



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: August 12, 2014 - Planning and Land Development Regulation Commission (PLDRC)

CASE NO: V-14-063

SUBJECT: Variance to separate nonconforming lots on Heavy Commercial (B-5) and Light Industrial (I-1) zoned property.

LOCATION: 874, 894, 912, and 916 South Nova Road, Ormond Beach

APPLICANT: Edwin Davis, Esq.

OWNERS: Wesley Olen McGee Trustee, and Michael and Deborah Davis

STAFF: Carol McFarlane, AICP, Planner II

I. SUMMARY OF REQUEST

The applicant is requesting a variance to the provision of Section 72-206(1) *Nonconforming lots* to separate lots under the zoning code. Two of the properties are zoned B-5, and two are zoned I-1, of which both zoning classifications have a minimum lot size of one acre. Approval of this variance request will allow the owner to sell the properties separately.

The requested variance is:

A variance to Section 72-206(1) *Nonconforming Lots* to separate parcels 4242-04-06-0141, and 4242-04-06-0143 on Heavy Commercial (B-5) zoned property and to separate parcels 4242-04-06-0210 and 4242-04-06-0214 on Light Industrial (I-1) zoned property.

Staff recommendation: Approval with conditions.

II. SITE INFORMATION

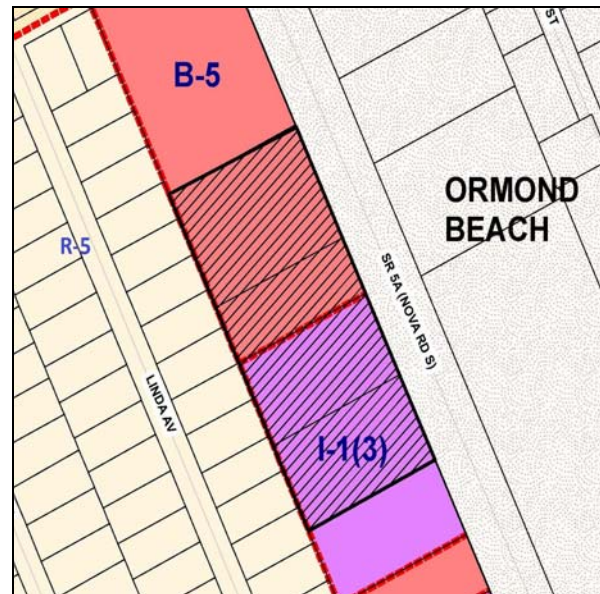
1. Location: The property is located on the west side of Nova Road, 370 feet north of its intersection with Arroyo Parkway, in the Ormond Beach area.
2. Parcel No(s): 4242-04-06-0141, 4242-04-06-0143, 4242-04-06-0210, and 4242-04-06-0214
3. Property Size: ±1.23 acres, ±26,853 square feet, ±40,279 square feet, and ±40,279 square feet, respectively
4. Council District: 4
5. Zoning: B-5, General Commercial and I-1, Light Industrial
6. Future Land Use: C, Commercial and MXZ, Mixed Use Zone
7. ECO Overlay: No
8. NRMA Overlay: No
9. Adjacent Zoning and Land Use:

DIRECTION	ZONING	FUTURE LAND USE	CURRENT USE
North:	B-5	C	Offices
East:	B-8, Commercial and T-1, Manufactured Home Community (City of Ormond Beach)	GC , General Commercial and MDR, Medium Density Residential (City of Ormond Beach)	Mobile Home Parks (City of Ormond Beach)
South:	I-1	MXZ	Service Shops
West:	R-5	UMI	Single-Family Residential

10. Location Maps:



Aerial Map



Zoning Map

III. BACKGROUND AND PREVIOUS ACTIONS

These properties are located in an area adjacent to the city of Ormond Beach along Nova Road. The immediate area is comprised of commercial and light industrial uses along the west side of Nova Road, and mobile home parks on the east side of Nova Road. The Donald Heights subdivision is to the west of the properties. Wesley McGee purchased all four properties in 1985. Three of the properties (874, 892 and 912 Nova Road) have existed in their current configuration since at least 1978, according to historic tax rolls. In 2002, 916 Nova Road was subdivided (2202-S-ODP-0275) to recognize parcel number 4242-04-06-0215 (960 Nova Road).

