from the north property line and 6.3 feet from the south property line, per the property survey. The current R-9W classification requires minimum 7-foot side yard setbacks for the dwelling and elevated deck.

Variances 6, 7 and 8 are required to allow construction of a proposed 5.5-foot (wide) by 38-foot expansion of the existing elevated deck attached to the front of the dwelling. The proposed 209 square-foot elevated deck addition (Structure 3) would connect to and extend in front of Structure 2. The applicant designed Structure 3 to be cantilevered over a driveway without the need of additional vertical support posts. Instead, the applicant proposes to enlarge existing vertical posts to support both Structures 2 and 3.

Variance 6 is to allow the Structure 3 to extend 5.5 feet farther into the front yard area, resulting in setback only 13.9 feet from the front property line. The R-9W classification requires a minimum 25-foot front yard.

The single-family dwelling (excluding Structure 2) sets back 25.9 feet from the front property line. Variances 7 and 8 are required to allow Structure 3 to match the existing 5.6-foot north side yard setback and 6.3-foot south side yard setback of existing Structure 2. The zoning code does not allow Structure 2 or proposed Structure 3 to encroach into a required yard without variance approval(s).

Property Appraiser's records list 1984 as year built for the single-family dwelling, when the property was zoned Urban Single Family Residential (R-4). The requested variances are not the result of the property's former R-4 zoning classification.

Variances 3, 4 and 5 are needed to remedy Structure 2's front and side yard encroachments, which occurred with the original home construction. Based on review of the original 1983 building permit, the single-family dwelling was approved with a 26-foot front yard setback. The approved original building plans also included a labeled 5.5-foot (wide) by 38-foot second floor front "porch/balcony" (Structure 2), which extended across the front of the home, and included 3-foot wide exterior stairs and landing on the north side of the home. However, the approved original building permit plot plan did not show front porches or balconies or elevated decks, or related support posts or columns on the dwelling. The approved original building permit plot plan shows the home's foundation set back 26 feet from the front property line, 8.5 feet from the north side property line and 9.5 feet from the south side property line. The exterior stairs are set back 5.5 feet from the north property line, which is consistent with the zoning code.

III. 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 criteria are the basis for the staff evaluation:

- 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 conditions and circumstances peculiar to the properties and structures involved. The properties involved consist of four nonconforming adjoining tax parcels. Previous property owners deeded referenced Property A and Property B separately to two different entities in 2010, which did not comply with subsection 72-206(1) of the zoning code. Approval of a variance is required to grant the current property owners relief from the code requirement to combine the two nonconforming properties, which will allow a permitted principal structure on Property B.

Staff finds that Variance 1 meets this criterion for approval.

Variance 2: There are special circumstances peculiar to Structure 1 involved because the accessory shed structure already exists and is located in a required rear yard. County staff found no record of a building permit or a required variance to allow Structure 1 as sited on the property. Structure 1 does not qualify as a nonconforming structure as defined by the zoning code. Staff finds that Variance 2 meets this criterion for approval.

Variances 3, 4 and 5: There are special conditions and circumstances peculiar to the property, single-family dwelling and Structure 2 involved. Structure 2 was included on the 1983 approved building permit plans for the original home. However, the approved plot plan for the single-family dwelling did not show the front elevated deck and support posts, even though these improvements were included with the approved building plans. A former property owner relied on the approved building permit to construct the dwelling, including Structure 2. Staff finds that Variances 3, 4 and 5 meet this criterion for approval.

Variances 6, 7 and 8: Staff finds no peculiar property or building conditions or circumstances, including the single-family dwelling's or Structure 2's existing front and side yard setbacks, to support approval of these requested variances to extend Structure 2 farther into the required front and side yard areas. The purpose of Variances 6, 7 and 8 is to enable construction of a proposed 209 square-foot elevated deck addition (Structure 3) onto the home. Staff finds that Variances 6, 7 and 8 do not meet this criterion for approval.

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

Variance 1: Previous property owners are responsible for selling the property separately to two different property owners. Staff finds that Variance 1 meets this criterion for approval.

Variance 2: The current owners bought the property in October 2010, which is after the shed's 1988 build date per Property Appraiser's records. Based on the applicant's petition and available county records, staff finds that Variance 2 meets this criterion for approval.

Variances 3, 4 and 5: A previous property owner obtained a county building permit to construct a single-family dwelling on the property in the early 1980's in reliance on the approved building plans and building permit. The approved building plans included Structure 2 that extended across the front of the home, even though it encroached into the required setbacks shown on the approved building permit plot plan. Staff finds that Variances 3, 4, and 5 meet this criterion for approval.

Variances 6, 7 and 8: The applicant is responsible for the design, location, and size of the proposed Structure 3, which requires these requested variances. Staff finds Variances 6, 7 and 8 do 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.

Variance 1: Literal interpretation of code subsections 72-206(1) and 72-280 would require the property owner and the separate owner of parcel 8505-01-34-0460 (Property B) to combine their parcels to create a single parcel, owned by two different owners and prevent construction of a permitted principal structure on Property B. These actions would be an unnecessary and undue hardship on both owners. Staff finds that Variance 1 meets this criterion.

Variance 2: The property owner is not responsible for construction of Structure 1. Literal interpretation of applicable code requirements would require Structure 1 to be moved, altered, or deconstructed and rebuilt outside of the required rear yard. Staff finds that performing these action(s) to remedy a 7.2-inch rear yard encroachment would work an undue hardship to the property owner. Staff finds that Variance 2 meets this criterion.

Variances 3, 4 and 5: Not granting these requested variances would require the owner to undertake and complete significant alterations to the single-family dwelling. County staff discovered the need for these variances after the applicant's submission of this variance application, based on the property survey and research of available county records. The property owner is not responsible for construction of the dwelling or Structure 2. Literal interpretation of the provisions of the zoning code would likely deprive the property owner of rights commonly enjoyed by other property owners in the same zoning classification. Staff finds that Variances 3, 4, and 5 meets this criterion.

Variances 6, 7 and 8: The property owner benefits from a developed beachfront property that includes a three-story single-family dwelling, with an existing 6.5 foot (wide) by 38 foot (247 square feet) elevated deck (Structure 2), which is already set back only 19.4 feet from the front property line in lieu of the required 25. Approval of Variances 6, 7, and 8 would enable the property owner to construct a proposed 209 square feet elevated deck addition (Structure 3) located only 13.9 feet from the front property line, and 5.6 feet from the north side property line and 6.3 feet from the south side property line. Zoning code provisions applicable to proposed Structure 3 do not deprive the property owner from reasonable property use, which the owner already has. Furthermore, granting Variances 6, 7 and 8 would confer upon the applicant a special privilege not commonly enjoyed by other properties in the same zoning classification. Staff finds that Variances 6, 7 and 8 do 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.

Variance 1: Approval of this variance will allow the owner's Property A and Property B to exist independently as separated parcels for purposes of the zoning code and enable a permitted principal use and structure on Property B (parcel 8505-01-34-0460). Staff finds variance 1 meets this criterion.

Variance 2: This is the minimum variance required to maintain Structure 1 in its current location. Staff finds Variance 2 meets this criterion.

Variances 3, 4 and 5: These variances are the minimum variances required to maintain Structure 2 as constructed with an approved building permit. Staff finds that with recommended condition(s), Variances 3, 4 and 5 can meet this criterion.

Variances 6, 7 and 8: The owner has reasonable property use and may continue to use and enjoy the property, without approval of Variances 6, 7 and 8. The existing elevated deck is 6.5 feet in width and 38 feet in length and is large enough (247 square feet) to be used. A staff photo shows patio furniture on the deck. Approval of these requested variances would allow a 209 square feet elevated deck addition. Upon completion, the property would include a 12-foot wide by 38-foot long elevated front deck.

A 12-foot wide, 456 square feet elevated deck is not required to have reasonable use of the property. Staff finds that Variances 6, 7 and 8 do 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.***

Variance 1: Granting this requested variance is in harmony with the general intent and purpose of the zoning ordinance because it does not create traffic congestion, fire hazards, or blocks adequate light or air and would have insignificant effect on essential governmental services. The requested section 72-206(1) variance is unlikely to be injurious to the immediate area.

Variance 2: Granting this variance is in harmony with the general intent and purpose of the zoning ordinance. With variance conditions, allowing Structure 1 to remain as sited on the property should not be injurious to the immediate area. Staff finds that Variance 2 can meet this criterion for approval with conditions.

Variances 3, 4 and 5: Granting these requested variances is in harmony with the general intent and purpose of the zoning ordinance. With conditions, approval of these requested variances is unlikely to be injurious to the immediate area. Staff finds that Variances 3, 4 and 5 can meet this criterion for approval with conditions.

Variances 6, 7 and 8: Granting these requested variances does not create traffic congestion or significantly effect essential governmental services and is unlikely to affect public health. However, these requested variances are not in harmony with the purpose and intent of the subject code regulations, as approval of Variance 6 would allow the proposed elevated deck addition (Structure 3) to encroach 11.1 feet or 44.4 percent into the required 25 ft. front yard setback. Approval of Variance 7 allows proposed Structure 3 to encroach 1.4 feet or 20 percent into the required north side yard. Variance 8 approval allows Structure 3 to encroach 0.7 feet or 10 percent into the required south side yard. Staff finds Variances 6, 7 and 8 do not meet this criterion. Staff noted no specific Comprehensive Plan policies applicable to this case.

