



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:** May 13, 2014 - Planning and Land Development Regulation Commission (PLDRC)

**CASE NO:** V-14-041

**SUBJECT:** Variance to the minimum front yard requirement for an existing single-family dwelling on Tourist (B-8) zoned property.

**LOCATION:** 1453 Ocean Shore Boulevard, Ormond-by-the-Sea

**APPLICANT:** Shayna Morrow

**OWNER:** Euleta Dianne Fox L/E

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

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**I. SUMMARY OF REQUEST**

The applicant is requesting a variance to legitimize a 74-year old setback in effect at the time the single-family dwelling was constructed.

Requesting a variance to the front yard requirements from 20 feet to 2.99 feet.

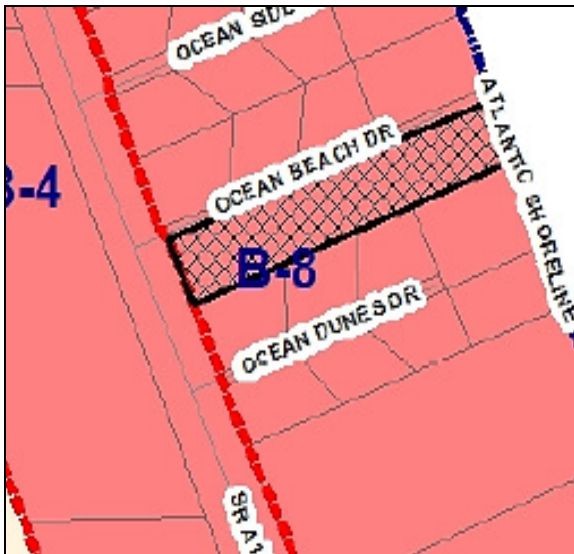
*Staff recommendation:* Approval with conditions.

**II. SITE INFORMATION**

- 1. Location: The property is located at 1453 Ocean Shore Boulevard, southerly 60 feet of Lot 13, O’Byrne Subdivision, in the Ormond-by-the-Sea community.
- 2. Parcel No(s): 3234-07-00-0130
- 3. Property Size: ± 22,915 square feet or 0.53 acres
- 4. Council District: 4
- 5. Zoning: Tourist (B-8)
- 6. Future Land Use: Urban High Intensity (UHI)
- 7. ECO Overlay: No
- 8. NRMA Overlay: No
  
- 9. Adjacent Zoning and Land Use:

DIRECTION	ZONING	FUTURE LAND USE	CURRENT USE
North:	B-8	UHI	Single-family dwellings
East:	Not Applicable	Not Applicable	Coastal Dunes, Non-Driving Beach Zone and Atlantic Ocean
South:	B-8	UHI	Single-family dwellings
West:	B-4	C	Retail and Office

10. Location Maps:



**ZONING**



**AERIAL**

### III. BACKGROUND AND PREVIOUS ACTIONS

The property is in the North Peninsula community of Ormond-by-the-Sea,  $\frac{3}{4}$  mile north of the Ormond Beach city limits. The area development pattern on the east side of Ocean Shore Boulevard consists of single-family dwellings and condominiums. Subject Lot 13 is part of the O'Byrne Subdivision, platted in 1946, and based on the property record card the dwelling was constructed in 1940 with structural additions added through to 1996.

The property contains a single-family dwelling comprising of 3,407 square-feet includes a finished upper story and a single garage. A covered wood deck and dune walkover are located in the waterfront yard.

The lot is zoned Tourist (B-8), which, until recently, made many of the area homes nonconforming because single-family dwellings were not a permitted use in the B-8 zoning classification. Many of these dwellings, like the subject single-family dwelling, were also nonconforming structures because they do not meet the minimum required yards in the B-8 zoning classification and, as such, could not be expanded and rebuilt without a special exception and/or variance application.

On January 24, 2013, the county council adopted Ordinance 2013-01 to allow single-family dwellings as a permitted principal use (instead of a permitted special exception) in the B-8 zoning classification and established minimum and maximum dimensional requirements for the single-family use, such as lot size, yards (setbacks), floor area, and building height. The property is a conforming lot per Ordinance 2013-01. However, the dwelling is a nonconforming structure because it does not meet the minimum front yard requirement.

