



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: July 8, 2014 - Planning and Land Development Regulation Commission (PLDRC)

CASE NO: V-14-056

SUBJECT: Variance to the maximum permitted fence height in a front yard on Urban Single-Family Residential (R-4) zoned property.

LOCATION: 138 Ocean Grove Drive, Ormond Beach

APPLICANT: Cydney Reagan, A1A Landscaping, Inc.

OWNERS: William Emory Barr Life Estate

STAFF: Carol McFarlane, AICP, Planner II

I. SUMMARY OF REQUEST

The applicant is requesting to install a six-foot high fence along the perimeter of the property, including in the front yard. However, the zoning code limits residential fence height to four feet in the front yard. The applicant state that the taller fence requested is for the safety of the resident.

The requested variance is:

A variance to Section 72-282(2) to maximum permitted fence height in a front yard from four (4) feet to six (6) feet on Urban Single-Family Residential (R-4) zoned property.

Staff recommendation: Denial, as the requested variance does not meet the five criteria for the granting of a variance.

SITE INFORMATION

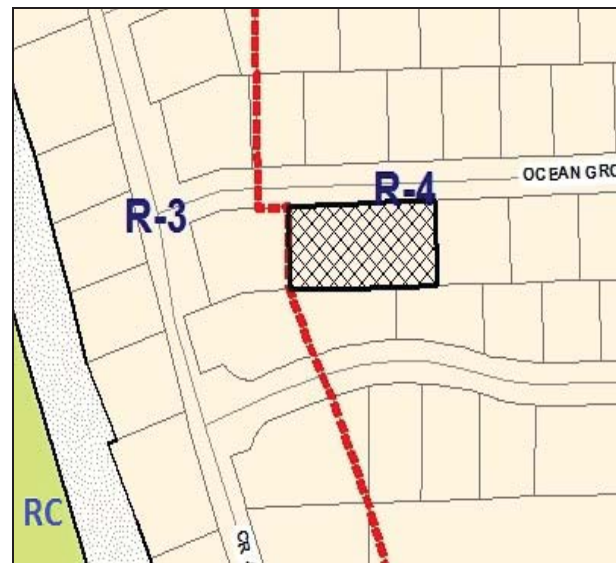
1. Location: The property is located on the south side of Ocean Grove Drive, approximately 180 feet east of its intersection with John Anderson Drive, Ormond Beach.
2. Parcel No(s): 3221-04-00-0410
3. Property Size: ±20,000 square feet
4. Council District: 4
5. Zoning: Urban Single-Family Residential (R-4)
6. Future Land Use: Urban Medium Intensity (UMI)
7. ECO Overlay: No
8. NRMA Overlay: No
9. Adjacent Zoning and Land Use:

DIRECTION	ZONING	FUTURE LAND USE	CURRENT USE
North:	R-4	UMI	Single-family Residences
East:	R-4	UMI	Single-family Residence
South:	R-4	UMI	Vacant Residential
West:	R-3	ULI	Single-family Residence

10. Location Maps:



Aerial Map



Zoning Map

II. BACKGROUND AND PREVIOUS ACTIONS

The subject property is comprised of two platted lots and a portion of another lot of the Ocean Grove Terrace subdivision, which was platted in 1964. The property has 200 feet of road frontage on Ocean Grove Drive, and is 100 feet deep. The residence on the house was built in 1967, according to Property Appraiser's notes. The property is also developed with a detached garage. On June 13, 2014, a lot combination for the underlying lots on this property was approved (2014-S-EXM-0150).

REVIEW CRITERIA AND ANALYSIS

Section 72-282-(2) allows a maximum fence height of four feet within required front yards. Outside of the front yard, the fence can have a maximum height of six feet. In the R-4 zoning classification, the required front yard is 25 feet measured from the front lot line. The zoning ordinance does allow for a six-foot fence as long as it is outside of the front yard setback.

The applicant is requesting a variance to the maximum permitted fence height in a front yard to enclose the property with a six-foot high opaque PVC fence. As shown on the survey submitted by the applicant, the house is setback over 30 feet and the detached garage is setback 65 feet from the north lot line. It is the applicant's assertion that a six-foot fence height will deter the owner from wandering. Two gates are proposed for the two driveways on the property. As shown on the submitted variance site plan, the easterly driveway gate will be set back slightly from the property line to avoid a retaining wall.