IV. STAFF RECOMMENDATION

Staff recommends approval of a variance to Section 72-206(1) *Nonconforming Lots* to separate parcels 8505-01-34-0080, 8505-01-13-0080 and 8505-01-13-0090 (Property A) from parcel 8505-01-34-1460 (Property B) (Variance 1); a rear yard setback variance from the required 5 feet to 4.4 feet for an existing accessory storage shed structure (Structure 1) (Variance 2); a front yard setback variance from the required 25 feet to 19.4 feet (Variance 3); a north side yard setback variance from the required 7 feet to 5.6 feet (Variance 4); and a south side yard setback variance from the required 7 feet to 6.3 feet (Variance 5) for an existing elevated deck (Structure 2) on Urban Single-Family Residential/Indian River Lagoon Surface Water Improvements and Management Overlay Zone (R-9W) zoned property, subject to the following conditions:

1. The property owner or authorized agent(s) shall combine Lots 8 and 9, Block 34, and Lot 8 Block 13 and Lot 9 Block 13 in Bethune Volusia Beach Unit 4 of 7, into one 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. The unified parcel shall have a minimum lot width of 50 feet as defined by the zoning code and shall be consistent with this approved variance.
2. Variance 2 is limited to the existing 14.2 feet (wide) by 16.3 feet (231.4 square feet) accessory shed (Structure 1) as shown on the variance site plan. Structure 1 shall not be enlarged, increased, or extended to further encroach or occupy any greater area or other part of the rear yard of the property, as defined by the zoning code, without approval of a separate variance(s) and building permits.
3. The property owner or authorized agent(s) shall obtain and complete a building permit and all required inspections for Structure 1 within 90 days of the date of variance rendition, unless the property owner requests and is granted an extension by the Zoning Enforcement Official.
4. Variances 3, 4 and 5 are limited to the existing attached, unenclosed, elevated (second-floor) 6.5 foot (wide) by 38 foot (247 square feet) deck (Structure 2) as shown on the variance site plan. Structure 2 shall not be enclosed, or converted into living area or enlarged, increased, or extended to further encroach or occupy any greater area or other part of the front and/or side yard(s) of the property, as defined by the zoning code, without approval of a separate variance(s) and building permit(s) and inspections.

However, staff recommends denial of a variance for a front yard setback variance from the required 25 feet to 13.9 feet (Variance 6); a north side yard setback variance from the required 7 feet to 5.6 feet (Variance 7); and a south side yard setback variance from the required 7 feet to 6.3 feet (Variance 8) for a proposed elevated deck (Structure 3) on Urban Single-Family Residential/Indian River Lagoon Surface Water Improvements and Management Overlay Zone (R-9W) zoned property as they do not meet all five of the criteria for granting a variance.

V. ATTACHMENTS

- Written petition
- Variance site plan and survey
- Applicant's proposed elevated deck drawing
- Building permit 22976C plan excerpts
- 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**



Proposed Deck "East" Front Yard Encroachment-

- A. This property has a deck that is only 6.5 feet front to back of space, limiting the practical use of the floor space. This property has an extensive impervious concrete surface on the ocean side, beginning from the building exterior all the way to the street and on the east side which serve as the primary area of circulation for the homeowners. The existing 6.5 feet space severely limits the homeowner from enjoying the property on the ocean side. Extending the existing deck 5.5 feet on the east side and maintaining the existing width of the balcony would allow the homeowner the ability to furnish the space with patio furniture and will accommodate a modest area for the homeowner to be able to walk around the furnishings. Other properties in close proximity have been previously permitted to alter the front of their homes by adding air conditioned space on the first floor (garage areas) and in a recent case (PLDRC Rendition for Variance Case V-11-072) a variance was granted to reduce the front yard setback from 24.9 feet to 17.4 feet. Approval of this variance would permit the homeowner, homeowner's relatives and guests a similar and practical intended use of the balcony as a gathering place on the (front) ocean side of their home.

The intent of this application is to reconstruct the balcony in similar fashion as existing, an open air structure with no roof, with only the posts coming into contact with the ground as is the case now. Also, the applicant is proposing to cantilever the front edge of the balcony to 13.9 feet from the east property line.

The special conditions existing on this property were not self-created by the present homeowner. And, it should be noted other properties in close proximity have been previously granted permission to improve their existing conditions by variance for similar reasons.

- B. The literal interpretation of the setback ordinance deprives the homeowner of the practical use of the deck since the existing depth of the deck at 6.5 feet severely limits pedestrian circulation around any full length lounge or table.

Several other properties for example, 6021 and 6037 S Atlantic Ave, New Smyrna Beach and 3 other adjacent properties have successfully obtained permits to enclose the open first floor front porch and /or construct decks. In addition there are 5 properties on the ocean side where Turtle Mound Rd forks into S Atlantic Ave. with similar conditions that have been granted permits for similar modifications.

- C. The variance being requested for the additional 5.5 feet of depth of the deck space is necessary to be able to furnish the space as well as to accommodate the homeowner's elderly mother since there is not enough room for a nurse to circulate effectively around her and her medical equipment. The added space would comfortably allow for pedestrian circulation around the furnishings.
- D.
 - 1. Yes, this request is consistent with intent and purpose of the Zoning Ordinance and Volusia County's Comprehensive Plan Ordinance. The requested variance does not adversely affect the listed intents and purposes and in fact promotes the family gatherings vs. not using the deck at all because of its limited size.
 - 2. Extending the deck by 5.5' only involves cantilevering the floor framing; the new supporting columns will replace the existing columns in their current location. This will maintain the footprint of the structure at 6.5' from the front of the building as currently built. Further, the deck will be constructed as an open air structure and there will be no line of site issue.

**VOLUSIA COUNTY
WRITTEN PETITION FOR A VARIANCE**

**Per 72-277 – Exemptions to minimum yard or lot coverage requirements
Section (12); Minimum Side Yard may be decreased to 7 (Seven) feet on any
non-conforming lot not more than 50 feet in width, that has a single family
zoning classification.**

Existing Deck “South” Side Yard Encroachment –

- A. The existing deck encroaches into the South side yard setback 0.7’ and therefore does not meet The Land Development Code Setback Requirement. This special condition was not self-created nor was the owner aware of the encroachment prior to purchasing the property.
- B. The existing condition will not permit the owner to pull building permits when necessary for improvements or repairs.
- C. The variance being requested is the minimum variance required to satisfy the land development code requirements.
- D. 1. This request has no effect on traffic, safety, morals or general welfare of the public. This is an administrative request as required by the Land

**VOLUSIA COUNTY
WRITTEN PETITION FOR A VARIANCE**

**Per 72-277 – Exemptions to minimum yard or lot coverage requirements
Section (12); Minimum Side Yard may be decreased to 7 (Seven) feet on any
non-conforming lot not more than 50 feet in width, that has a single family
zoning classification.**

Existing Deck “North” Side Yard Encroachment –

- A. The existing deck encroaches into the North side yard setback 1.4’ and therefore does not meet The Land Development Code Setback Requirement. This special condition was not self-created nor was the owner aware of the encroachment prior to purchasing the property.
- B. The existing condition will not permit the owner to pull building permits when necessary for improvements or repairs.
- C. The variance being requested is the minimum variance required to satisfy the land development code requirements.
- D. 1. This request has no effect on traffic, safety, morals or general welfare of the public. This is an administrative request as required by the Land Development Code.
2. This request has no effect on the surrounding area.

**VOLUSIA COUNTY
WRITTEN PETITION FOR A VARIANCE**

Existing Wood Deck "East" Front Yard Encroachment -

- A. This property has an existing wood deck that that was approved for construction at the time the home was built; it is encroaching into the Front yard setback 5.6 feet. Approval of this variance would allow the deck to remain in its present location and permit the owner to pull permits to repair or alter the structure when the need arises.

The special conditions existing was not-self created

- B. The literal interpretation of the setback ordinance would deprive the homeowner from obtaining the necessary permits to repair or alter the structure when the need arises.
- C. This variance request is the minimum variance required to permit the owner to pull permits for repairs and/or alterations when the need arises.
- D. 1. This request has no effect on traffic, safety, morals or general welfare of the public. This is an administrative request as required by the Land Development Code.
2. This request has no effect on the surrounding area or houses, all surrounding houses are existing.

**VOLUSIA COUNTY
WRITTEN PETITION FOR A VARIANCE**

Variance to Section 72-206(1) Non-Conforming Lots of the zoning code to Separate Parcels: 8505-01-34-0080, 8505-01-13-0080, & 8505-01-13-0090 from 8505-01-34-0460 in the Urban Single Family Residential/Indian River Lagoon Surface Water Improvements and Management Overlay Zone (R-9W) Zoning Classification.

Non-Conforming Lot -

- A. The property currently does not meet the land development code requirement to be defined as a Conforming Lot.
The special condition existing on this property was not self-created by the present homeowner nor was the owner aware of the non-conforming status prior to purchasing the property.
- B. The literal interpretation of the conforming lot ordinance will not permit the owner to pull building permits when necessary for improvements.
- C. The variance being requested is the minimum variance required to bring the property in compliance with the Land Development Code.
- D.
 - 1. This request has no effect on traffic, safety, morals or general welfare of the public. This is an administrative request as required by the Land Development Code.
 - 2. This request has no effect on the surrounding area or houses, all surrounding houses are existing.

**VOLUSIA COUNTY
WRITTEN PETITION FOR A VARIANCE**

Storage Shed –

- A. There is a storage shed located at the rear of the property that was built by a previous owner; the shed was built 4.4' from the rear property line making it non-conforming to the required 5' setback from the property line. Approval of this variance request would allow the storage shed to remain in its present location and would permit the homeowner to pull permits to repair or alter the structure if the need arises in the future.