In conjunction with Ordinance 2013-01, county council also adopted Resolution 2013-10 waiving the variance application fees for B-8 zoned properties so that property owners could apply for variances to address nonconforming issues not resolved by the code changes. Approval of the requested variance would remedy nonconforming setbacks for an existing single-family dwelling.

### 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 is based on these criteria:

***i. Special conditions and circumstances exist which are peculiar to the land, structure, sign, or building involved and which are not applicable to other lands, structures, signs, or buildings in the same zoning classification.***

There are special conditions and circumstances peculiar to the property and the single-family dwelling involved. As mentioned previously, the owner's dwelling was built in 1940, the property has a limited lot width of 60+/- feet and the parcel has two front yards. This property is an exception to the typical B-8 single-family lots in the O'Byrne subdivision whereas the subject lot's depth is located between Ocean Shore Boulevard and the beach. The dwelling exceeds 147.7 feet from the minimum front yard requirement of 20 feet off

Ocean Shore Boulevard. However, the front yard setback from Ocean Beach Drive does not comply with the B-8 classification requirement of 20 feet, as the dwelling is only 2.99 feet off the front yard property line.

When the lot was created in 1946, it was legal and not considered nonconforming. Therefore, the variance will recognize and legitimize the 74-year old regulations that were in effect at the time of the single-family dwelling construction.

Staff finds that the variance request meets this criterion.

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

The applicant is not responsible for the special conditions and circumstances pertaining to the property and the single-family dwelling involved. The owners obtained title to the property in August 2010 according to the warranty deed listed on the property record card.

Staff finds that the variance request 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.***

The provisions of subsection 72-206(3) *Nonconforming structure* of the zoning code apply to the applicant's single-family dwelling, because the structure is assumed a lawful nonconforming structure because of dimensional requirements. Literal application of the subsection 72-206(3) code provisions would require the structure to comply with current zoning code requirements, including minimum setback provisions, if damaged in excess of 75 percent of the assessed value by the Property Appraiser, except as provided in subsection 72-302, Hurricane damage. This latter code provision applies to the rebuilding of both conforming and nonconforming structures damaged by a hurricane, which are located in the coastal high hazard area as defined by the comprehensive plan. Section 72-302 requires conforming and nonconforming structures which have been damaged more than 50 percent of their replacement cost at the time of occurrence.

Approval of the requested variance would establish the conforming front yard setback for the dwelling which would help the applicant to repair and/or rebuild and reuse the single-family dwelling if damaged or destroyed, in compliance with applicable code provisions.

Staff finds that given the peculiar circumstances and conditions that apply to the property and single-family dwelling involved, that the variance request 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 has reasonable use of the land and the single-family dwelling without approval of the requested variance. However, approval of the requested variance would legitimize

the existing front yard setback and will assist the applicant in the repair, rebuild and/or reuse of the structure if damaged or destroyed.

Staff finds that the variance request can 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 the requested variance will be in harmony with the code, and the approval of the variance should not be injurious to the immediate area.

Staff found no specific comprehensive plan policies applicable to this case.

## **V. STAFF RECOMMENDED CONDITIONS**

Staff finds that the requested variance can meet all five of the required criteria for approval. Therefore, staff recommends approval of the variance for a front yard from the required 20 feet to 2.99 feet for a single family dwelling on B-8 zoned property subject to the following condition:

1. The variance is limited to the single-family dwelling placement as shown on the property survey from Harts Progressive Enterprise Inc., Sheet 2 of 3, report dated 11/22/13 and certified to Euleta Dianne Fox Trust. Except for compliance with the required front yard, any future expansion of the single-family dwelling shall require a separate variance.

## **VI. ATTACHMENTS**

- Written Petition
- Variance Site Plan
- Site Photos
- 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.