In 2004, Volusia County changed the minimum lot size requirements of the B-5 and I-1 zoning classification to one acre. This change to the zoning code made three of the properties (892, 912 and 916 Nova Road) nonconforming. Since the same individual owned four contiguous properties at the time of the code change, the owners cannot obtain a valid nonconforming lot letter. The inability to obtain good nonconforming lot letters prevents the owner from conveying the nonconforming lots. Furthermore, Michael and Deborah Davis purchased 912 Nova Road from the Wesley McGee Trust in June of 2014.

874 Nova Road: This property is developed with a one-story office, retail and warehouse building that was constructed in 1975. The Wesley Olen McGee Trust owns the property. At 1.23 acres and 200 feet wide, the parcel does not require a variance. However, this parcel must be included in the variance application to separate 892 Nova Road from this conforming parcel. Both 874 and 892 Nova Road are zoned B-5. Two tenants, an equipment rental company, and a pool design company currently occupy the building.

892 Nova Road: This property is developed with a two-story building that contains a warehouse and an apartment on the second floor. The apartment is not occupied at this time and is considered a nonconforming, abandoned use. It cannot be used as an apartment unless it receives approval from the county council for a special exception for an owner/manager of a permitted principal use. According to the Property Appraiser's Office, the building was constructed in 1974. The Wesley Olen McGee Trust owns the property. The property is 26,853 square feet in size (0.6 acres) and is zoned B-5. It is currently vacant and for sale.



Figure 1: Approval of this variance request will separate 874 and 892 Nova Road from one another.

approval from the county council for a special exception for an owner/manager of a permitted principal use. According to the Property Appraiser's Office, the building was constructed in 1974. The Wesley Olen McGee Trust owns the property. The property is 26,853 square feet in size (0.6 acres) and is zoned B-5. It is currently vacant and for sale.

912 Nova Road: This property is developed with a one-story building that contains a warehouse and an office. According to the Property Appraiser's Office, the building was constructed in 1978. There is also a 195-foot communications tower on the site that was constructed in 2002. Michael and Deborah Davis purchased the property in June of 2014. The property is 40,279 square feet in size (0.9 acres) and is zoned I-1. A property management company currently occupies the building.

916 Nova Road: This property is developed with a one-story building that contains a warehouse and an office. According to the Property Appraiser's Office, the building was constructed in 1979. The Wesley Olen McGee Trust owns the property. The property is 40,279 square feet in size (0.9 acres) and is zoned I-1. Two tenants, a moving van company, and a records storage management company currently occupy the building.

The purpose of this variance application is to allow the parcels to exist separately as conforming lots. This will allow issuance of permits, site plans, and other development orders on the sites in the absence of a nonconforming lot letter. The survey submitted with the application shows the existing conditions on the properties.



Figure 2: Approval of this variance request will separate 912 and 916 Nova Road from one another.

IV. REVIEW CRITERIA AND ANALYSIS

Section 72-379 (1) a. 4 *Variances* of the zoning code contains five applicable criteria by which a variance application may be granted by the commission. The 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.

There are special circumstances peculiar to the land in that these parcels were conforming lots until the 2004 zoning code amendment which required one-acre lot size minimums and 150-foot lot widths in the B-5 and I-1 zoning classifications. These lots have been developed since the late 1970s with businesses that function independently of each other. Each parcel has its own site improvements and do not rely on each other for required infrastructure.

Staff finds that the variance requests can meet this criterion.

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

The cause of the special circumstances on these properties is the zoning code amendment in 2004. The owner is not response for the nonconformity.

Staff finds that the variance requests can meet this criterion.

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

Literal interpretation of the zoning code would require that the parcels be combined under common ownership. Parcels that are different zoning classifications cannot be combined. Therefore, 874 and 892 Nova Road would have to be combined into one parcel, and 912 and 916 Nova Road would have to be combined into another parcel. However, that would create a new nonconformity with section 72-280(d), which states:

“In commercial, industrial, conservation and public use classifications, more than one principal structure may be erected on a lot, provided that the requirements of this article shall be met for each principal structure as though it were on an individual lot, except hotels and multifamily structures. In all other classifications, only one principal structure may be erected on a lot.”

