



**GROWTH AND RESOURCE MANAGEMENT DEPARTMENT
PLANNING AND DEVELOPMENT SERVICES DIVISION**
123 West Indiana Avenue, DeLand, Florida 32720
(386) 736-5959

PUBLIC HEARING: February 18, 2021 – Planning and Land Development Regulation Commission (PLDRC)

CASE NUMBER: V-21-047

SUBJECT: Variances to the maximum fence height on Planned Unit Development (PUD) zoned property

LOCATION: 200 Silver Branch Trail, DeLand

APPLICANT(S): Kellee Holland Smith

OWNER(S): Kellee Holland Smith

I. SUMMARY OF REQUEST

The applicant built a six-foot-tall fence around her property without a county-issued building permit. She was cited by Volusia County Code Compliance and would like to obtain an after-the-fact building permit to keep the 6-foot-tall fence in its current location. The parcel is located at the end of a cul-de-sac and at the intersection of two local roads, which subjects it to multiple front yards. This parcel appears to be the only corner-through lot in the immediate vicinity. Pursuant to the Zoning Ordinance, only four-foot-tall fences are allowed in front yards. Three variances are required to obtain an after-the-fact building permit. The variance requests are as follows:

Variance 1: A variance to Section 72-282(1) to increase the maximum height of a fence in the front yard along Silver Branch Trail from four feet to six feet.

Variance 2: A variance to Section 72-282(1) to increase the maximum height of a fence in the front yard along Shady Branch Trail from four feet to six feet.

Variance 3: A variance to Section 72-282(1) to increase the maximum height of a fence from four feet to six feet for the first 30 feet of the eastern portion of the southern property boundary.

Staff Recommendation:

Deny variance requests 1, 2 and 3, case number V-21-047, as the variances fail to meet one of the five criteria for granting said variances.

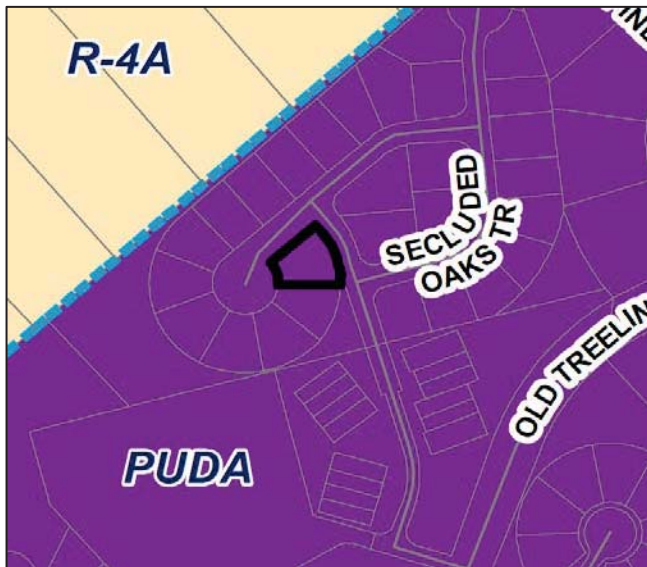
II. SITE INFORMATION

- 1. Location: The southwest corner of the intersection of Silver Branch Trail and Shady Branch Trail
- 2. Parcel Number: 6038-25-00-0010
- 3. Property Size: ± 7,964 square feet
- 4. Council District: 1
- 5. Zoning: Planned Unit Development (PUD)
- 6. Future Land Use: Urban Low Intensity (ULI)
- 7. Overlays: Airport Protection Overlay
- 8. Local Plan Area: N/A
- 9. Adjacent Zoning and Land Use:

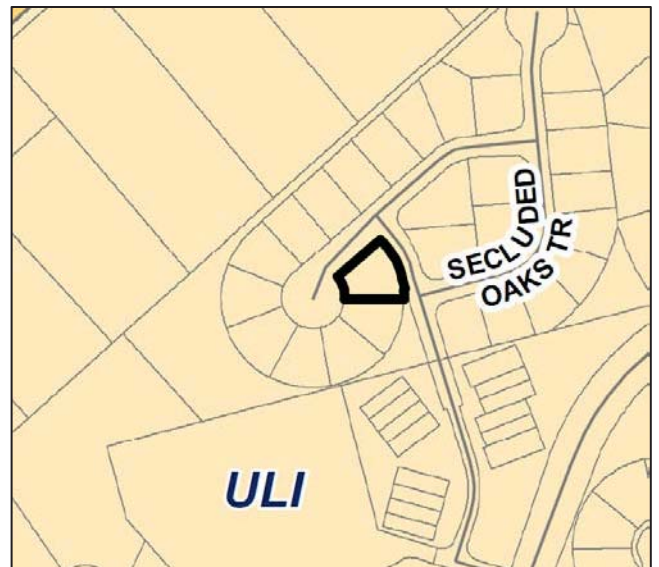
DIRECTION	ZONING	FUTURE LAND USE	EXISTING USE
North:	PUD	Urban Low Intensity (ULI)	Trails West - Single-Family Homes
East:	PUD	Urban Low Intensity (ULI)	Trails West - Single-Family Homes
South:	PUD	Urban Low Intensity (ULI)	Trails West - Single-Family Homes
West:	PUD	Urban Low Intensity (ULI)	Trails West - Single-Family Homes