The special conditions existing were not self-created by the present homeowner.

- B. The literal interpretation of the setback ordinance would deprive the homeowner from obtaining the necessary permits to repair or alter the structure when the need arises.
- C. The variance as requested, "to leave the shed in its present location", would permit the homeowner to perform routine maintenance as well as structurally repair the shed as necessary when the need arises.
- D. 1. This request is consistent with the intent and purpose of the Zoning Ordinance and the Volusia County Comprehensive Plan Ordinance No. 90-10. This request does not adversely affect the listed intents and purposes since the shed in its present location is only 7" from being in compliance with the Ordinance.
2. Because the shed is in the rear yard and the total offset to the required setback is only 7", the current encroachment is not noticeable without the benefit of a survey.

**VOLUSIA COUNTY
WRITTEN PETITION FOR A VARIANCE**

**Per 72-277 – Exemptions to minimum yard or lot coverage requirements
Section (12); Minimum Side Yard may be decreased to 7 (Seven) feet on any
non-conforming lot not more than 50 feet in width, that has a single family
zoning classification.**

Proposed Deck “Side” South Yard Encroachment –

- A. The existing deck was permitted and approved for construction at the time the home was built. The portion of the deck that encroaches into the side yard setback is a cantilevered structure extending 0.7 feet in to setback. Approval of this request is necessary in order to maintain the integrity of the original design and structure that was previously permitted.

The setback encroachment of the existing deck was not self-created and was approved for construction at the time the home was built.

- B. The literal interpretation of the Zoning Ordinance would prohibit a uniform design of the proposed deck addition and would leave the design out of character from existing decks already existing throughout the neighborhood.
- C. The variance being requested is the minimum variance required to maintain the original design of the existing deck that was permitted and approved at the time the home was built.
- D. 1. This request has no effect on traffic, safety, morals or general welfare of the public.
2. This request has no effect on the surrounding area.

**VOLUSIA COUNTY
WRITTEN PETITION FOR A VARIANCE**

**Per 72-277 – Exemptions to minimum yard or lot coverage requirements
Section (12); Minimum Side Yard may be decreased to 7 (Seven) feet on any
non-conforming lot not more than 50 feet in width, that has a single family
zoning classification.**

Proposed Deck “North” Side Yard Encroachment –

- A. The existing deck was permitted and approved for construction at the time the home was built. The portion of the deck that encroaches into the side yard setback is a cantilevered structure extending 1.4 feet in to setback. Approval of this request is necessary in order to maintain the integrity of the original design and structure that was previously permitted.

The setback encroachment of the existing deck was not self-created and was approved for construction at the time the home was built.

- B. The literal interpretation of the Zoning Ordinance would prohibit a uniform design of the proposed deck addition and would leave the design out of character from existing decks already existing throughout the neighborhood.
- C. The variance being requested is the minimum variance required to maintain the original design of the existing deck that was permitted and approved at the time the home was built.
- D. 1. This request has no effect on traffic, safety, morals or general welfare of the public.
2. This request has no effect on the surrounding area.

**VOLUSIA COUNTY
WRITTEN PETITION FOR A VARIANCE**

** REFER TO ATTACHED SHEETS*

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


Applicant's Signature

9/27/2012
Date

Applicant's Signature

Date

- A. This property has a balcony that has only 6.5 feet front to back of space, limiting the practical use of this space. Further, this property has an extensive impervious concrete surface on the ocean side, beginning from the building exterior all the way to the street and on the north side which serve as the primary area of circulation for the homeowners. These existing conditions severely limit the homeowner from enjoying the property on the ocean front side. Extending the balcony 5.5' would allow the homeowner the ability to furnish the balcony with patio furniture and will accommodate a modest area for the homeowner to be able to walk around the furnishings. Other properties in close proximity have been previously permitted to alter the front of their homes by adding air conditioned space on the first floor (garage areas) and in a recent case (PLDRC Rendition for Variance Case V-11-072) a variance was granted to reduce the front yard setback from 25 feet to 17.4 feet. Approval of this variance would permit the homeowner, homeowner's relatives and guests the intended use of the balcony as a gathering place on the (front) ocean side of their home.

The intent of this application is to reconstruct the balcony in similar fashion as existing, open air structure with no roof, with only the posts coming into contact with the ground as is the case now. Also, the applicant is willing to explore the possibility of cantilevering the front edge of the balcony to the 17.4' proposed setback line.

The special conditions existing on this property were not self-created by the present homeowner. And, it should be noted other properties in close proximity have been previously granted permission to improve their existing conditions by variance for similar reasons.

- B. The literal interpretation of the setback ordinance deprives the homeowner of practical use of the balcony since the existing depth of the balcony at 6.5 feet severely limits pedestrian circulation around any full length lounge or table.

Several other properties, namely 6021 and 6037 S Atlantic Ave, New Smyrna Beach and 3 other adjacent properties have successfully obtained permits to enclose the open first floor front porch and /or construct decks. In addition there are 5 properties on the ocean side where Turtle mound Rd forks into S Atlantic Ave.

- C. The variance being requested for the additional 5.5 feet of balcony space is necessary to be able to furnish the space and to accommodate the homeowner's elderly mother with a medical lung condition comfortably. The existing balcony prohibits the use of the balcony by the homeowner's elderly mother because there is not enough room for a nurse to circulate effectively around her and the medical equipment. The added space would comfortably allow for pedestrian circulation around furnishings.

- D. 1. Yes, this request is consistent with intent and purpose of the Zoning Ordinance and the Volusia County Comprehensive Plan Ordinance No. 90-10. The requested variance does not adversely affect the listed intents and purposes and in fact promotes the family gatherings vs. not using the balcony at all now because of its limited size.
2. Extending the balcony by 5.5' only involves relocating the supporting posts in an area that is already impervious with concrete. Further, the balcony will be constructed as an open air structure and there will be no line of site issue.

VARIANCE SITE PLAN

FOUND
NAIL & DISC
LB# 2599

GROUPE AVE. (50' R/W)
(Platted as 14th Street)

C/L

R/W

Block "34"

Variance 1: Variance to
separate nonconforming
Property A from Property B

Variance 7

Variance 4

5.6'

Variance 6

Variance 3

13.9'

19.4'

6.3'

Variance 5

Variance 8

Variance 2

Property A

NOTE:
1) MEAN HIGH WATER LINE
2) COASTAL CONSTRUCTION
CONTROL LINE
(Not Located)

Property B

KEY:

Property A

Property B

STRUCTURE 1

STRUCTURE 2

STRUCTURE 3

CURRENT PLANNING
ACTIVITY
DEC 10 2012
RECEIVED

1" = 20'
GRAPHIC SCALE IN FEET
0' 10' 30'

This Plat Is Certified To:

- 1) Sixty five Hundred, LLC
- 2) Professional Title Agency, Inc.
- 4) Chicago Title Insurance Company

KINGFISH AVE. (50' R/W)
(Platted as 15th Street)

C/L

R/W

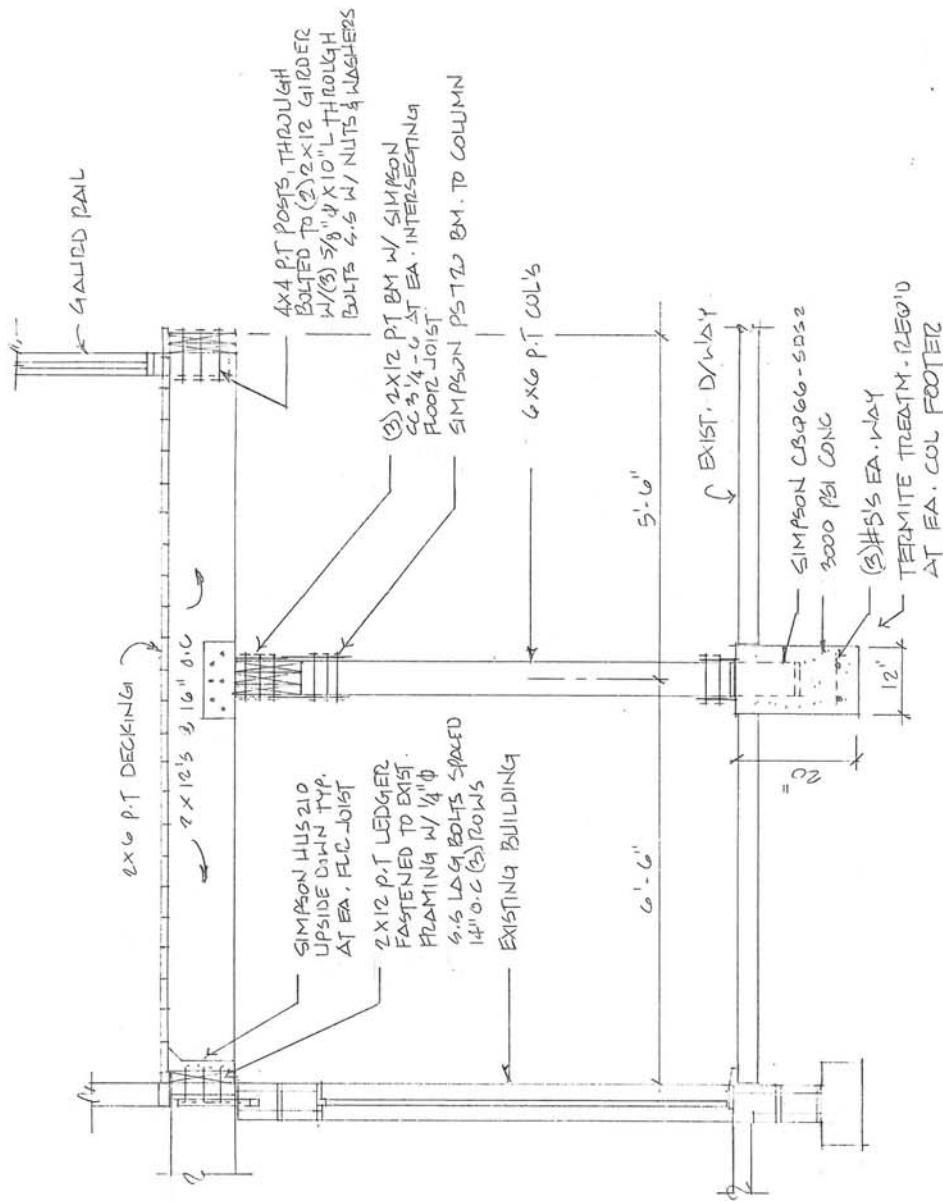
Block "34"