Therefore, providing a variance to separate these lots is the best solution to the nonconforming status of these parcels.

Staff finds that the variance requests can 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.*

This variance request is the minimum variance required to make reasonable use of the land. As stated earlier, these parcels have been developed for decades and function independently of each other. Approval of this variance will allow the sale of these parcels in their current configuration.

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.*

This variance request is in harmony with the zoning code and the comprehensive plan. Since the properties are already developed, there will be no additional impact to traffic, safety, or essential services.

Staff finds that the variance request can meet this criterion.

V. STAFF RECOMMENDATION

Staff finds that the application can meet all five criteria for the granting of a variance. Therefore, staff recommends approval of a variance to Section 72-206(1) *Nonconforming Lots* to separate parcels 4242-04-06-0141, and 4242-04-06-0143 on Heavy Commercial (B-5) zoned property and to separate parcels 4242-04-06-0210 and 4242-04-06-0214 on Light Industrial (I-1) zoned property, with the following condition:

1. The variance is limited to the configuration of the lots as shown on the submitted survey, prepared by Cullum Land Surveying, Inc., dated July 27, 2012. Any change in the configuration of the lots that would result in additional lots or would increase the nonconformity in any way shall be subject to additional variance approvals.

VI. ATTACHMENTS

- Written Petition
- Variance Site Plan
- 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 subject properties existed as independent parcels, businesses, and buildings
And were owned by the current owner prior to the administrative rezoning
in 2004 when the lot size requirements were revised. The current configuration of
Properties pre-existed the let one acre lot size requirement.

- 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 literal interpretation would deprive the owner and or a subsequent owner
Of the right to sell and utilize the properties as they were built and are zoned.
The other property owners in the same area and with the same zoning classifications
can obtain a non-conforming letter which the subject properties could not obtain due to
single ownership.

- 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 variance is the minimum necessary for the properties to be utilized as zoned and as per the existing parcel sizes that pre-existed the zoning change. The variance is the minimum to allow an owner to operate the property as zoned and pull permits for work, finance the properties, and operate a business for the future.

- D. The general intent and purpose of the Zoning Ordinance and the Volusia County Comprehensive Plan Ordinance No. 90-10 is to lessen congestion in the streets; to promote public health, safety, morals, and the general welfare; to properly provide for the use of land and governmental services; and to preserve the character, appearance, and aesthetic qualities of Volusia County by regulating signs.


1. Is your request for Variance(s) consistent with this intent and purpose?

Yes the requested variance is consistent especially in that the subject properties will remain the same as they are currently and the variance in its essence is to acknowledge the pre-existing nature of the parcels as individual parcels and businesses.

and

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

The request for a variance does not change the existing properties or allow anything that is not currently allowed or anything different than the current zoning.