- 10. Maps:

ZONING MAP

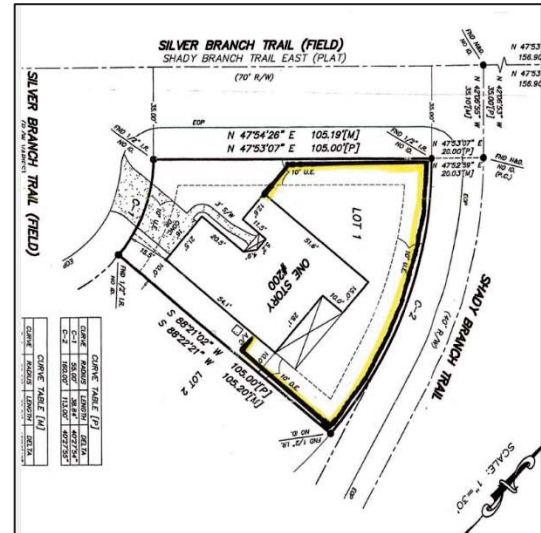


FUTURE LAND USE MAP



III. BACKGROUND AND OVERVIEW

The subject property, which is developed with a 1,665-square-foot single-family home, is located in the Trails West Subdivision in DeLand, Florida. The parcel sits at the intersection of a cul-de-sac, more specifically defined as the southwest corner of Silver Branch Trail and Shady Branch Trail. The applicable setbacks in the PUD are front – 30 feet, side – 15 feet for an interior lot and 30 feet for a corner lot, and rear – 25 feet. In this case, there are no rear yards. The configuration of this parcel subjects it to a front yard along the northern boundary (Silver Branch Trail), the eastern boundary (Shady Branch Trail), and the first 30 feet of that portion of the southern boundary that is impacted by the front yard requirements.



The applicant applied for and received approval from the Home Owner's Association (HOA) to install a 6-foot-tall fence. However, she was under the impression that she did not need to apply for a county permit, as long as she had HOA approval. The applicant was unaware of the zoning requirement that limits fence sizes in front yards.

IV. REVIEW CRITERIA AND ANALYSIS

Section 72-379(1)a.4 of the Zoning Ordinance 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.

Variations 1, 2 and 3: Due to the design of the subdivision, this parcel is subject to three front yards. Additionally, only a portion of the southern property boundary is allowed to have a six-foot-tall fence, by right. The remaining property boundaries are restricted to a four-foot-tall fence. The majority of parcels in the subdivision are not subjected to as many front yards as the applicant's parcel.

Staff finds that this criterion is met.

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

Variations 1, 2 and 3: While the applicant is responsible for constructing a six-foot tall fence without a building permit, she was not responsible for the configuration of the lot.

Staff finds that this criterion is met.

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, 2, and 3: All properties in the PUD are subject to the same zoning requirements. The applicant stated that she received approval from the HOA and was unaware of the need to apply for a county building permit. Unfortunately, HOA approval does not take precedence over the Zoning Ordinance requirements. Literal interpretation of the Zoning Ordinance does not deprive the applicant of commonly enjoyed rights.

Staff finds that this criterion is not met.

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

Variances 1, 2 and 3: The variances are the minimum that will allow the applicant to obtain an after-the-fact building permit for the existing fence.

Staff finds that this criterion is met.

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.

The applicant was required by the HOA to paint the exterior of the fence and plant landscaping in front of it. The applicant submitted letters of support from the neighbors for the fence (attached). The grant of this variance does not appear to be injurious to the area involved.

Staff finds that this criterion is met.

V. STAFF RECOMMENDATION

Deny variance requests 1, 2 and 3, case number V-21-047, as the variances fail to meet one of the five criteria for granting said variances.

Should the PLDRC find that the applicant has provided competent substantial evidence to support approval of these variances, the following conditions are provided for consideration:

1. The variances shall apply to the existing fence as depicted on the variance site plan. Any alteration shall require submittal of a separate variance application.
2. The applicant shall apply for an after-the-fact building permit upon approval of the variances by the PLDRC.

VI. ATTACHMENTS

- Variance Site Plan
- Written Petition
- Survey
- Environmental Permitting Memo
- Letters of Support
- Site Photographs
- Map Exhibits