Section 72-379 (1) a. 4 *Variances* of the zoning code contains five applicable criteria by which a variance application may be granted by the commission. The following staff evaluation using these criteria is as follows:

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

The land itself is rectangular, and is flat and generally free of obstacles. At 100 feet in depth, there is still 75 feet of yard depth that could be enclosed by a six-foot fence, without the use of a variance. Therefore, there are no special conditions peculiar to the land.

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

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

Since staff could not find a circumstance peculiar to the land, this variance request cannot meet this criterion.

iii. *Literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning classification, under the terms of the ordinance, and would work an unnecessary and undue hardship on the applicant.*

Literal interpretation of the zoning code would require reducing the fence height to four feet within the 25-foot front yard, or locating the six-foot fence outside of the required front yard. Erecting a fence with one of these two options would not create a hardship for the applicant.

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

iv. The variance granted is the minimum variance that will make possible the reasonable use of the land, building, structure, or sign.

The variance requested is not the minimum variance necessary to make possible the reasonable use of the land. As discussed in paragraph iii, above, there are alternatives available for the placement of the fence.

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

v. The grant of the variance will be in harmony with the general intent and purpose of this ordinance and the Volusia County Comprehensive Plan Ordinance No. 90-10, as amended, and that such variance will not be injurious to the area involved.

Granting of this variance may have an impact on traffic as a six-foot high fence may prevent a clear line of sight to those backing out of the property. According to the survey, there is 12.6 feet between the property line and the edge of pavement of Ocean Grove Drive. Depending on the length of the vehicle, it may be difficult for someone backing out the driveway to view oncoming traffic on Ocean Grove Drive.

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

III. STAFF RECOMMENDATION

Staff finds that the requested variance does not meet all five criteria for the granting of a variance and must recommend denial of the variance to Section 72-282(2) to allow a fence from the maximum permitted height of four feet to six feet in a front yard on Urban Single-Family Residential (R-4) zoned property.

VI. ATTACHMENTS

- Written Petition
- Survey/Variance Site Plan
- Reviewer Comments
- Letters of Support
- Site Photos
- Maps

VII. AUTHORITY AND PROCEDURE

The commission may, except as otherwise provided in Section 72-379 of the zoning code, authorize, after due public notice upon application on a form prescribed by the zoning enforcement official, such variance or variances from the terms of this ordinance as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provision of this ordinance would result in unnecessary and undue hardship. Said variance application shall be heard only if it is presented by the person owning 51 percent or more of the specific area of land involved or upon an administrative application by the county council.

Any new information to be presented at the planning and land development regulation commission meeting for any application will be grounds to continue an application to the next planning and land development regulation commission meeting. Applicants shall inform and provide staff with the new information prior to the planning and land development regulation commission meeting.

**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?

The owner of the house has dementia/alzheimers
& the fence is being used to contain owner to
his property

- 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?

The zoning ordinance for the R4 classification
would only allow a 4' fence in the front yard

- 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:

The minimum height of 6' is needed to
prevent the owner from leaving the property

- 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?

The proposed variance will not impact congestion on the street, but will provide safety for the owner & neighborhood.

and

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

Neighbors are in total support for the safety of Mr. Barr.

John T. Anthony 5/20/2014
Applicant's Signature JOHN T. ANTHONY, TRUSTEE Date

Karen E. Britt 05/20/14
Applicant's Signature KAREN E. BRITT, TRUSTEE Date

Advanced Physician

MDVIP

John F. Cullen, MD
Family Medicine

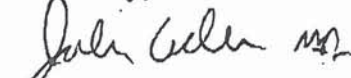
June 6, 2014

Re: William E. Barr
D.O.B.: 05/15/1922

To Whom It May Concern:

Mr. William E. Barr, a patient of mine for years, has developed problems with memory which have, with time worsened. Mr. Barr has unknowingly left the house unescorted. He has sustained several falls. Risk to his well being has increased to an unacceptable level. In an attempt to allow Mr. Barr to continue living in his home, his family has suggested that his yard be fenced. I think that this could be done, in a tasteful fashion and would allow Mr. Barr to avoid institulization.