ATLANTIC OCEAN

BOUNDARY SURVEY-VOLUSIA COUNTY-FLORIDA

THE SURVEY DEPICTED HEREON IS NOT VALID WITHOUT THE SIGNATURE OF THE LICENSED FLORIDA SURVEYOR AND MAPPER



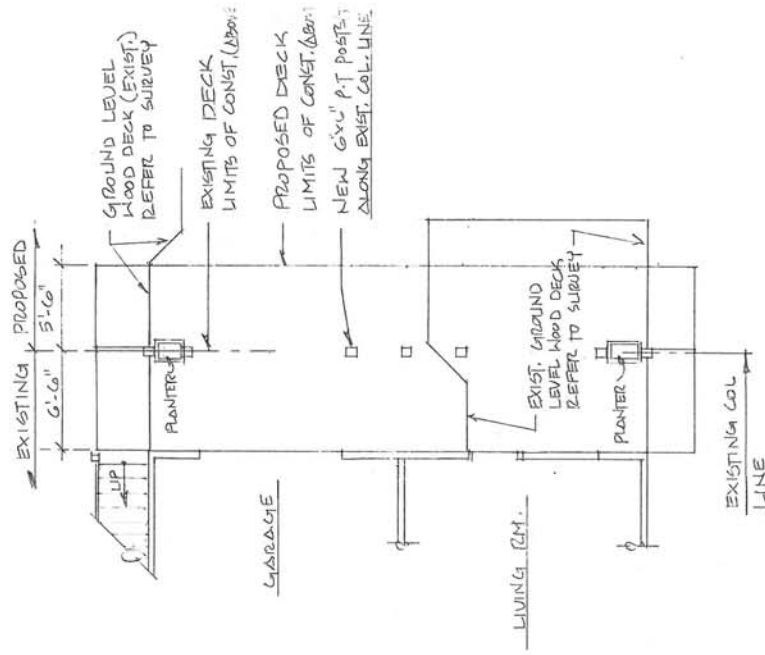


PROPOSED BALCONY SECTION DETAIL

SCALE: 1/2" = 1'-0"

PROPOSED W.D. DECK PLAN

SCALE: 1/8" = 1'-0"



N-13-043
 CURRENT PLANNING
 ACTIVITY
 DEC 10 2012
 RECEIVED CN

11/12/2012

VARIANCE CASE V-12-043
 PARCEL 8505-01-24-0080
 6510 S. ATLANTIC AV., NEW SMYRNA BEACH



01 17 2013

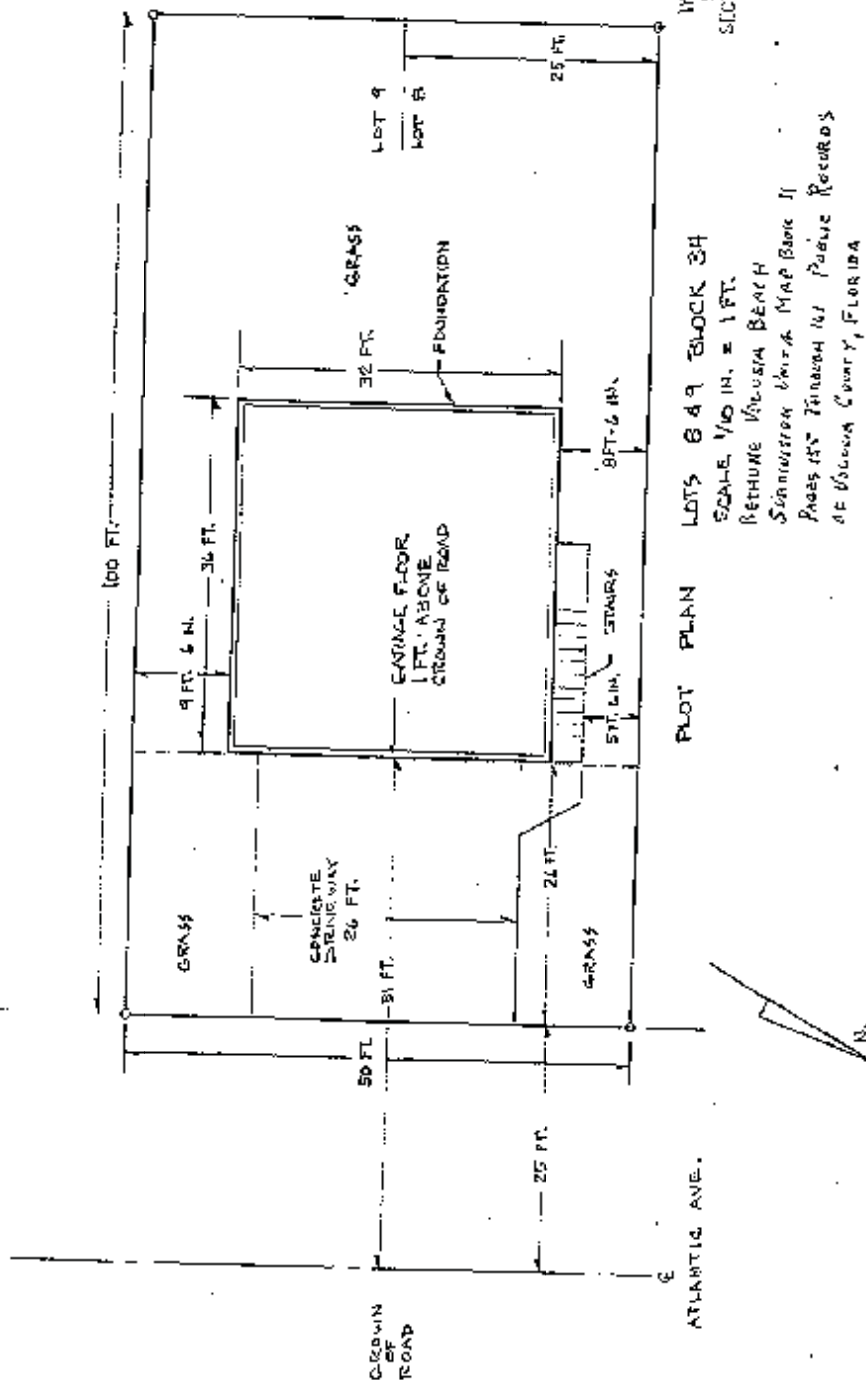
22976C

22976C
3.2.83
June 13/14/84

Gee, James M.
6510 S. Atlantic Ave.
N.S.B.

Owner

Res. \$55675.00



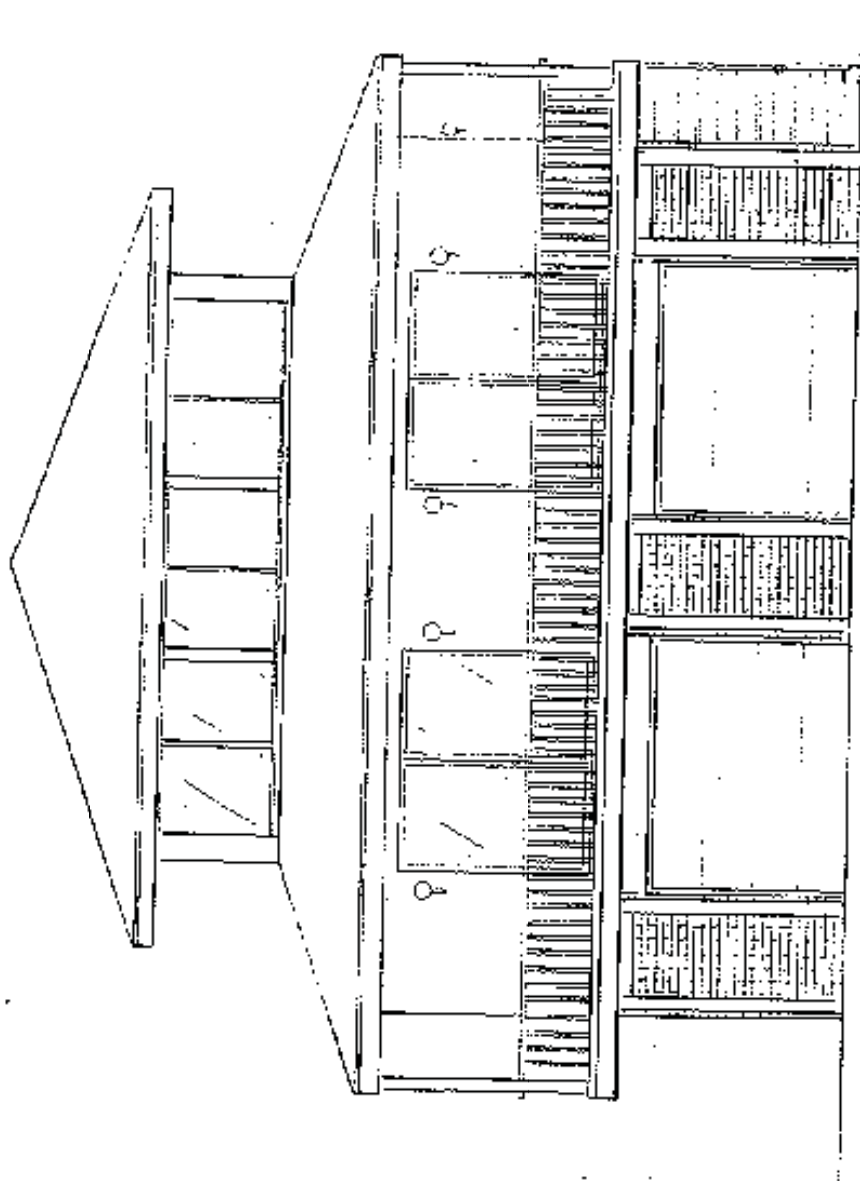
LOT 8 & 9 BLOCK 34
 SCALE 1/8" IN. = 1 FT.
 BETHUNE VOLUSIA BEACH
 SUBDIVISION WITH A MAP BOOK II
 PAGES 155 THROUGH 161 PUBLIC RECORDS
 OF VOLUSIA COUNTY, FLORIDA