VII. AUTHORITY AND PROCEDURE

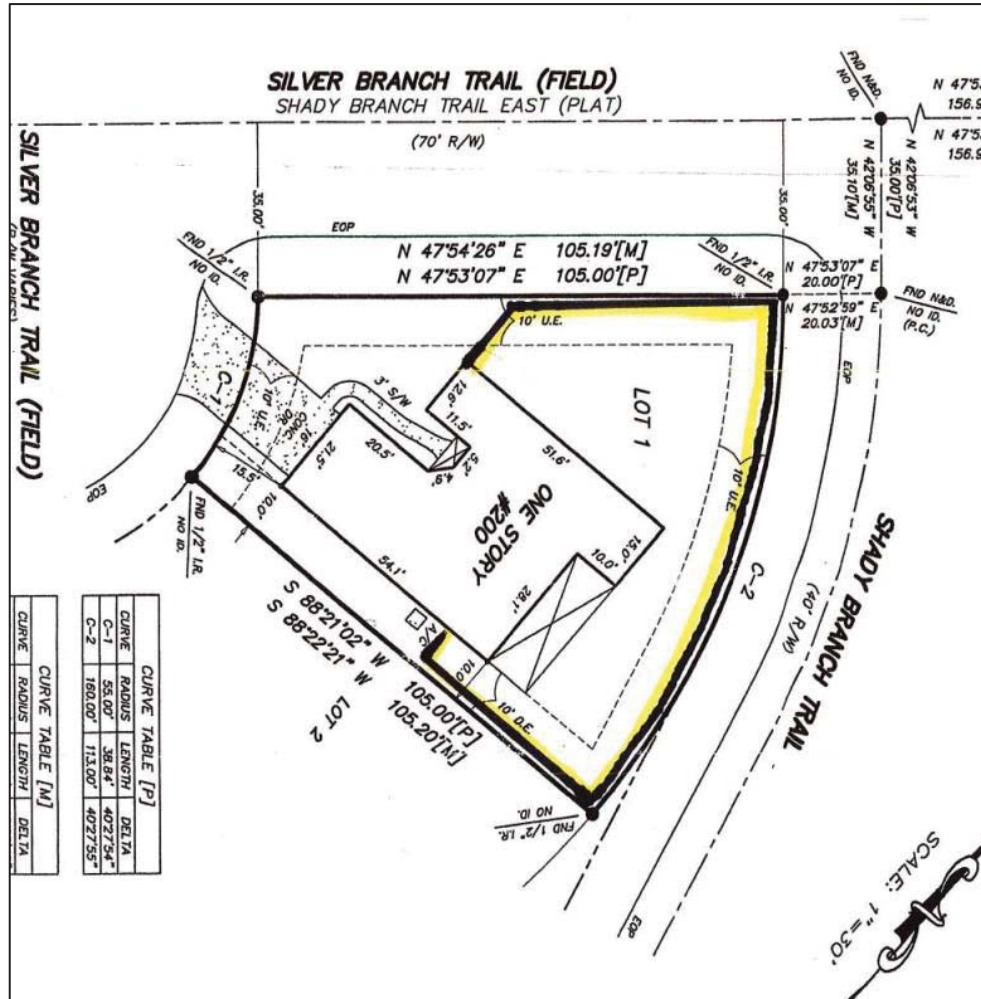
The commission may, except as otherwise provided in Section 72-379 of the Zoning Ordinance, authorize, after due public notice upon application on a form prescribed by the zoning enforcement official, such variance or variances from the terms of this ordinance as will not be contrary to the public interest 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.

Pursuant to Section 72-412, no variance shall be granted, in whole or in part, unless four members concur. A tie vote shall be grounds for continuance to the next scheduled meeting.

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 SITE PLAN

V-21-047 - SMITH



- Variance 1: A variance to Section 72-282(1) to increase the maximum height of a fence in the front yard along Silver Branch Trail from four feet to six feet.
- Variance 2: A variance to Section 72-282(1) to increase the maximum height of a fence in the front yard along Shady Branch Trail from four feet to six feet.
- Variance 3: A variance to Section 72-282(1) to increase the maximum height of a fence from four feet to six feet for the first 30 feet of the eastern portion of the southern property boundary.

Kellee Smith
200 Silver Branch Trail
Deland 32724



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.

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.)

1. What special conditions and circumstances exist which are peculiar to your land, structure, building or sign that are not applicable to other lands, structures, buildings or signs in the same zoning classification. Are these special conditions and circumstances the result of actions by you?

This is my personal home. I wanted to put up a fence. I was told that I did not need Volusia County to issue a permit because it was on the private property of Trails West subdivision. I filled out the appropriate HOA applications to apply to Trails West HOA. The 6' fence was approved by the HOA.

2. How would literal interpretation of the zoning ordinance deprive you of rights commonly enjoyed by other properties in the same zoning classification? How would this interpretation be an unnecessary and undue hardship on you?

The interpretation of the zoning ordinance was that I needed the HOA to approve the 6' fence all the way around. After reading the ordinance, I thought the front elevation of 6' must be approved by HOA - instead of 4' fence at front.

3. Explain how the variance you are requesting is the minimum variance that will make possible the reasonable use of your land, building, structure, or sign.

I already put the fence up / painted it / landscaped the exterior of the fence per HOA request. I am requesting that Volusia County will allow me to keep the installed fence = AS IS.

4. How is your request consistent with the general intent and purpose of the Volusia County Zoning Ordinance and Comprehensive Plan, which are to promote public health, safety, morals, and the general welfare; and to preserve the character, appearance and aesthetic qualities of Volusia County?

I feel the fence is aesthetically pleasing. The HOA required me to paint and landscape the exterior of the fence. All neighbors say they love my fence.