Variance Request Information – Euleta Dianne Fox for Property at  
1453 Ocean Shore Blvd, Ormond Beach, FL 32176

**CHECKLIST**

**1. Description of Variance Requested:**

**Multi- Family Dwelling Minimum Yard Size as follows:**

- Side yard setback from required 5 feet to 2.99 feet. Or
- ~~Front yard setback from required 20 feet to 2.99 feet.~~

**Accessory structures to single family dwellings as follows:**

- ~~Waterfront yard setback from required 25 feet to 2.5 feet.~~

**2. Property Owners Information:**

Name: Euleta Dinne Fox  
 Address: 1453 Ocean Shore Blvd.  
 Ormond Beach, FL 32176  
 Telephone Number: 386-290-8800 Shayna Morrow, POA

**3. Applicant Information:** Owners are the applicants. Shayna Morrow will be primary contact.

**4. Information on Utilities:**

- Septic
- City Water
- Well for irrigation
- Electric

**5. Tax parcel number and address of parcel:**

Tax Parcel Number: 34-13-32-07-00-0130  
 Address of Parcel: 1453 Ocean Shore Blvd.  
 Ormond Beach, FL 32176

**6. General Location of Site:** Corner of (and south) Ocean Beach Dr and Ocean Shore Boulevard.

**7. Number of acres in the parcel:** Approximately 0.4752 acres or 20700 square feet.

**3. Square footage of each proposed building, if applicable. – N/A**

**Additional Requirements – Check List**

- 1. Application Fee** – Waived per Resolution 2013-01.
- 2. A notarized authorization form from owner or attorney representing the owner.** - N/A as applicants and owners are the same.
- 3. Two (2) copies of the legal description** – See Survey.

4. **Two (2) current surveys of the property prepared by a Florida Registered Land Surveyor – See attached.**
5. **Five (5) copies of a site plan that complies with Section 72-379(1)(a)(3) of the Zoning Ordinance and one 8 ½" x 11" reduced copy of the survey – N/A**
6. **Written petition as described in Section 72-379(1)(a)(4) of the Zoning Ordinance. – See attached.**
7. **Additional information required for a variance from Section 72-206(1) (Nonconforming lot) – N/A**

#### **Responses to Written Petition for a Variance**

- 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?**

This home is part of the O'Byrne Subdivision and was built in 1957. In 1957, the O'Byrne Subdivision was not zoned B-8 – Tourist. The B-8 Tourist zoning classification was recently modified under Ordinance 2013-01 as a result of a settlement agreement between the County of Volusia and Mr. Joseph Kohler. The minimum yard size requirements for Single Family Dwellings and/or the setbacks for Accessory structures to single family dwellings contained in Ordinance 2013-01, make this property non-conforming. Because this property and the majority of the properties impacted by Ordinance 2013-01 cannot meet the proposed single family dwelling minimum yard requirements and/or accessory structures setbacks, County Council passed Resolution 2013-01 waiving variance fees for properties zoned B-8, Tourist Classification, in Neptune Subdivision, O'Byrne Subdivision, and Replat of Ormond by the Sea #4 until March 1, 2014. These circumstances are not the result of actions by the owner(s).

- 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?**

Because this property is non-conforming, a variance for the existing minimum yard size and/or existing accessory structure setbacks is being requested. The variance will eliminate issues lenders have with respect to re-financing and financing a non-conforming property. Additionally, the variance affords the owner(s) the right to rebuild the existing structure and/or accessory structures in their current locations should they be partially or completely destroyed.

- 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.**

Granting the requested variance(s) will conform the existing structure and/or accessory structure to Ordinance 2013-01.

- D) The general intent and purpose of the Zoning Ordinance and the Volusia County Comprehensive Plan Ordinance NO. 90-10 is to lesson 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?**

This variance request applies to an already developed property therefore will not impact congestion on the streets, public health, safety, morals, and general welfare; or use of land and governmental services.

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

This variance request applies to an already developed property therefore will not be injurious to the surrounding area.





Front View of Dwelling Looking East



Rear View of Dwelling Looking West



Looking East Along North Property Line



Looking East Along South Property Line

*Inter-Office  
Memorandum*



**TO:** Bill Gardner, Activity Manager   **DATE:** April 22, 2014




**FROM:** Danielle Dangleman, Environmental Specialist III

**SUBJECT:** Planning & Land Development Regulation Commission meeting for  
Date: May 13, 2014  
Parcel #: 3234-07-00-0130  
Case #: V-14-041, Shayna Marrow, Applicant

Environmental Permitting (EP) has reviewed the application and conducted a site inspection for this project on April 17, 2014. EP has no objection to this variance request.



