



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

PUBLIC HEARING: May 16, 2019 - Planning and Land Development Regulation Commission (PLDRC)

CASE NUMBER: V-19-024

SUBJECT: Variance to the minimum yard requirements and maximum fence height on Urban Single-Family Residential (R-3) zoned property.

LOCATION: 1434 John Anderson Drive, Ormond Beach

APPLICANT(S): Benjamin B. Hedrick, Agent

OWNER(S): Laura J. Ortiz

I. SUMMARY OF REQUEST

This case was continued for 60 days at the PLDRC meeting of March 21, 2019, per request of the applicant.

The applicant requests a variance to construct a two-car carport structure with an enclosed shed, and a variance to allow an existing six-foot fence to remain on a nonconforming parcel in Ormond Beach. The requested variances are as follows:

Variance 1: A variance to Section 27-277(1) and (2) to reduce the front yard from the required 30 feet to 11 feet in order to construct a two-car carport with an enclosed shed.

Variance 2: A variance to Section 72-282(2) to the maximum fence height in a front yard from the allowed four feet to six feet.

Staff Recommendation:

Variance 1: Deny variance request 1, case number V-19-024, as the variance fails to meet all five criteria for granting said variance.

Variance 2: Deny variance request 2, case number V-19-024, as the variance fails to meet four of the five criteria for granting said variance.

II. SITE INFORMATION

1. Location: West side of John Anderson Drive, approximately 75 feet north of its intersection with Hibiscus Drive, in the Ormond Beach area.
2. Parcel Number: 3234-13-00-0340
3. Property Size: 11,700 square feet
4. Council District: 4
5. Zoning: Urban Single-Family Residential (R-3)
6. Future Land Use: Urban Low Intensity
7. Overlays: Not Applicable
8. Local Plan Area: Not Applicable
9. Adjacent Zoning and Land Use:

DIRECTION	ZONING	FUTURE LAND USE	EXISTING USE
North:	R-3	Urban Low Intensity	Single-family residence
East:	R-3	Urban Low Intensity	Single-family residence
South:	R-3	Urban Low Intensity	Single-family residence
West:	R-3	Urban Low Intensity	Single-family residence

10. Location Maps:

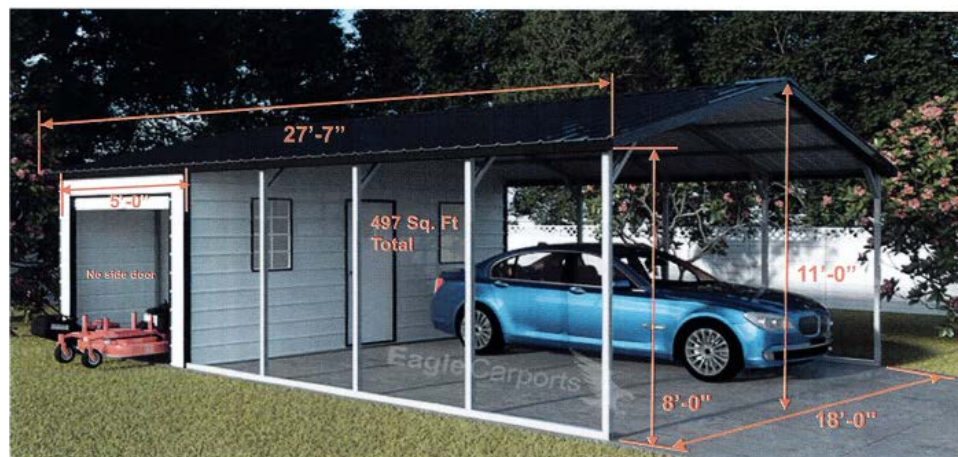


III. BACKGROUND AND OVERVIEW

The subject property is located on the west side of John Anderson Drive, approximately 75 feet north of its intersection with Hibiscus Drive, in the Ormond Beach area. The 11,700-square-foot property consists of portions of two lots within O'Byrnes Halifax Shores subdivision. The lot contains a 1950's single-family dwelling with a one-car garage, and a 1,600-square-foot two-car garage addition, constructed in 2011.