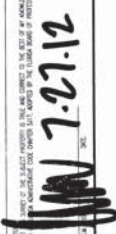

Applicant's Signature

06/25/2014
Date

Applicant's Signature

Date

Site Plan





874 Nova Road.



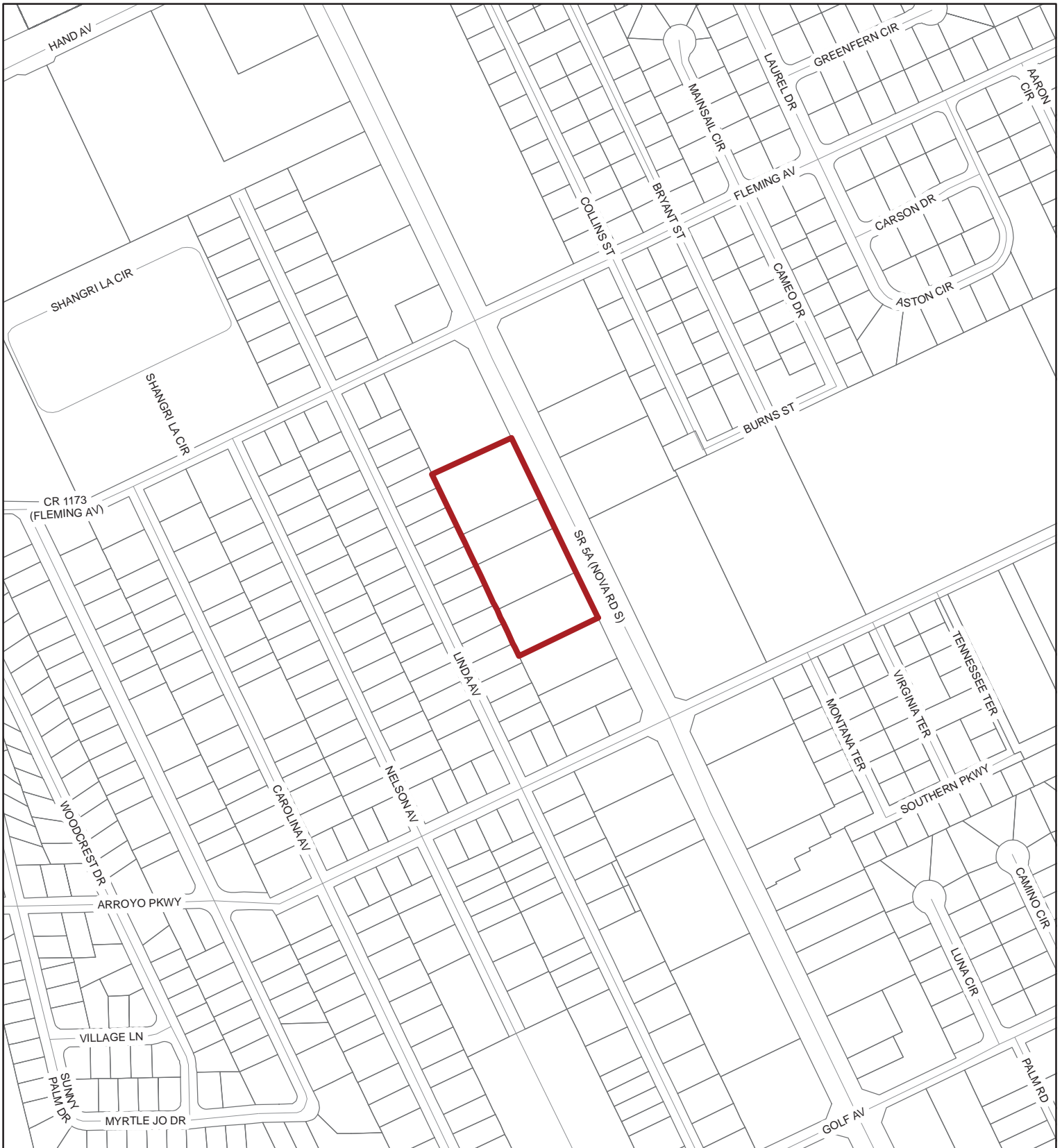
892 Nova Road.