APPROVED
 2/1/1983
 VOLUSIA COUNTY, FLORIDA
 BUILDING DEPARTMENT
De Barents

VIEWER BY RESOLUTION
 588-17-00000-110
 SECTION 110.0 OF F.B.C.

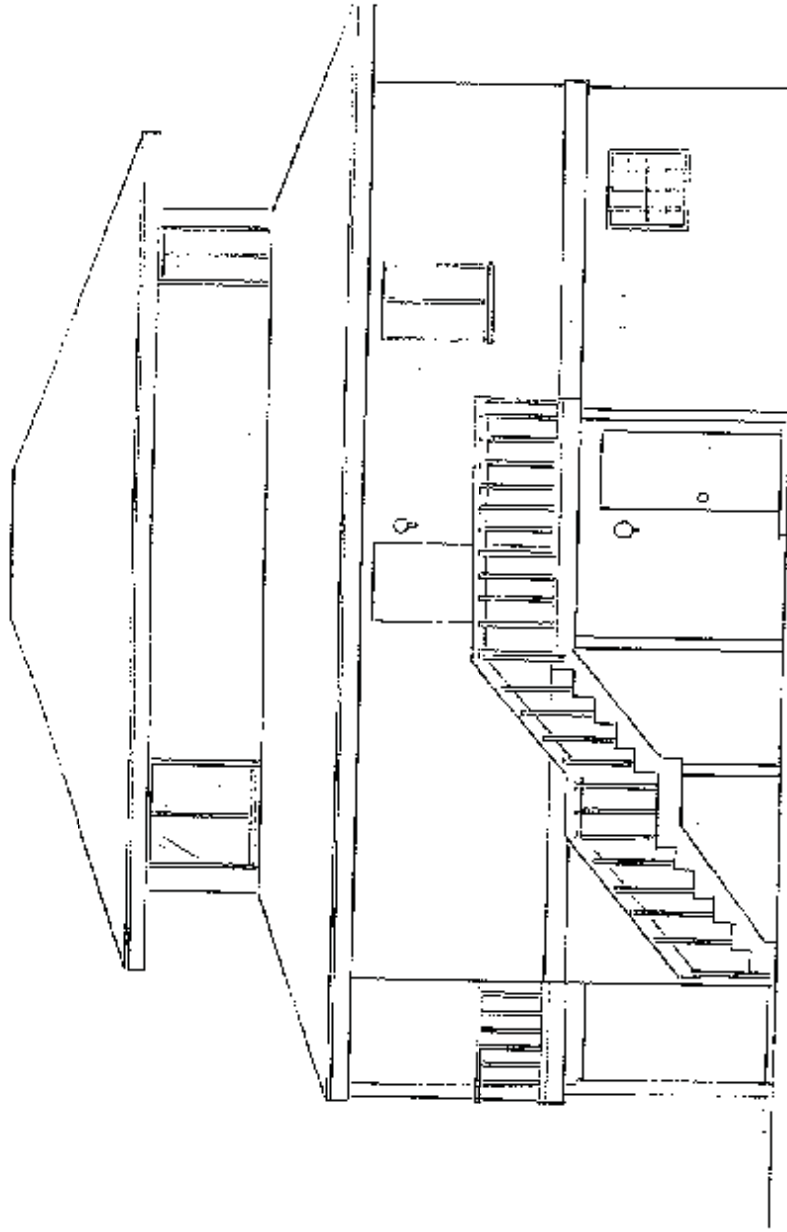
Flood Hazard Area
 Zone AE
 Elev. 7.4 Above
 Mean Sea Level