Sincerely,



John Cullen, M.D.

Boundary Survey

LEGAL DESCRIPTION: THE WESTERLY 50 FEET OF LOT 41, ALL OF LOT 42 AND 43, OCEAN GROVE TERRACE SUBDIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN MAP BOOK 25, PAGE(S) 91, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.



138 OCEAN GROVE DRIVE
ORMOND BEACH, FL

LONG
SURVEYING,
INC.



Long Surveying, Inc.
"Specializing in Residential Surveying"

LB No. 7371
143 Villa Di Este Terrace #113
Lake Mary, FL 32746
Office 407-330-9717 or 407-330-9716
Fax 407-330-9775
www.longsurveying.com

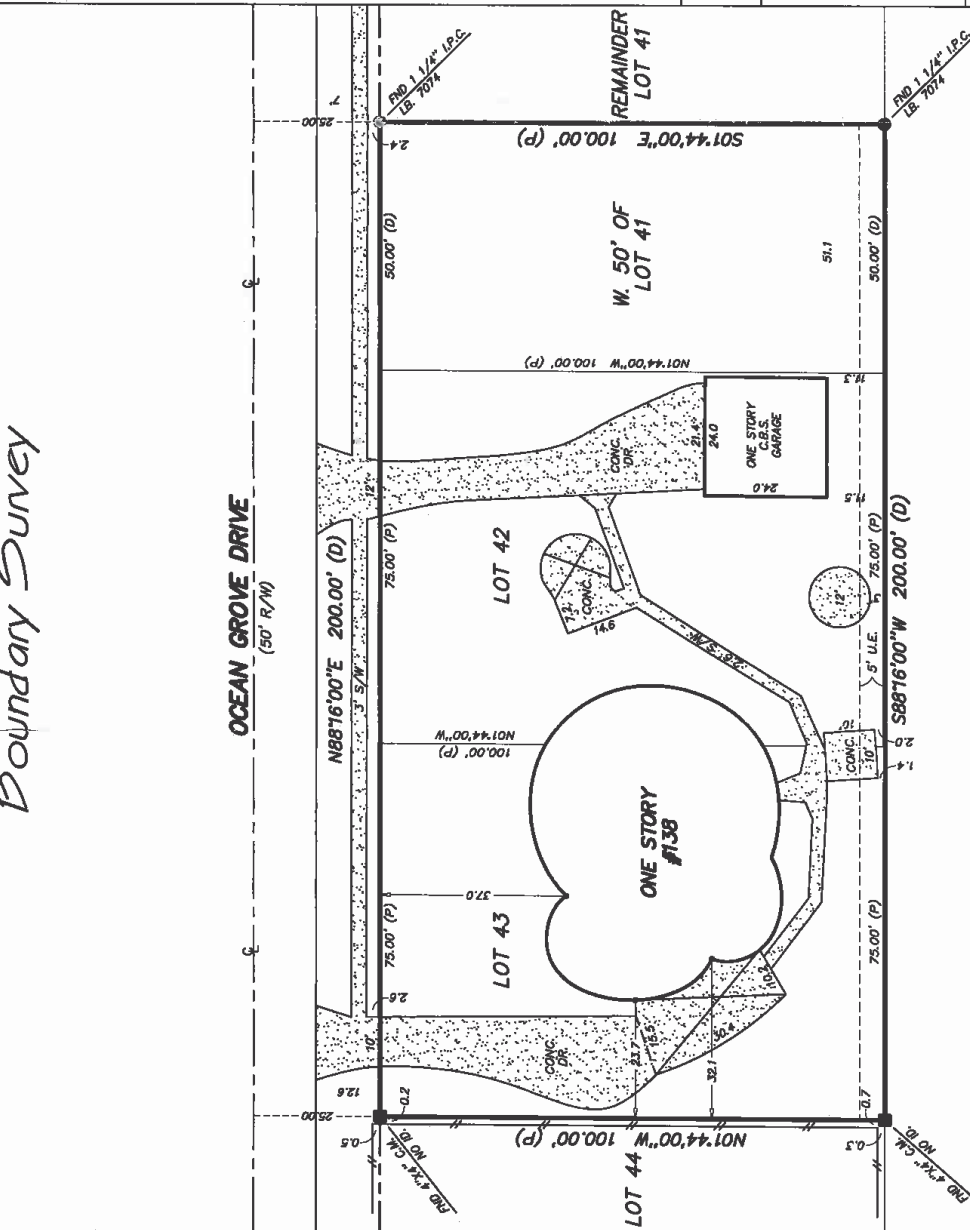
DRAWN BY:
MP

CHECKED BY:
BRETT

CERTIFIED TO:
JTA FINANCIAL SERVICES

COMMUNITY NO:
125155
FIRM, DATE:
02/19/14
SUFFIX:
J
FLOOD ZONE:
X

SURVEY NO:
55205
FIELD DATE:
04/07/14



- SCALE: 1"=30'
- A.P. - AIR CONDITIONER
 - A - CENTRAL ANGLE
 - B.A. - BACKSIGHT
 - C.B. - CHORD BEARING
 - C.B.S. - CONCRETE BLOCK STRUCTURE
 - C.M. - CONCRETE MONUMENT
 - C.M. - CONCRETE MONUMENT
 - D.E. - DRAINAGE EASEMENT
 - E - EAST
 - F.E. - FINISHED FLOOR ELEVATION
 - F.P. - FENCE POST
 - G. - GROUND
 - I.P. - IRON PIPE
 - I.R. - IRON ROD
 - I.R.C. - IRON ROD & CAP
 - L. - LAND SURVEYOR
 - L.S. - LAND SURVEYOR BUSINESS
 - M - MEASURED
 - N - NORTH
 - N.D. - NAIL AND DISK
 - N.P. - NAIL PLAT
 - P.C. - POINT OF CURVATURE
 - P.C.C. - POINT OF COMPOUND CURVATURE
 - P.C.P. - PERMANENT CONTROL POINT
 - P.O.B. - POINT OF BEGINNING
 - P.O.C. - POINT OF COMMENCEMENT
 - P.O.L. - POINT ON LINE
 - P.R.C. - POINT OF REVERSE CURVE
 - P.R.M. - PERMANENT REFERENCE MONUMENT
 - P.T. - POINT OF TANGENT
 - R - RADIUS