5. Explain how your request for a variance will not be injurious to the surrounding area.

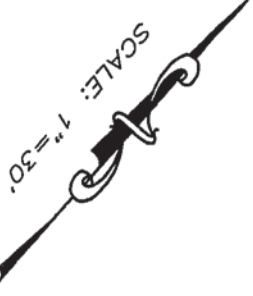
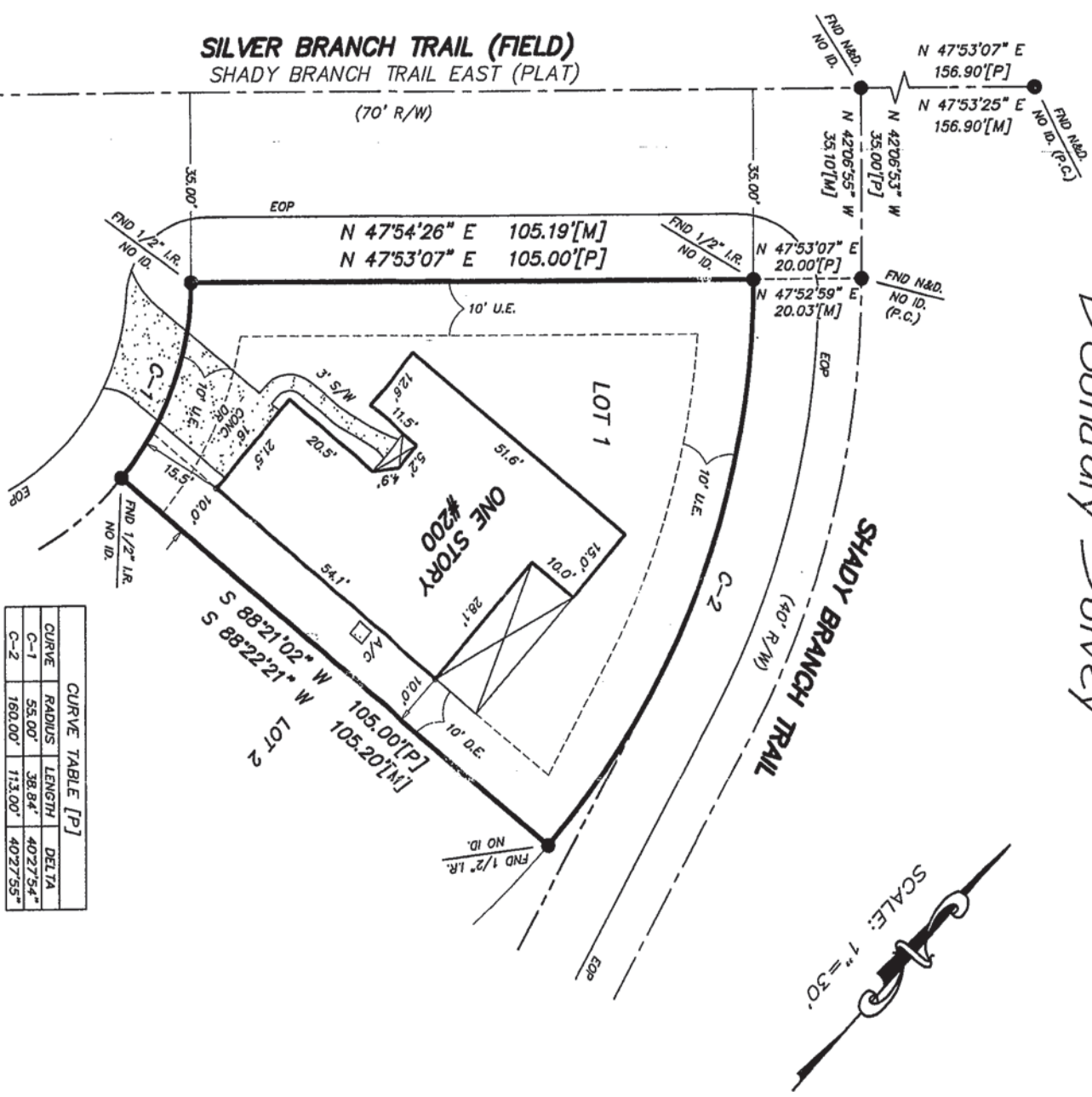
I have signed letters from my neighbors saying that the fence does not cause them any harm and that it is aesthetically pleasing.

I'm so sorry for this mistake. The two people that helped me install the fence said I did not need anything other than HOA approval. Sincerely, Kellee Smith 12.20.2020

Boundary Survey

SILVER BRANCH TRAIL (FIELD)
SHADY BRANCH TRAIL EAST (PLAT)

SILVER BRANCH TRAIL (FIELD)
(R/W VARIES)



CURVE TABLE [P]			
CURVE	RADIUS	LENGTH	DELTA
C-1	55.00'	38.84'	40°27'54"
C-2	180.00'	113.00'	40°27'55"

CURVE TABLE [M]			
CURVE	RADIUS	LENGTH	DELTA
C-1	55.00'	38.81'	40°25'48"

NOTES:

- 1) This survey is based on the legal description as provided by the Client.
- 2) This Surveyor has not destructed the land shown hereon for assessments, rights of way or restrictions of record which may affect the title or use of the land.
- 3) Do not reconstruct property lines from building ties.
- 4) No footing or overhangs 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 authenticated electronic seal of the original raised seal of a Florida Licensed Surveyor and Mapper.