229762



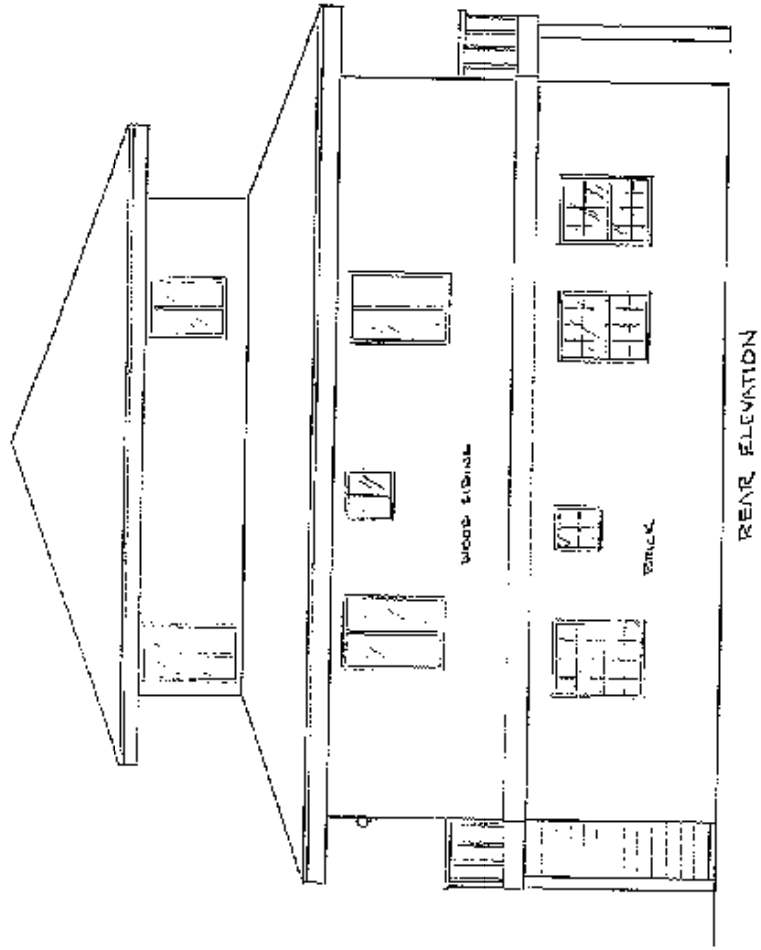
FRONT ELEVATION

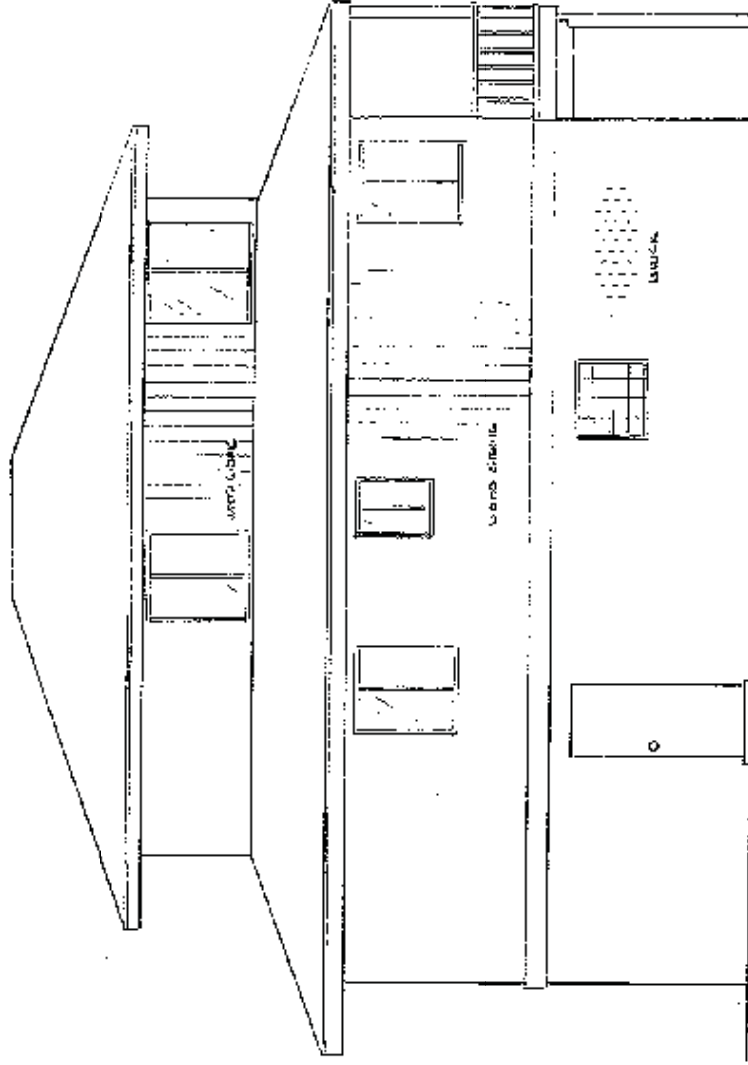
side view



RIGHT ELEVATION

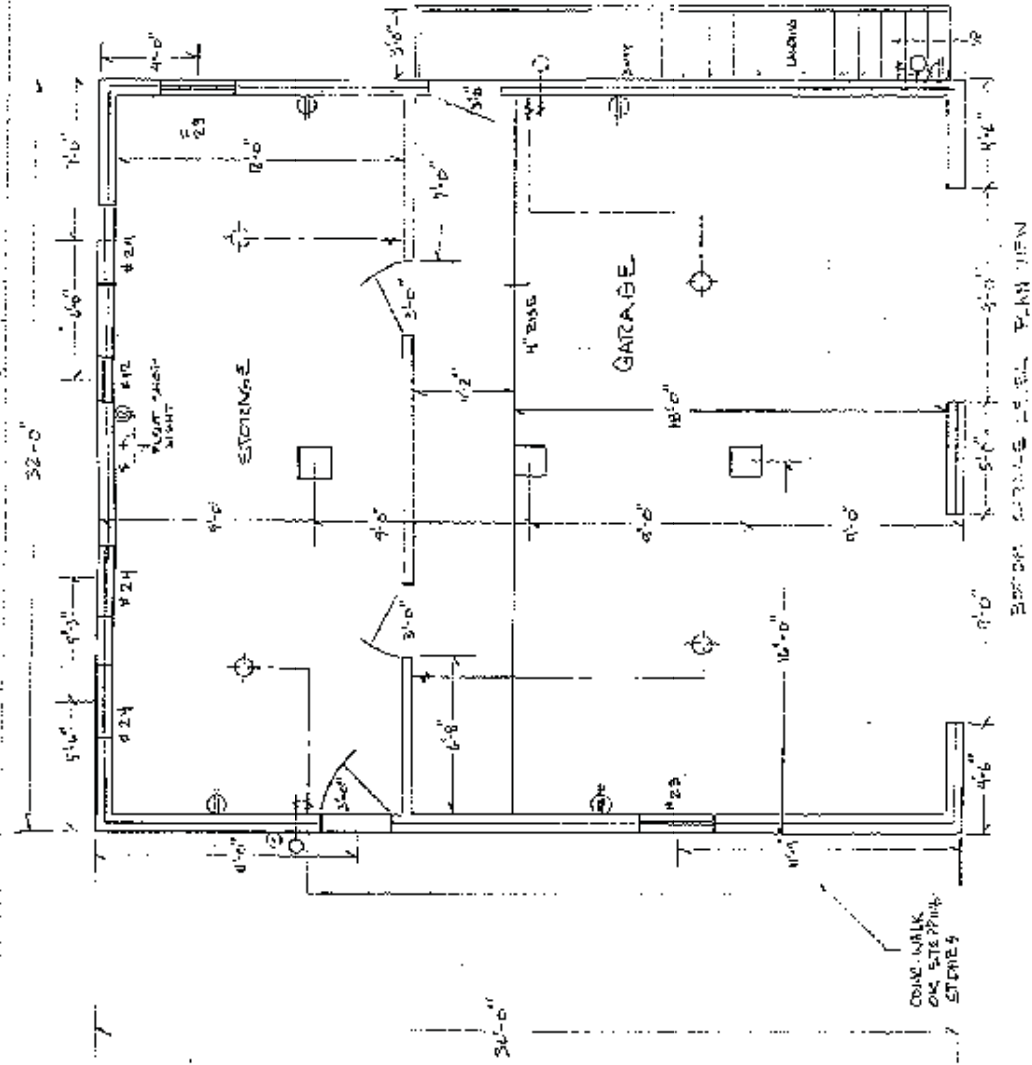
229710



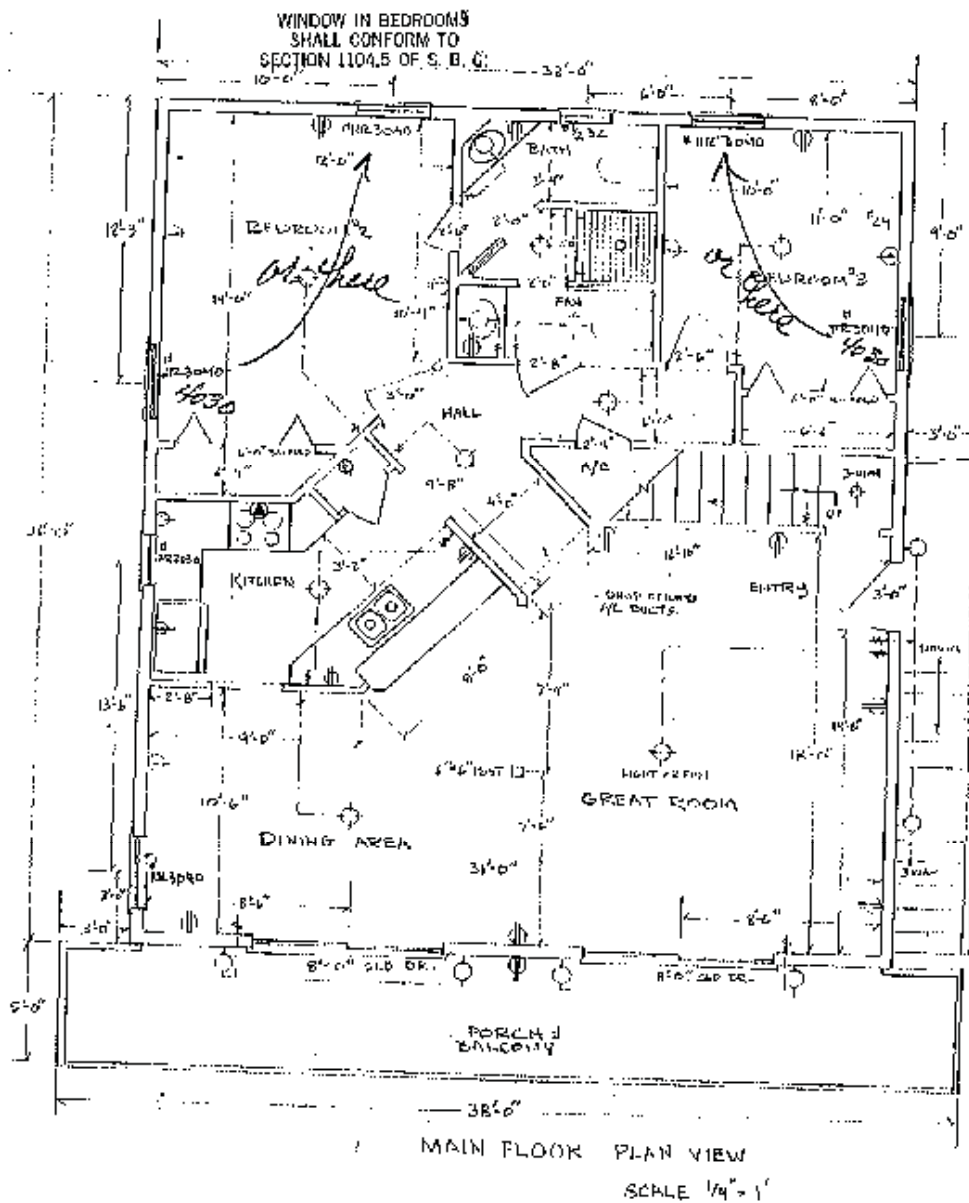