 - R.W. - RIGHT OF WAY
 - S - SOUTH
 - S.S. - SOUTHERN
 - U.E. - UTILITY EASEMENT
 - W - WEST
 - W.F.S. - WOOD FRAME STRUCTURE
 - O - SET 1/2" I.R.C. P.S.M. LB#7371
 - RIGHT-OF-WAY LINE
 - - - CENTERLINE
 - x - BARB WIRE FENCE
 - // - WOOD FENCE
 - x - CHAIN LINK FENCE
 - - - PLASTIC FENCE

BEARINGS SHOWN HEREON ARE BASED UPON THE CENTERLINE OF OCEAN GROVE DRIVE BEING N88°16'00"E PER PLAT

- NOTES:
- 1) This survey is based on the legal description as provided by the Client.
 - 2) This Surveyor has not abstracted the land shown hereon for any purpose other than the purpose of record which may affect the title or use of the land.
 - 3) Do not reconstruct property lines from building lines.
 - 4) No finding or overhang have been located except as shown.
 - 5) No improvements or utilities have been located except as shown.
 - 6) Not valid without a signature and the authorized electronic seal or the original raised seal of a Florida Licensed Surveyor and Mapper.

Jon M. Shoemaker, P.S.M. No. 5144
Certification: I certify that this survey was made under my direction and that it meets the minimum standards set forth by the Board of Professional Surveying and Mapping in Chapter 61G7-3, Florida Administrative Code, pursuant to Section



Variance Site Plan

LEGAL DESCRIPTION: THE WESTERLY 50 FEET OF LOT 41, ALL OF LOT 42 AND 43, OCEAN GROVE TERRACE SUBDIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN MAP BOOK 25, PAGE(S) 91, OF THE PUBLIC RECORDS OF VOLusia COUNTY, FLORIDA



1.38 OCEAN GROVE DRIVE, ORMOND BEACH, FL.

**LONG
SURVEYING,
INC.**



Long Surveying, Inc.