BEARINGS SHOWN HEREON ARE BASED UPON THE CENTERLINE OF SILVER BRANCH TRAIL BEING N 42°06'53" W PER PLAT

LEGEND:

- AIR CONDITIONER
- A/E — ALLEY EASEMENT
- B/C — BLOCK CORNER
- B/LX — BLOCK
- C.B. — CONCRETE BLOCK
- C.B.S. — CONCRETE BLOCK STRUCTURE
- C.M. — CONCRETE MONUMENT
- CONC. — CONCRETE
- DEED
- D.E. — DRAINAGE EASEMENT
- E.O.P. — EDGE OF PAYMENT
- F.C.C. — FOUND CROSS CUT
- F.F.E. — FINISHED FLOOR ELEVATION
- FND — FOUND
- ID. — IDENTIFICATION
- IR — IRON PIPE
- IR — IRON ROD
- IR.C. — IRON ROD & CAP
- L — LAND SURVEYING BUSINESS
- LB — LAND SURVEYOR
- LE — LANDSCAPE EASEMENT
- M — MEASURED
- M.E. — MAINTENANCE EASEMENT
- N&D — NAIL AND DISK
- PLAT
- P.E. — PEDESTRIAN EASEMENT
- P.C. — POINT OF CURVATURE
- P.C.P. — POINT OF COMPOUND CURVATURE
- P.C.P. — PERMANENT CONTROL POINT
- P.L. — PROPERTY LINE
- 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.D.A.E. — PRIVATE DRAINAGE AND ALLEY EASEMENT
- P.T. — POINT OF TANGENT
- R — RADIUS
- R/W — RIGHT OF WAY
- S/W — SIDEWALK
- U.E. — UTILITY EASEMENT
- W.F.S. — WOOD FRAME STRUCTURE
- — RIGHT-OF-WAY LINE
- — CENTERLINE
- x — BARRIER WIRE FENCE
- — WOOD FENCE
- x — CHAIN LINK FENCE
- — PLASTIC FENCE

STATE OF FLORIDA
No. 5910
Surveyor and Mapper

Received 01/22/21 YS

October 15, 2020

To Whom it May Concern:

My name is Michelle Thomas, and I live at 237 Silver Branch Trail in Deland, Florida. I live across the street from Kelly Smith. I am writing this letter in reference to the fence that was built on her property.

I would just like to say that I have no problem with the fence. I think it is very attractive, and in good taste. It blends in beautifully with the neighborhood.

I feel that they have made a space for themselves that they can come home to and enjoy. They have dogs, and they now can have a safe wonderful place to play.

You may contact me if needed at (386) 960-4391.

Michelle Thomas

Catherine Chancey
206 Silver Branch Trail
DeLand, Florida 32724

January 20, 2021

I live next door to Kellee H Smith at 200 Silver Branch Trail. I wanted to write this letter to let you know that I am fine with the fence and landscaping that she put at her home. I have no problems with the fence.



Catherine Chancey

Evan and Karissa Ott
243 Silver Branch Trail
DeLand, Florida 32724

January 20, 2021

I live across the cul-de-sac from Kellee H Smith at 200 Silver Branch Trail. I wanted to write this letter to let you know that I am fine with the fence and landscaping that she put at her home. I have no problems with the fence.



Evan and Karissa Ott

Venson and Marcia Craft
212 Silver Branch Trail
DeLand, Florida 32724

January 20, 2021

I live 2 doors down from Kellee H Smith at 200 Silver Branch Trail. I wanted to write this letter to let you know that I am fine with the fence and landscaping that she put at her home. I have no problems with the fence.

A handwritten signature in blue ink, appearing to be 'M. A.', written over a horizontal line.

Venson and Marcia Craft

Danielle Enneking
419 Secluded Oaks Trail
DeLand, Florida 32724

January 20, 2021

I live 3 doors behind Kellee H Smith at 200 Silver Branch Trail. I wanted to write this letter to let you know that I am fine with the fence and landscaping that she put at her home. I have no problems with the fence.