**ECO/NRMA**

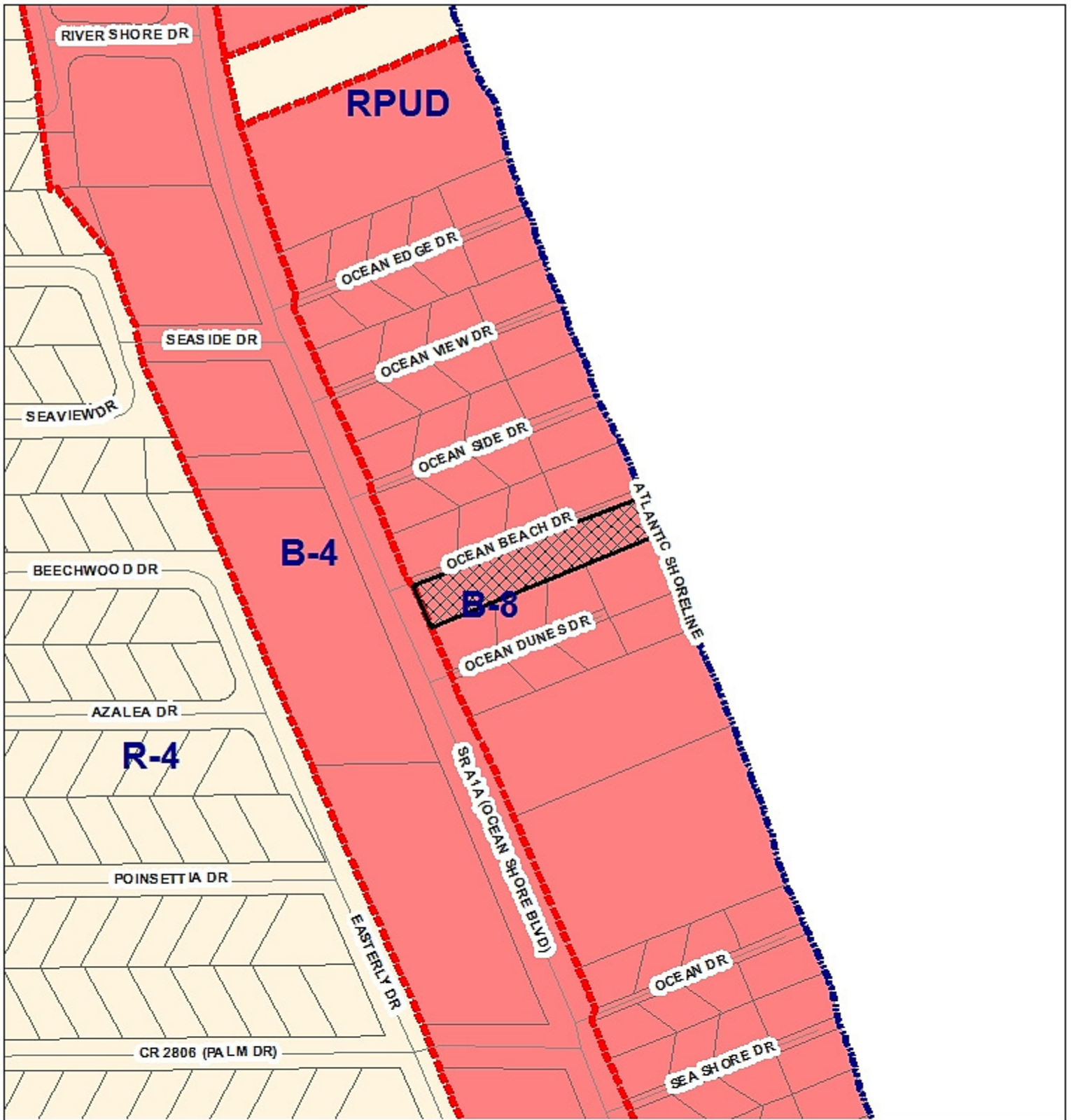
 ECO  NRMA  REQUEST AREA

1 inch = 300 feet



**VARIANCE  
CASE NUMBER**

**V-14-041**



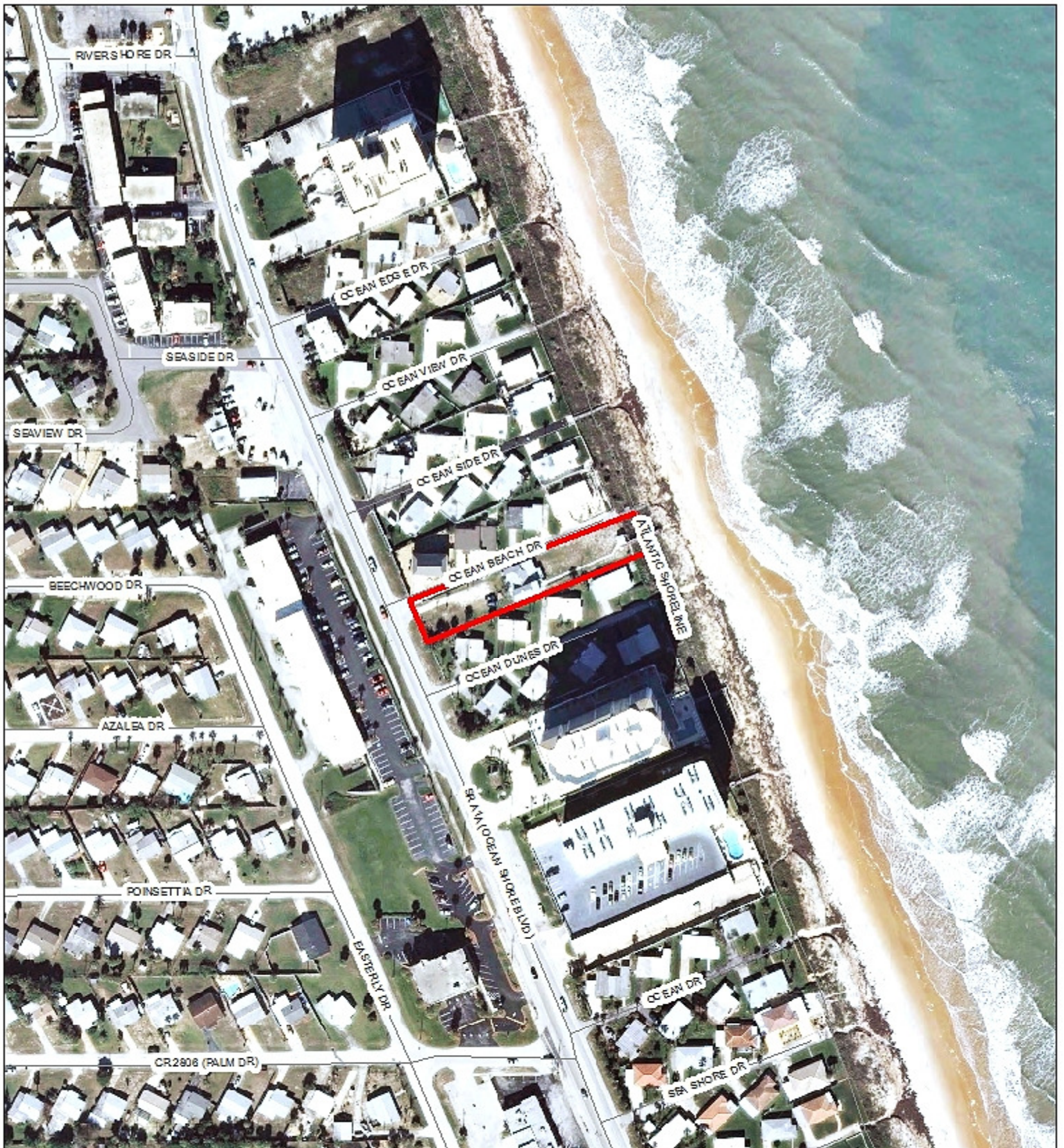
**ZONING CLASSIFICATION**

- COMMERCIAL