143 Villa Di Este Terrace #113
Lake Mary, FL 32746
Office 407-330-9717 or 407-330-9716
Fax 407-330-9715
www.longsurveying.com

DRAWN BY: MP
CHECKED BY: BRETT

DATE: 02/19/14
JTA FINANCIAL SERVICES

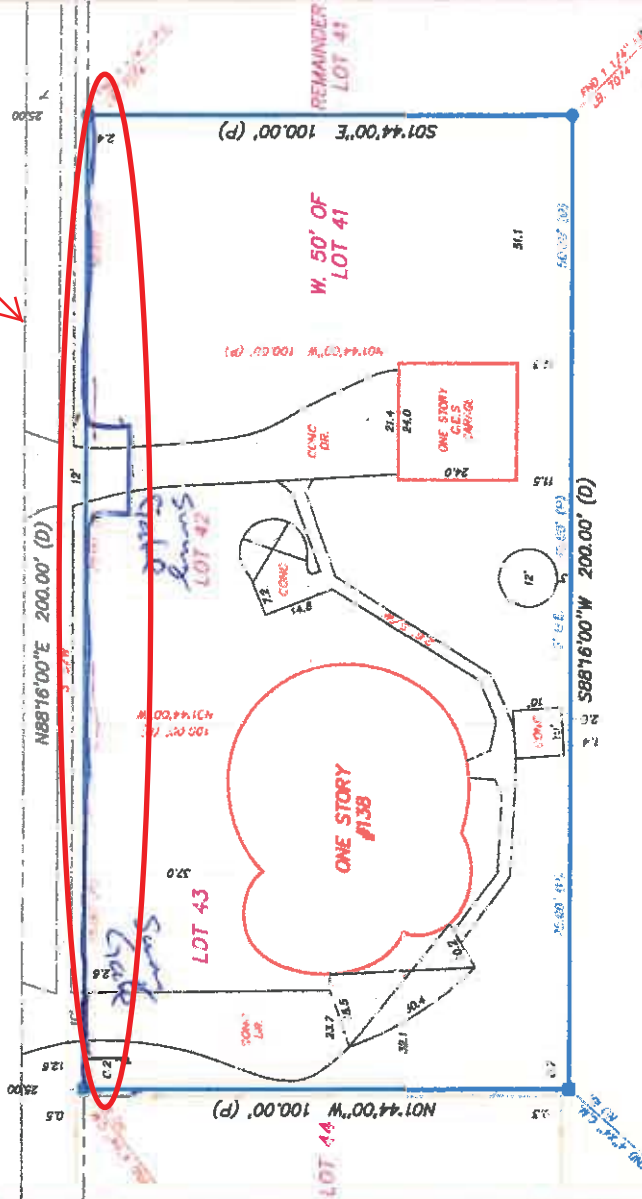
CUMULATIVE NO: 125155
FIRM DATE: 02/19/14
SUFFIX: J
FLOOD ZONE: X

SHEET NO: 55205
FIELD DATE: 04/07/14

Boundary Survey

Location of requested variance

OCEAN GROVE DRIVE
(E0° 21' 41")



NOT FLATTED

- A.C. - AIR CONDITIONER
- B.A. - BATH
- C.B. - CHORD BEARING
- C.E. - CONCRETE BLOCK STRUCTURE
- C.M. - CONCRETE MONUMENT
- C.O. - CONCRETE OBTUSE
- D.E. - DRAINAGE EASEMENT
- E. - EASEMENT
- F.E. - FINISHED FLOOR ELEVATION
- F.P. - FENCE
- G. - GROUND
- H. - HATCH
- I. - IDENTIFICATION
- J. - JUMP
- K. - KITCHEN
- L. - LAND SURVEYING BUSINESS
- M. - MONUMENT
- N. - NAIL AND D.B.K.
- O. - OBTUSE
- P. - PLAT
- Q. - POINT OF BEGINNING
- R. - POINT OF BEGINNING CURVATURE
- S. - PERMANENT CONTROL POINT
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BEARINGS SHOWN HEREON ARE BASED UPON THE CENTERLINE OF OCEAN GROVE DRIVE BEING N88°16'00"E PER FLAT