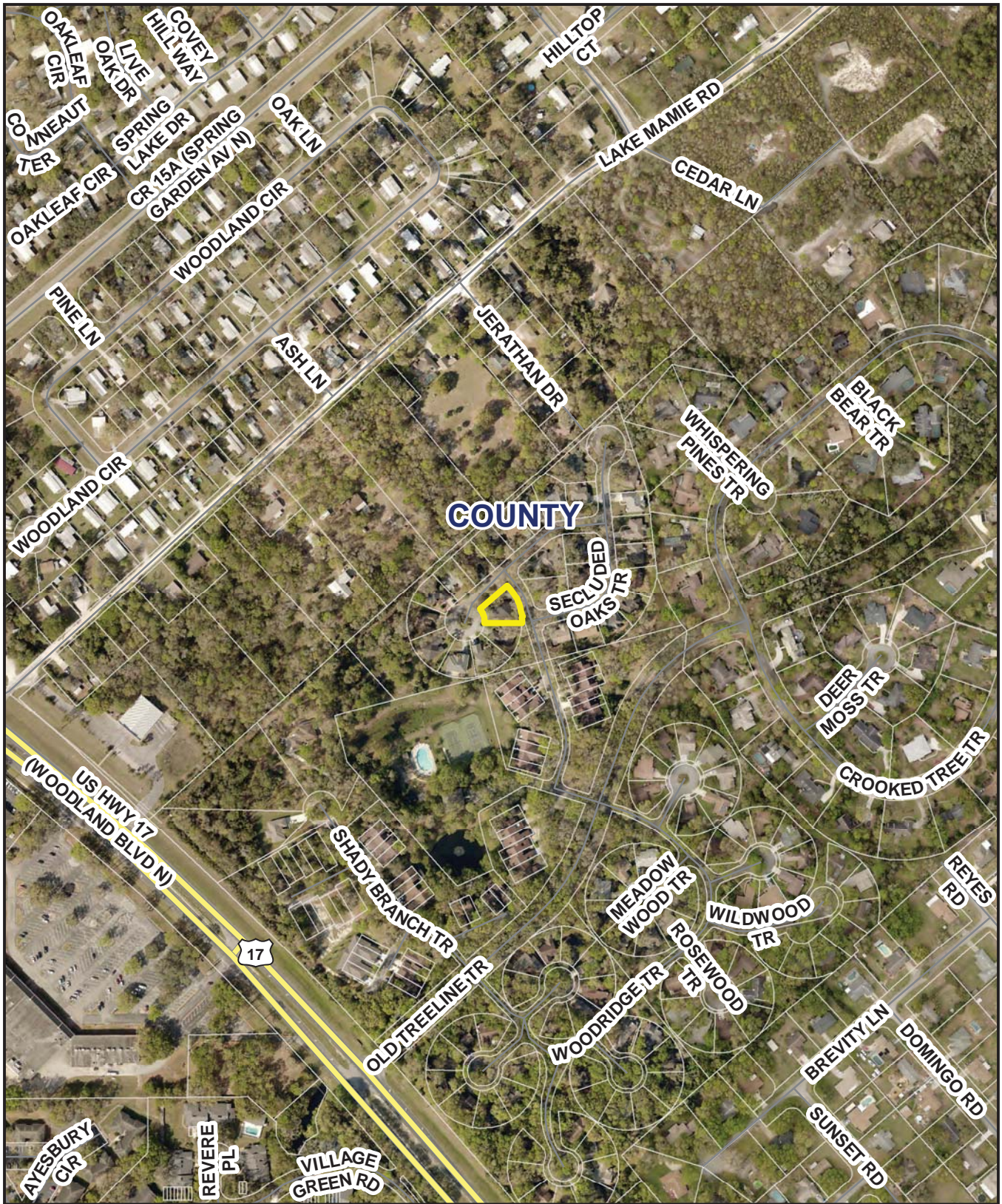

Danielle Enneking

PHOTOGRAPHS

V-21-047 SMITH



AERIAL V-21-047



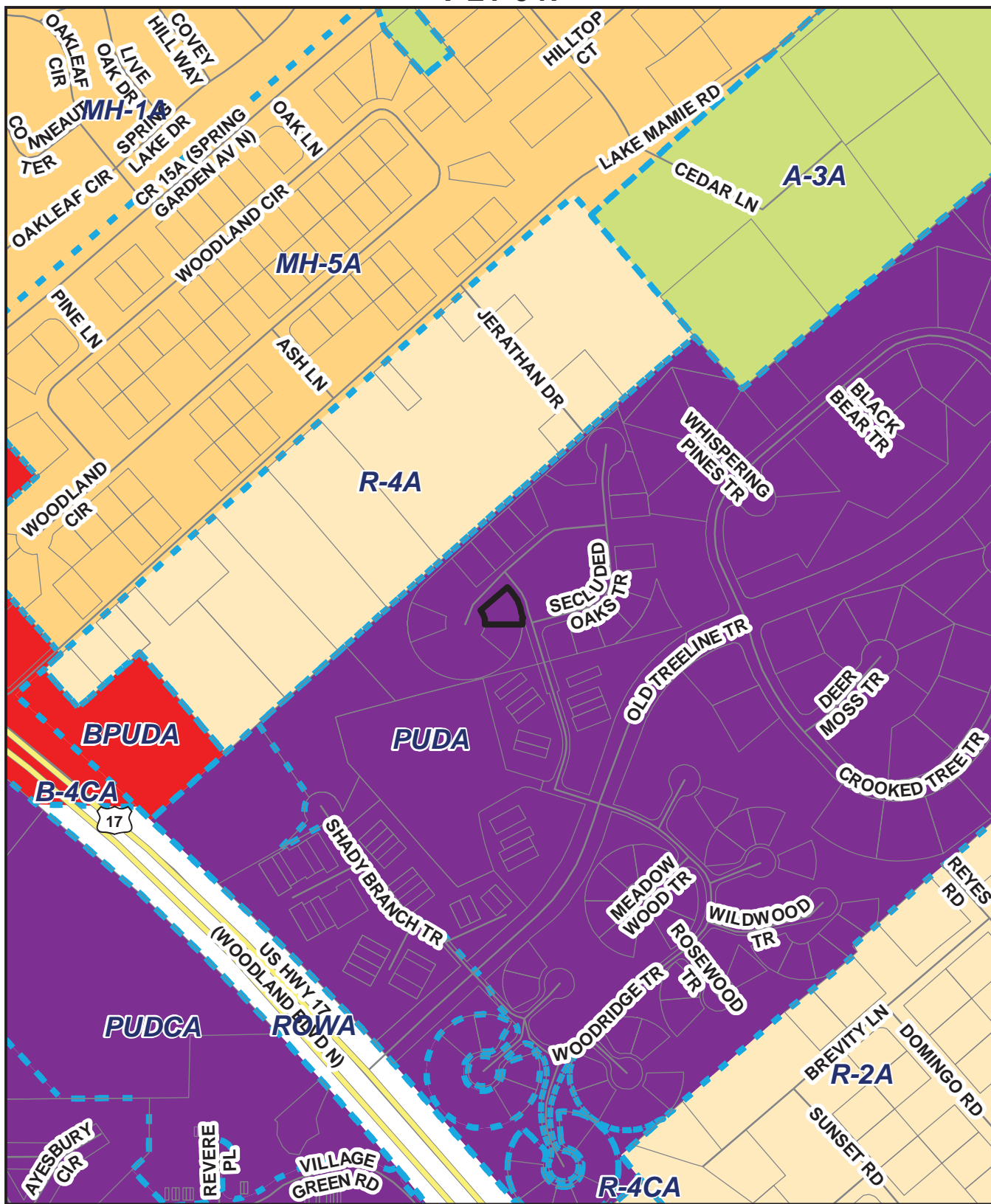
 SUBJECT PROPERTY

IMAGE DATE 2018



1" = 400'
1/5/2021

ZONING CLASSIFICATION V-21-047



SUBJECT PROPERTY



1" = 400'