- RESIDENTIAL
- REQUEST AREA

1 inch = 200 feet




**VARIANCE  
CASE NUMBER  
V-14-041**



**AERIAL**

IMAGE YEAR: 2012

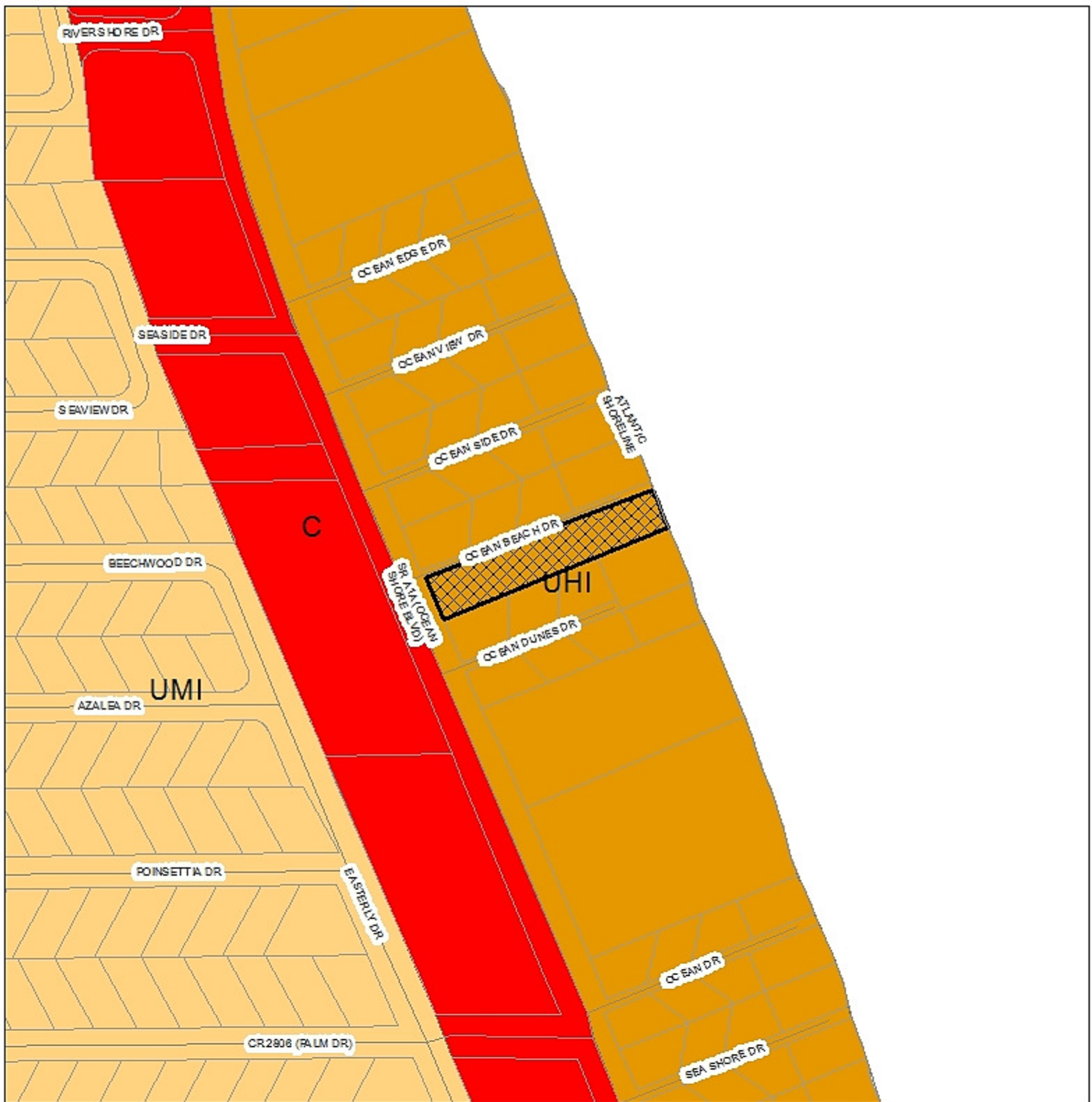
1 inch = 200 feet

 REQUEST AREA



**VARIANCE  
CASE NUMBER**

**V-14-041**



**FUTURE LAND USE DESIGNATION**

1 inch = 200 feet

**VARIANCE  
CASE NUMBER**

- COMMERCIAL (1)
- URBAN MEDIUM INTENSITY (1)
- URBAN HIGH INTENSITY (1)
- REQUEST AREA



**V-14-041**