- NOTES:
- 1) The survey is based on the legal description as provided by the Client.
 - 2) This Surveyor has not detected the land shown herein for easements, rights of way or restrictions of record which may affect this title or use of the land building line.
 - 3) No boundary line shown herein is based on a survey of the land shown herein.
 - 4) No easements or utilities have been located except as shown.
 - 5) Not valid without a signature and the authenticated electronic seal or the original (hard seal) of a Florida Licensed Surveyor and Mapmaker.

Qualification: I certify that this survey was made under my direction and that it meets the minimum standards set forth by the Board of Professional Engineers and Surveyors in Chapter 625, Florida Statutes, and is presented to the Client for their use.



REVIEW STAFF COMMENTS

AIA LANDSCAPING, INC.

V-14-056

TRAFFIC ENGINEERING

Melissa Winsett

June 2, 2014

Comments:

Traffic Engineering has no concerns or comments.

To whom it may concern,

I, Connie Thompson, residing at 137 Ocean Grove Drive have
no objection to a 6' fence being placed along the front of the property at 138
Ocean Grove Drive understanding that the owner, Emory Barr, has a medical
condition and this height of fencing is needed to keep him safe.

Sincerely,

Connie Thompson

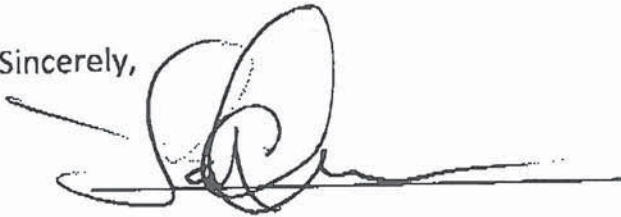
441-7959

(386) 441-7959

To whom it may concern,

I, JACK CHAYSA, residing at 139 Ocean Grove Drive have
no objection to a 6' fence being placed along the front of the property at 138
Ocean Grove Drive understanding that the owner, Emory Barr, has a medical
condition and this height of fencing is needed to keep him safe.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jack Chayst', written over a horizontal line.

JACK CHAYST

386-236-8315

To whom it may concern,

I, _____, residing at 143 Ocean Grove Drive have
no objection to a 6' fence being placed along the front of the property at 138
Ocean Grove Drive understanding that the owner, Emory Barr, has a medical
condition and this height of fencing is needed to keep him safe.

Sincerely,

6/7/2014

Spoke to Kathleen Reardon
P She stated verbally that
she was not opposed
to a fence on our property.

* Main residence in Deland.

To whom it may concern,

I, Robert Reiss, residing at 2895 John Anderson Drive

have no objection to a 6' fence being placed along the front of the property at 138

Ocean Grove Drive understanding that the owner, Emory Barr, has a medical

condition and this height of fencing is needed to keep him safe.

Sincerely,

Robert Reiss

Robert Reiss

386 441-1824

386 366 1524


To whom it may concern,

I, Jane Devine / Robert Weiss residing at 2893 John Anderson Drive

have no objection to a 6' fence being placed along the front of the property at 138

Ocean Grove Drive understanding that the owner, Emory Barr, has a medical
condition and this height of fencing is needed to keep him safe.