1/5/2021

ZONING BNDY

RESIDENTIAL

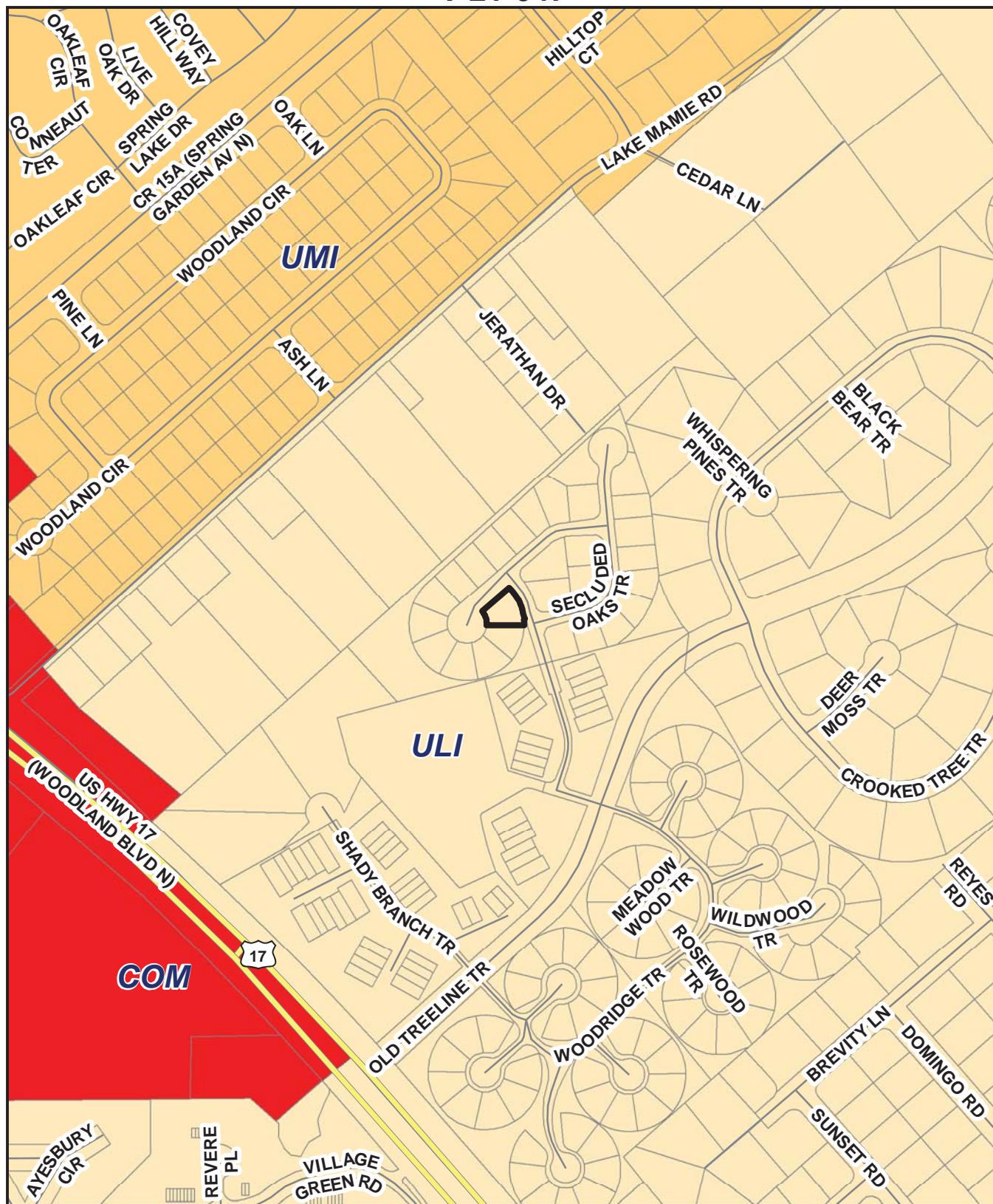
PLANNED UNIT DEVELOPMENT

COMMERCIAL

AGRICULTURAL

MOBILE HOME

FUTURE LAND USE V-21-047



 SUBJECT PROPERTY

 COMMERCIAL