LEFT ELEVATION

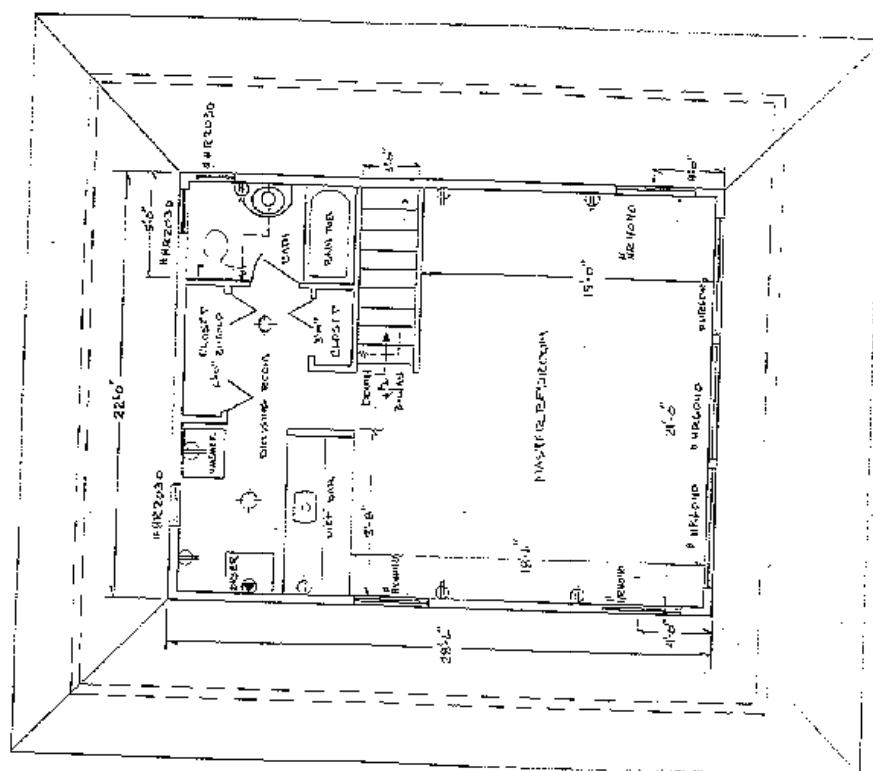
229763



22976C

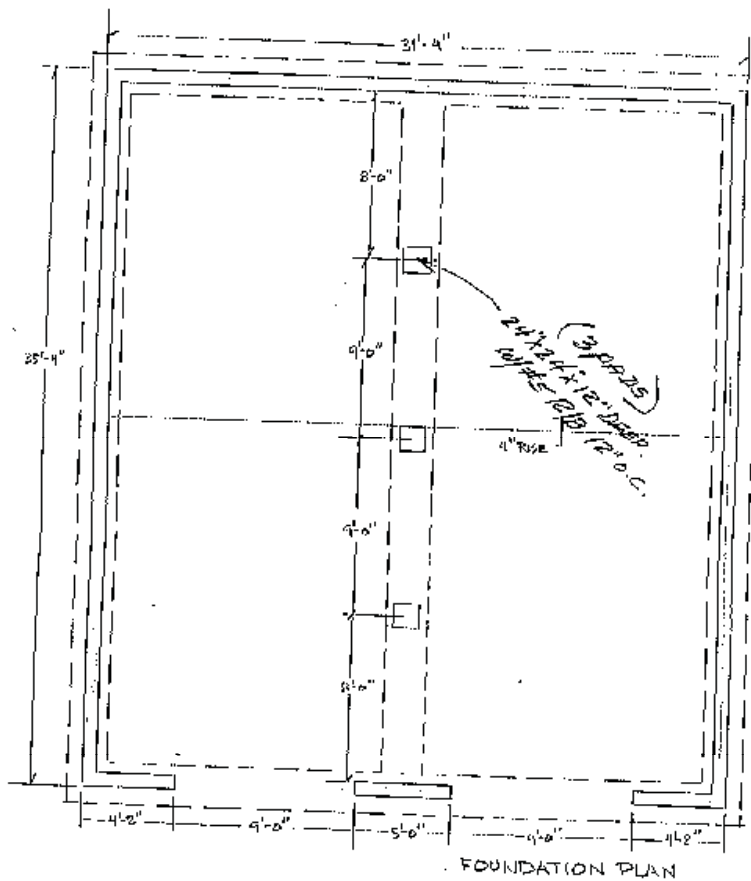


22-9710

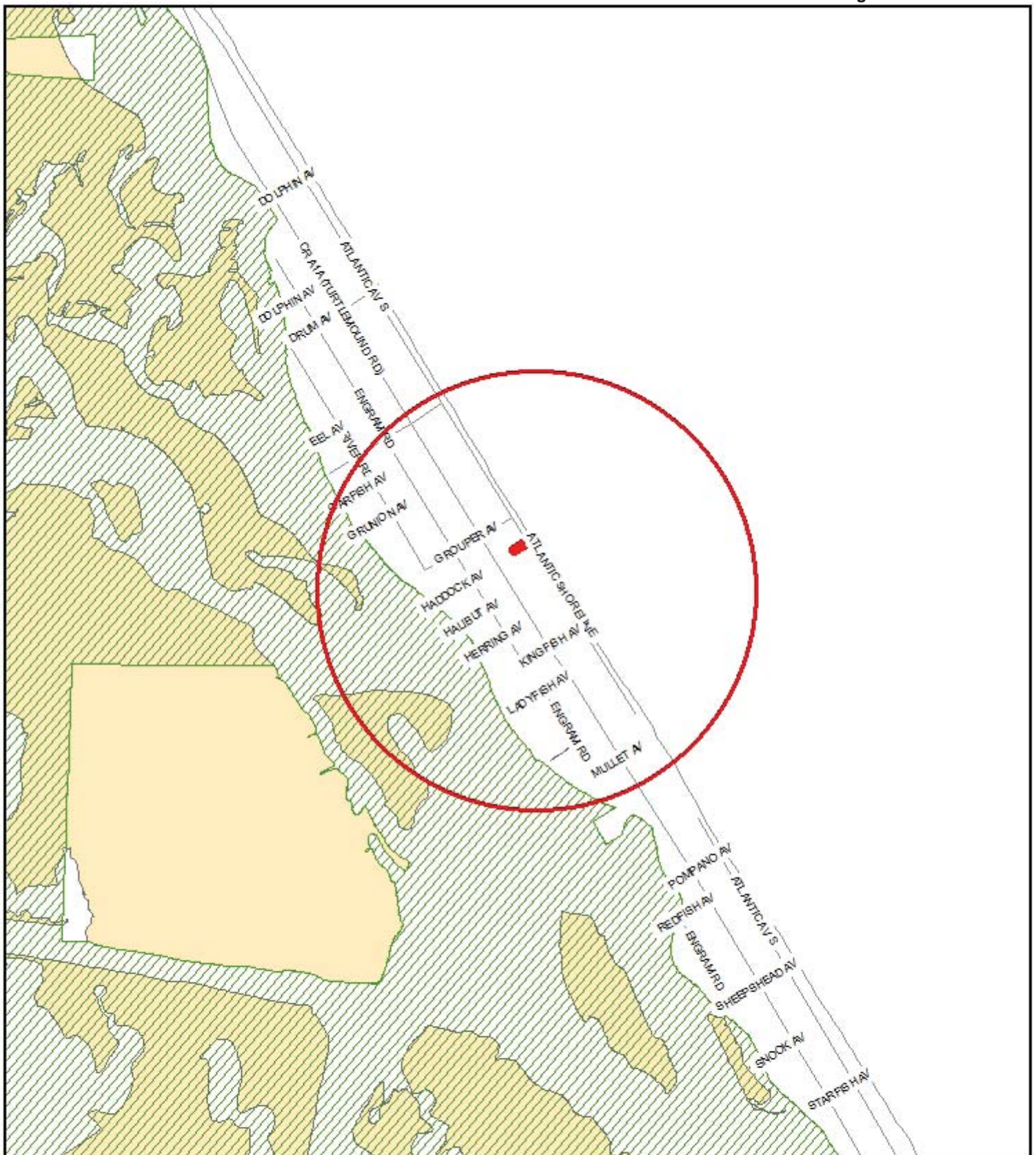


TOP FLOOR PLAN VIEW
SCALE 1/4" = 1'

22976C



20760



ECO/NRMA

1"=1000'