The property is currently nonconforming, as it does not meet the minimum lot width requirement of 85 feet within the R-3 zoning classification. The lots within this portion of O'Byrnes Halifax Shores were platted as 100 feet wide in 1951. However, the subject property consists of portions of two lots and when combined total 78 feet. A nonconforming lot letter prepared by Korey, Sweet, McKinnon & Simpson, dated February 1, 2019, states that the current owner has ownership interest in parcel 3234-13-00-0220, across River Lane to the west. However, this interest is within a revocable trust which will go into effect upon death, and does not constitute common ownership at this time. Therefore, the property is considered a good nonconforming lot.

The property is considered a double-frontage or through lot, as it fronts on both John Anderson Drive and River Lane. Through lots are defined as lots, other than corner lots, with frontage on more than one street. Therefore, the subject property has two front yards and two side yards. The required setbacks are: front – 30 feet; and sides – 20 feet combined, with a minimum of eight feet on any one side. Pursuant to Section 72-277(1), of the zoning code, accessory structures within residential zoning classifications cannot be located within the front yard. In addition, Section 72-277(2), of the zoning code, states that accessory structures shall not be located in any yard abutting a street on a double-frontage/through lot. The current owners purchased the subject property in February 2011, and wish to construct a two-car open carport structure with an enclosed shed on the rear of the carport. As proposed, the structure will not meet the minimum setback for the front yard within the R-3 zoning classification. As depicted on the site plan, the carport structure encroaches 19 feet into the west front yard. The applicant wants the structure for protection and security of her property.



The applicant is also requesting a variance to fence height. A six-foot fence surrounding the westerly parking area was erected on the property in 2012 without a permit. Between 2014 and 2015, this parking area expanded and the six-foot fence was moved closer to River Lane, also without a permit. In 2017, the subject property was erroneously issued a replacement fence permit for a four-foot and six-foot fence, due to Hurricane Matthew storm damage. This permit subsequently expired and is now invalid due to the lack of inspections. The aforementioned six-foot fence is located within the west front yard setback, eight feet, ten inches from the west property line. As proposed, it will enclose two sides of the carport structure. Pursuant to Section 72-282(2), of the zoning code, fences within the front yard shall not exceed four feet in height. The applicant explains that the owner was not aware that the fence contractor did not obtain the required permits and is requesting the variance in order to maintain the existing fence and screen their vehicles from the adjacent roadway.

Aerial Photo: January 2012 – May 2012



Aerial Photo: December 2014 – January 2015



Aerial Photo: January 2019



Also of note, pursuant to Development Engineering comments, the subject property was not issued a driveway Use Permit for the driveway located on River Lane. In addition, the approved plan for the previous garage addition did not indicate a driveway was included. The applicant explained that the owner was also not aware that the contractor did not obtain a permit for the driveway when the garage addition was permitted. The owner will be required to obtain the required permit for this driveway.

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.

Variance 1: The applicant indicates that they are requesting this variance for the protection and security of the owner's property, and since they have two front yard setbacks, they do not have the appropriate space to construct this structure. Although double frontage/through lots are not rare, they are also not the typical lot configuration utilized in developments. Typically, a lot will have one front, two sides, and one rear yard. Structures under 500 square feet within a residential zoning classification have a five-foot rear yard setback. However, this is a double-frontage/through lot, which has a 30-foot front yard setback off of River Lane. The proposed carport structure is 497 square feet and is 11 feet from the property line. In addition, the 11,700-square-foot property contains a 1950's single-family dwelling with a one-car garage on the east side, and a 1,600-square-foot two-car garage addition on the west side. It appears that the property currently has sufficient structures on-site to accommodate the storage of the applicant's vehicles.

Staff finds that this criterion is not met.

Variance 2: The property is considered a double-frontage/through lot, as it fronts on both John Anderson Drive and River Lane. Therefore, it has two 30-foot front yard setbacks. If the property had a rear yard, as the owner is utilizing the western portion of the property, the existing six-foot fence could remain in its current location. In addition, the platted right-of-way for River Lane is 50 feet wide, with 20 feet of grass from the edge of pavement to the property line. Therefore, the total distance from the edge of pavement on River Lane to the existing six-foot fence is around 30 feet.

Staff finds that this criterion is not met.