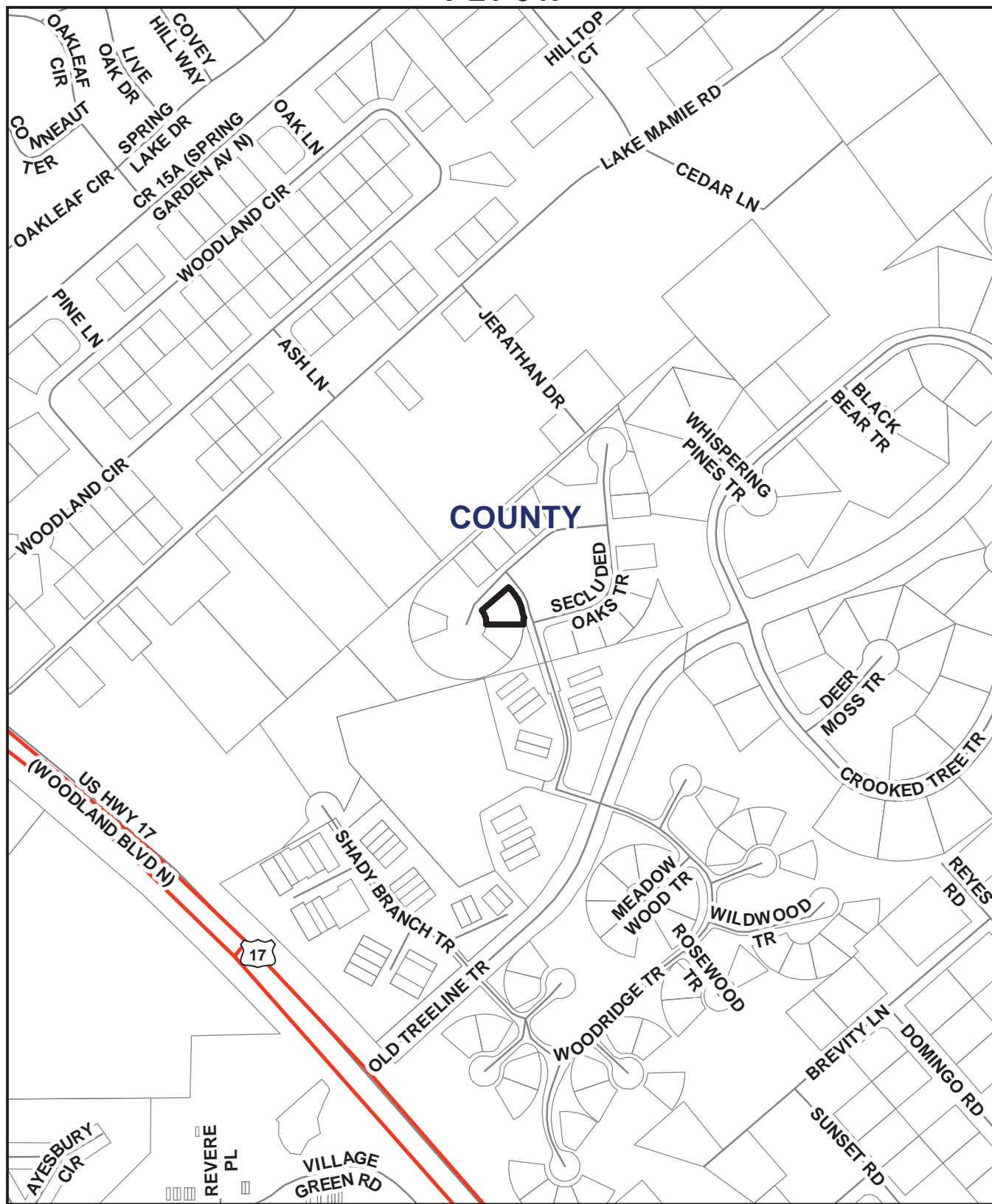
 URBAN MEDIUM INTENSITY




 URBAN LOW INTENSITY



1" = 400'
1/5/2021

ECO/NRMA OVERLAY V-21-047



-  SUBJECT PROPERTY
-  ECO
-  NRMA



1" = 400'
1/5/2021