912 Nova Road.



916 Nova Road.



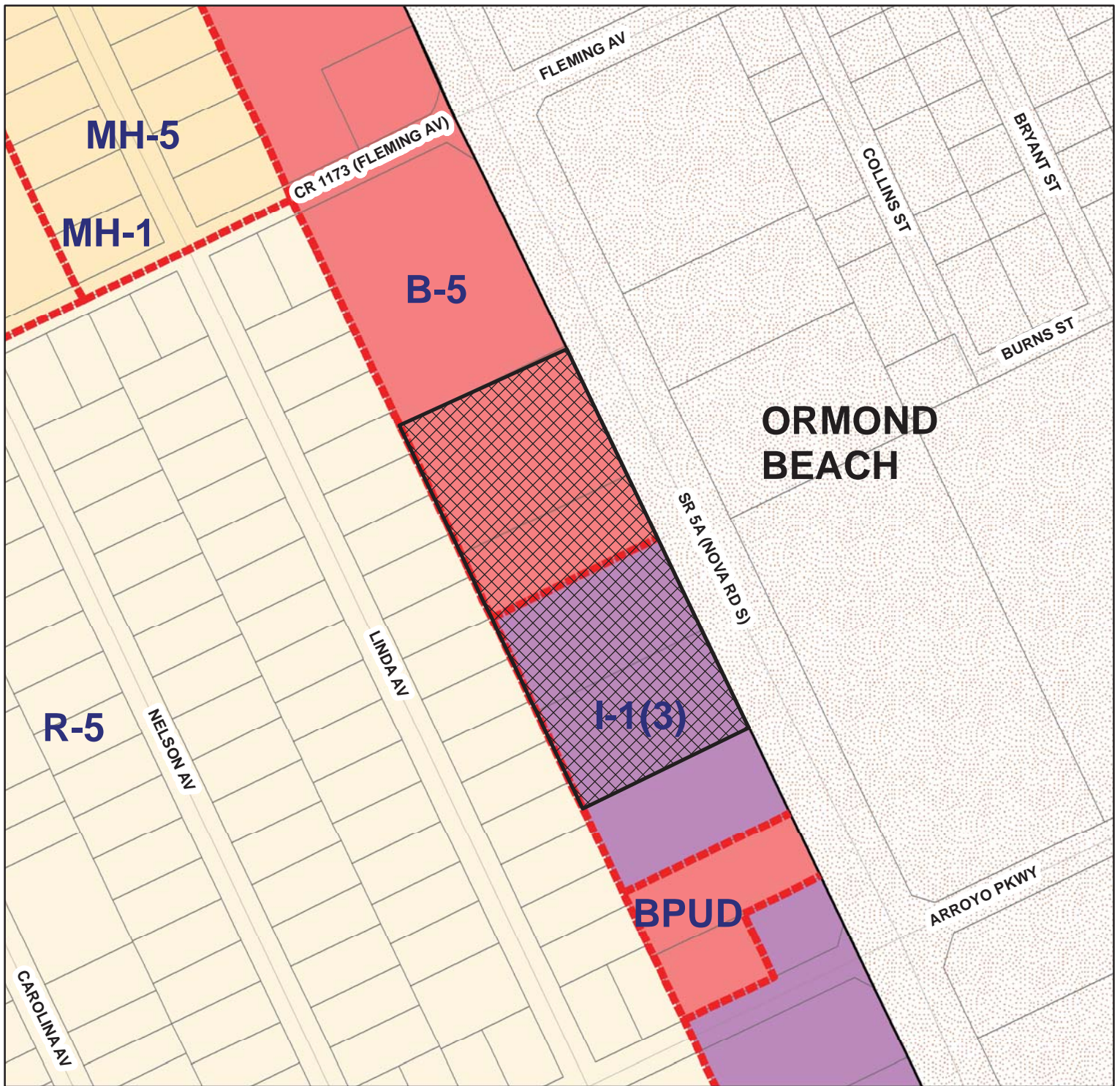
ECO/NRMA

 ECO
  NRMA
  REQUEST AREA

1 inch = 400 feet








VARIANCE
CASE NUMBER
V-14-063



ZONING CLASSIFICATION

1 inch = 200 feet

-  INCORPORATED
-  RESIDENTIAL (R-1; R-2; R-3; R-4; R-5; R-6; R-7;R-7; R-8)
-  COMMERCIAL (B-1; B-2; B-3; B-4; B-5; B-6; B-7; B-8; B-9)
-  INDUSTRIAL (I-1; I-2; I-3; I-4)
-  MOBILE HOME (MH-1; MH-2; MH-3; MH-4; MH-5; MH-6; MH-7; MH-8)