REQUEST AREA

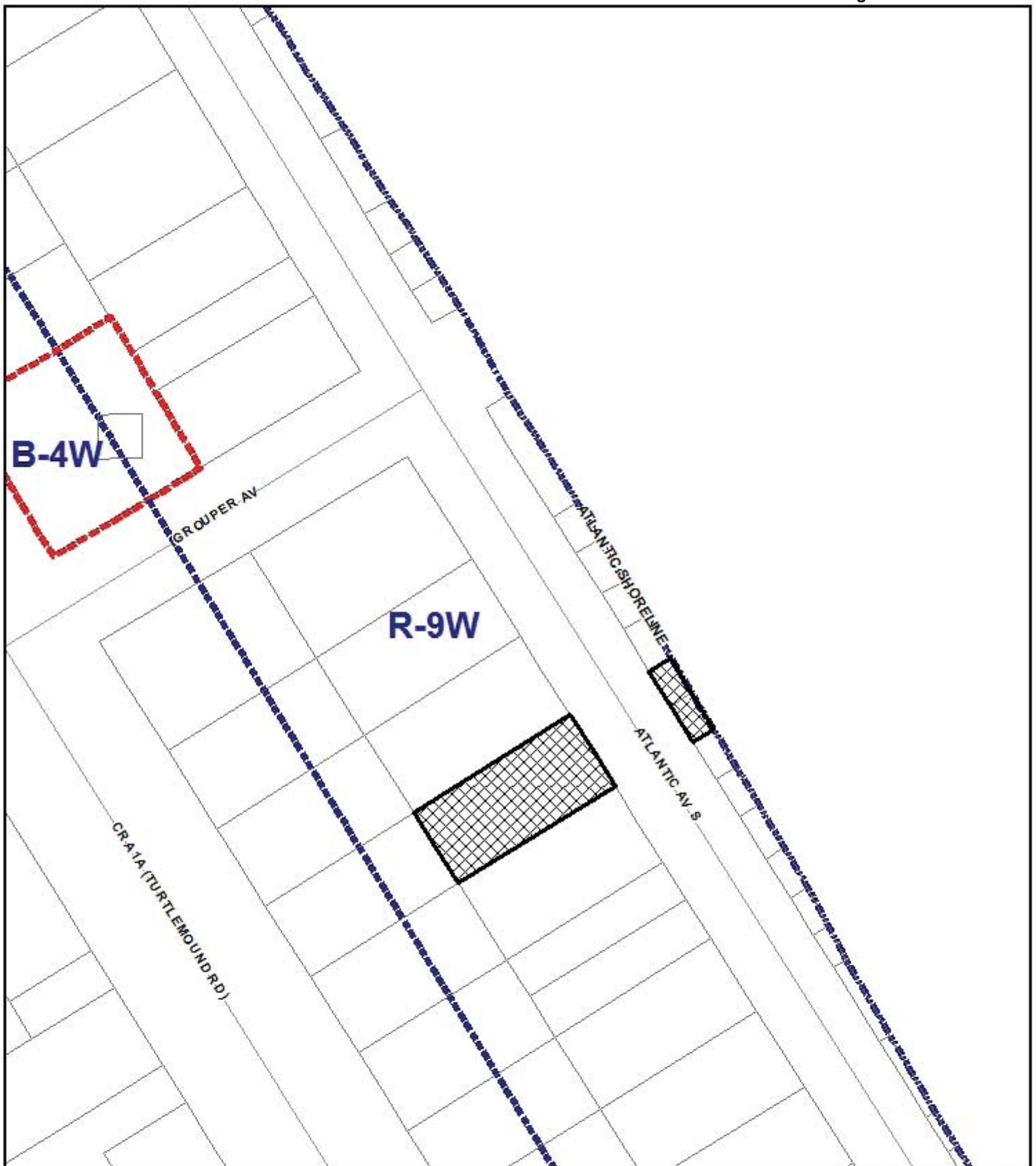
ECO

NRMA



**VARIANCE
CASE NUMBER**


V-12-043



ZONING CLASSIFICATION

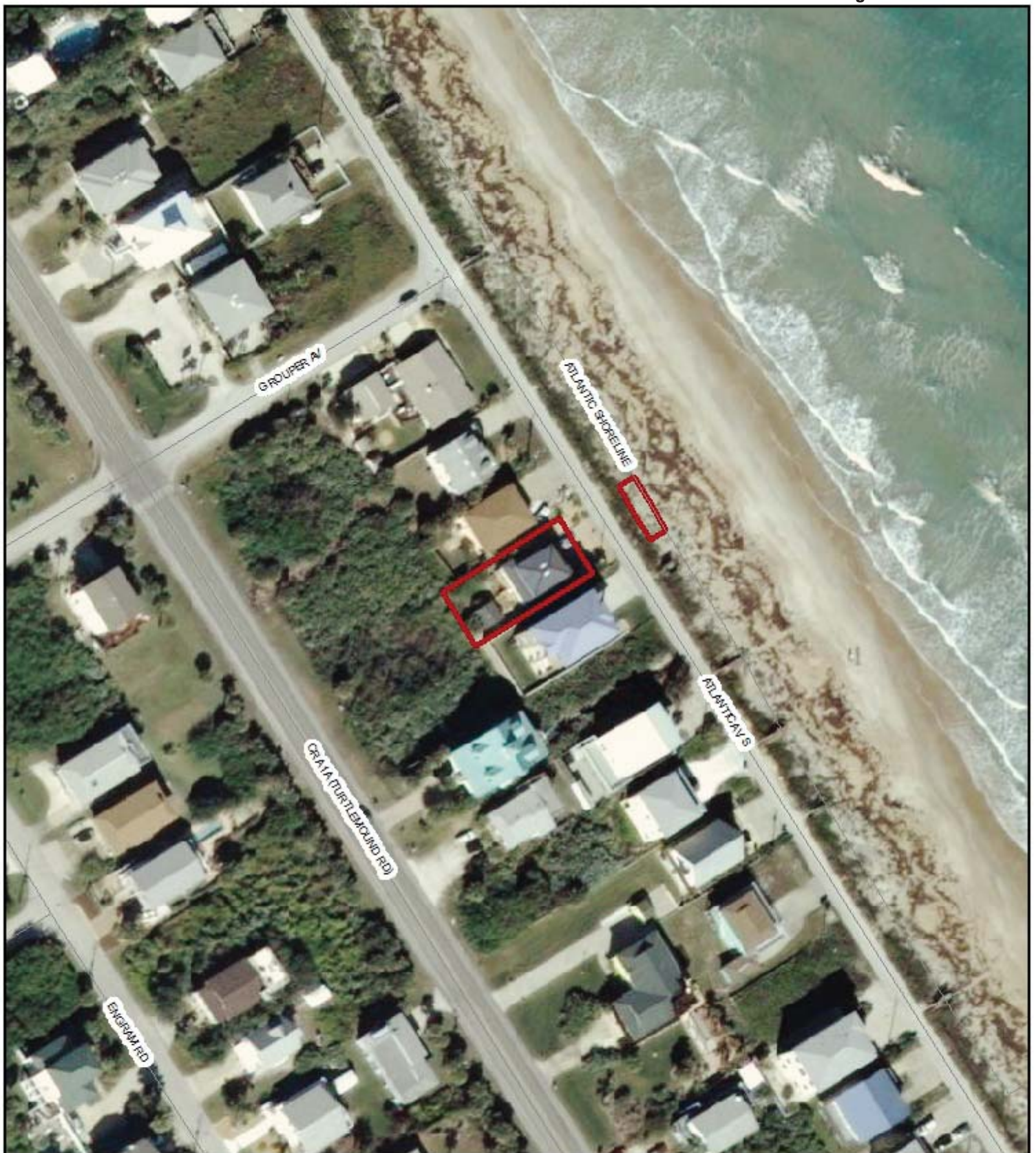
**VARIANCE
CASE NUMBER**

1"= 75'

 REQUEST AREA

N
27


V-12-043



AERIAL

1"= 100'

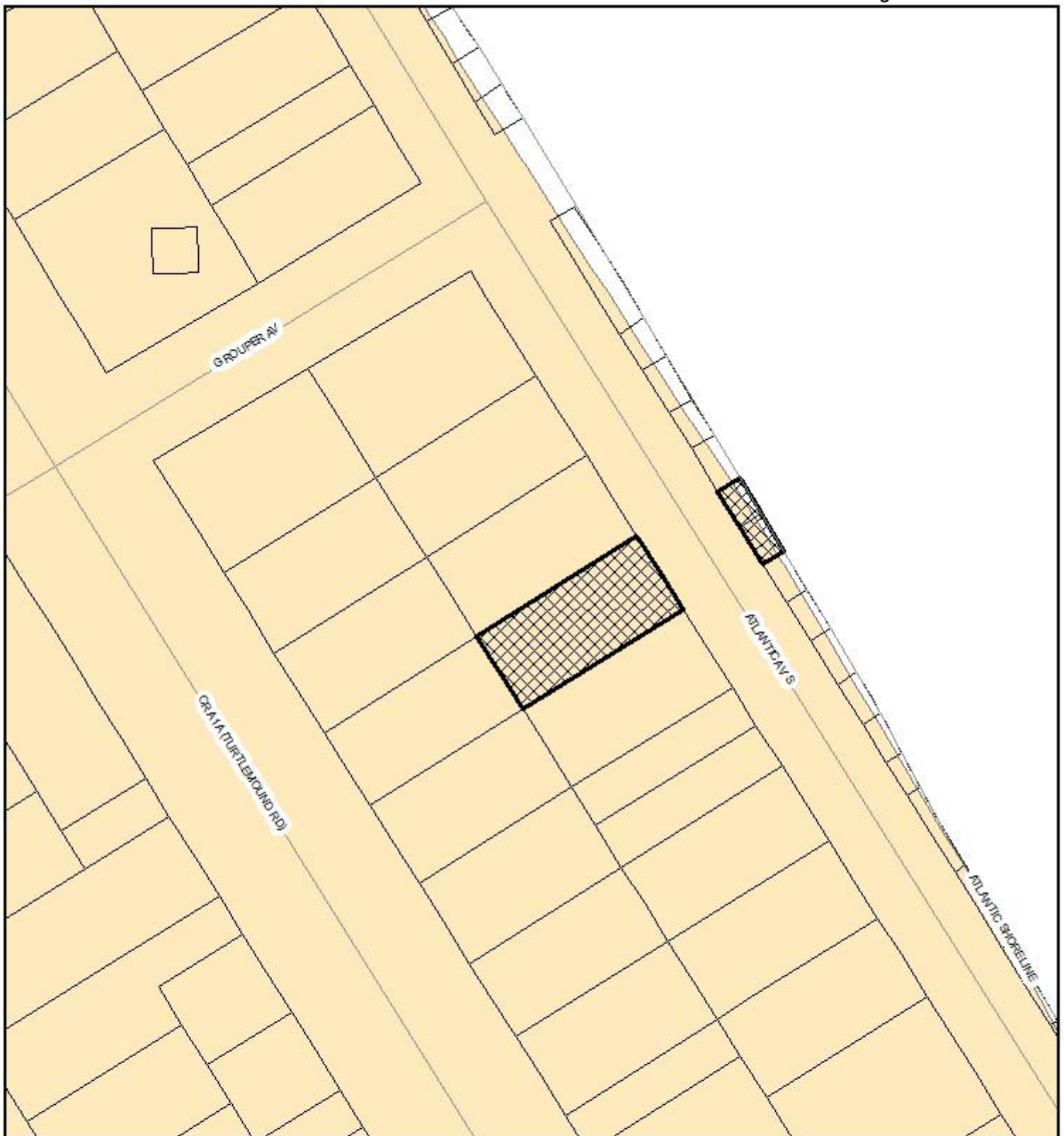
IMAGE YEAR: 2012

 REQUEST AREA





**VARIANCE
CASE NUMBER**

V-12-043



FUTURE LAND USE DESIGNATION

 URBAN LOW INTENSITY

 REQUEST AREA



**VARIANCE
CASE NUMBER**

V-12-043

1"= 75'