Sincerely,






Jane Devine

441-1874



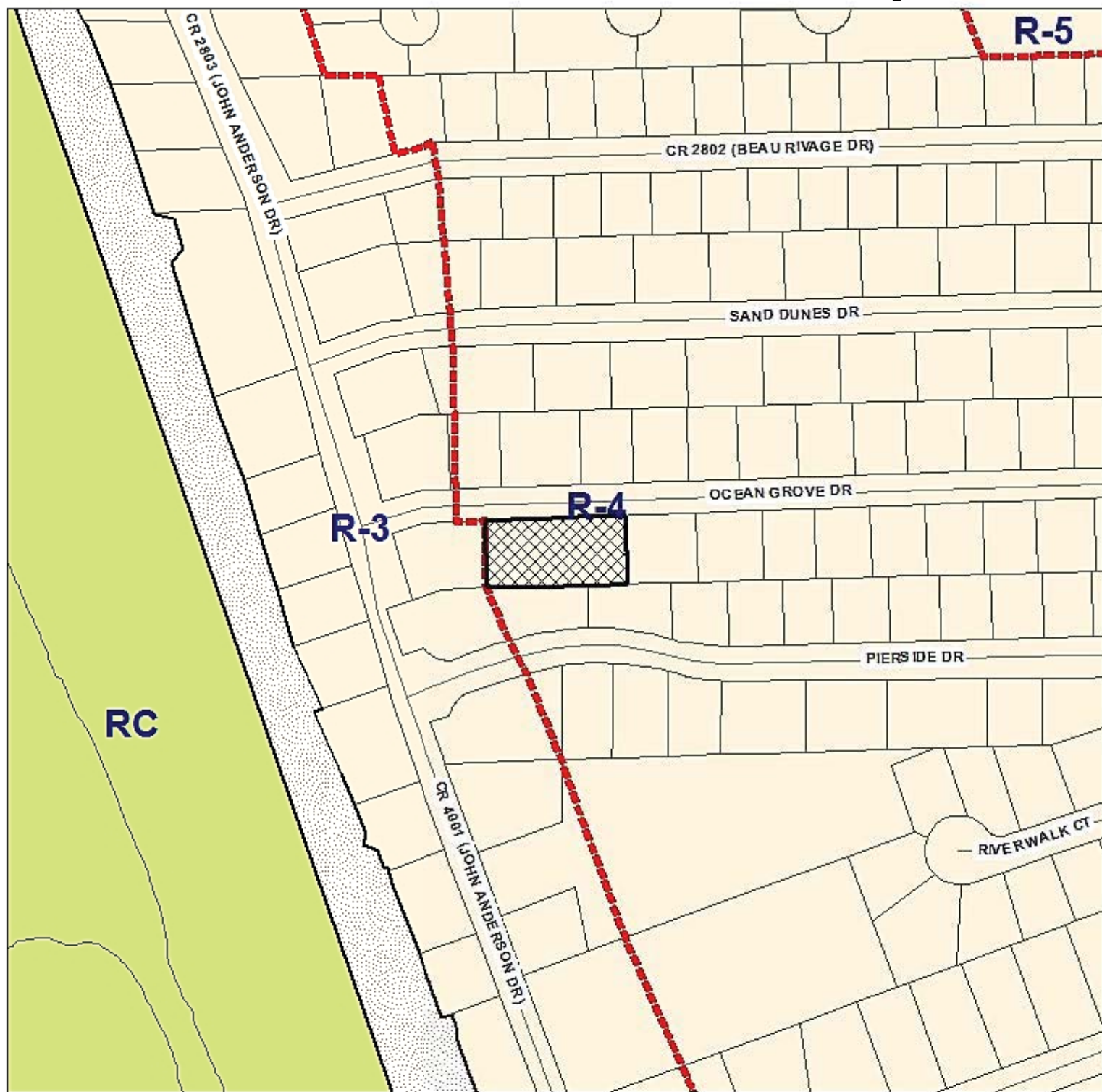
ECO/NRMA

 ECO
  NRMA
  REQUEST AREA

1 inch = 200 feet



VARIANCE
CASE NUMBER
V-14-056






ZONING CLASSIFICATION


1 inch = 200 feet



VARIANCE

CASE NUMBER
V-14-056

-  RESOURCE CORRIDOR (RC)
-  INCORPORATED
-  RESIDENTIAL (R-1; R-2; R-3; R-4; R-5; R-6; R-7; R-8)


 REQUEST AREA



AERIAL

IMAGE YEAR: 2012

1 inch = 100 feet

 REQUEST AREA



**VARIANCE
CASE NUMBER**

V-14-056



FUTURE LAND USE DESIGNATION

1 inch = 200 feet

VARIANCE CASE NUMBER

- ENVIRONMENTAL SYSTEMS CORRIDOR (1)
- URBAN LOW INTENSITY (1)

- URBAN MEDIUM INTENSITY (1)
- WATER (1)
- REQUEST AREA



V-14-056