VARIANCE CASE NUMBER

V-14-063





AERIAL

IMAGE YEAR: 2012

1 inch = 100 feet

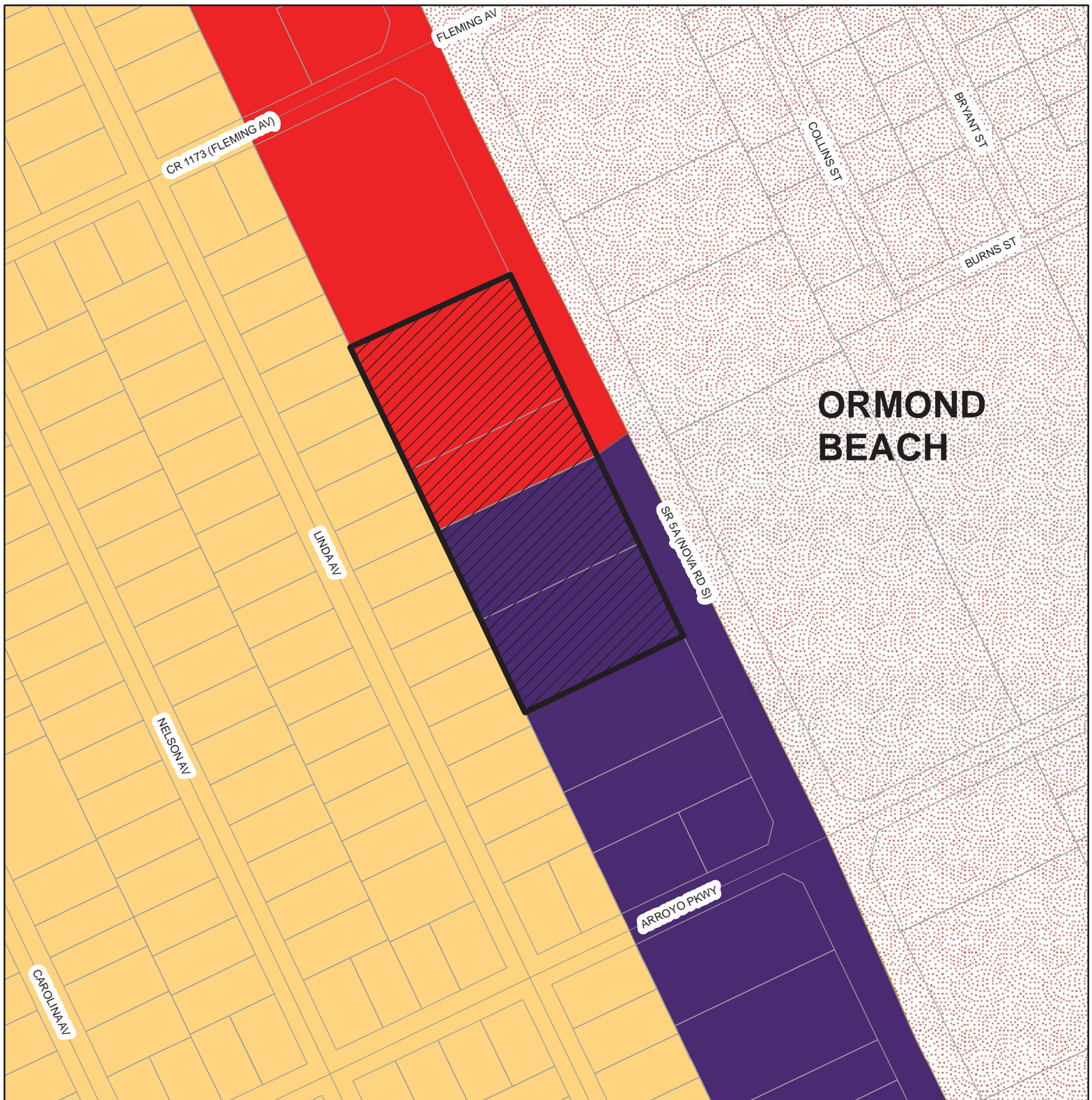


REQUEST AREA



VARIANCE
CASE NUMBER

V-14-063



FUTURE LAND USE DESIGNATION

- | | |
|--|--|
|  COMMERCIAL (1) |  MIXED USE (1) |
|  INCORPORATED (1) |  URBAN MEDIUM INTENSITY (1) |
|  REQUEST AREA (1) | |

1 inch = 200 feet

***VARIANCE
CASE NUMBER***



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