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

Variance 1: The subdivision was platted in 1951 with several double-frontage/through lots. Although the buildable area for accessory structures is decreased by the dual front yard setbacks, the property appears to have sufficient storage structures on-site. The need for a variance results directly from the property owner's desire to have an additional accessory structure for the protection and security of their possessions.

Staff finds that this criterion is not met.

Variance 2: The existing six-foot fence was erected on the subject property without the owner knowing the required permit was not obtained. Nevertheless, a four-foot fence is required in front yards for all residential zoning classifications and although the subdivision was platted in 1951, there are 11 other double-frontage/through lots which have to abide by this requirement.

Staff finds that this criterion is not 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: Literal interpretation of the zoning code does not deprive the applicant of the ability to store vehicles on the lot. However, the applicant would like to protect their possessions from the elements under a carport within their coastal community. Accessory structures under 500 square feet within a residential zoning classification typically have a five-foot rear yard setback and, therefore, more of the lot can be utilized. Since this is a double-frontage/through lot, it has two 30-foot front yards where accessory structure are not permitted. This does not deprive the applicant of a common right, as all double-frontage/through lots are subject to the same requirement.

Staff finds that this criterion is not met.

Variance 2: If this were considered a rear yard, the existing six-foot fence would be allowed for the screening of the owner's property. However, a four-foot fence is required in front yards for all residential zoning classifications. Therefore, literal interpretation of the zoning code does not deprive the applicant of rights commonly enjoyed by other properties in the same zoning classification.

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.

Variance 1: The site plan depicts the carport structure close to the two-car garage addition, with only enough room to accommodate maintenance of the structure. However, the size of the proposed carport accommodates two vehicles. It could be reduced in size to a lesser setback.

Staff finds that this criterion is not met.

Variance 2: In order to provide sufficient screening of the owner's property, the fence would need to stay in its current location. However, it would not be the minimum required variance, as a four-foot fence could be constructed in this location.

Staff finds that this criterion is not 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.

Variance 1: Harmonious layout and scale of principal and accessory structures is required to preserve property values and improve the overall image of communities. The subject property accommodates a single-family dwelling with a one-car garage and a two-car garage addition. Since the accessory structure is entirely within the front yard setback, the variance is not in harmony with the general intent of this ordinance.

Staff finds that this criterion is not met.

Variance 2: The overall intent of the zoning ordinance and the comprehensive plan is to maintain and improve the quality of life for the present and future residents of Volusia County. The existing six-foot fence compliments the façade of the single-family dwelling and does increase the aesthetics of the neighborhood by screening the owner's possessions.

Staff finds that this criterion is met.

V. STAFF RECOMMENDATION

Variance 1. Deny variance request 1, case number V-19-024, as the variance fails to meet all five criteria for granting said variance.

However, if the PLDRC finds that the variance request 1 does meet all five of the criteria, staff recommends the following conditions:

1. The variance shall be limited to an 11-foot front yard setback for the carport structure as depicted on the variance site plan. The variance shall not apply to any future structures. In addition, the proposed carport structure shall not be enlarged, increased, or extended further to encroach or occupy any greater area of the property without approval of a separate variance.
2. The property owner or authorized agent(s) shall obtain and complete all required building permits and inspections for the proposed carport structure.

Variance 2. Deny variance request 2, case number V-19-024, as the variance fails to meet four of the five criteria for granting said variance. If this variance is denied, the property owner or authorized agent(s) shall remove the existing six-foot fence out of the front yard setback.

However, if the PLDRC finds that variance request 2 does meet all five of the criteria, staff recommends the following conditions:

1. The variance shall be limited to an eight-foot, 10-inch front yard setback for the existing six-foot fence as depicted on the variance site plan. The variance shall not apply to any future structures. In addition, the existing six-foot fence shall not be enlarged, increased, or extended further to encroach or occupy any greater area of the property without approval of a separate variance.
2. The property owner or authorized agent(s) shall obtain and complete all required building permits and inspections for the existing six-foot fence.
3. If the existing six-foot fence is destroyed or removed, a new fence must comply with Section 72-282, of the zoning code.

Note: The property owner must comply with the following conditions regardless of variance determination:

1. The property owner or authorized agent(s) shall apply for a Use Permit for the existing driveway on River Lane.
2. A Subdivision Exemption application is required to combine the portions of lots within the subject property.

VI. ATTACHMENTS

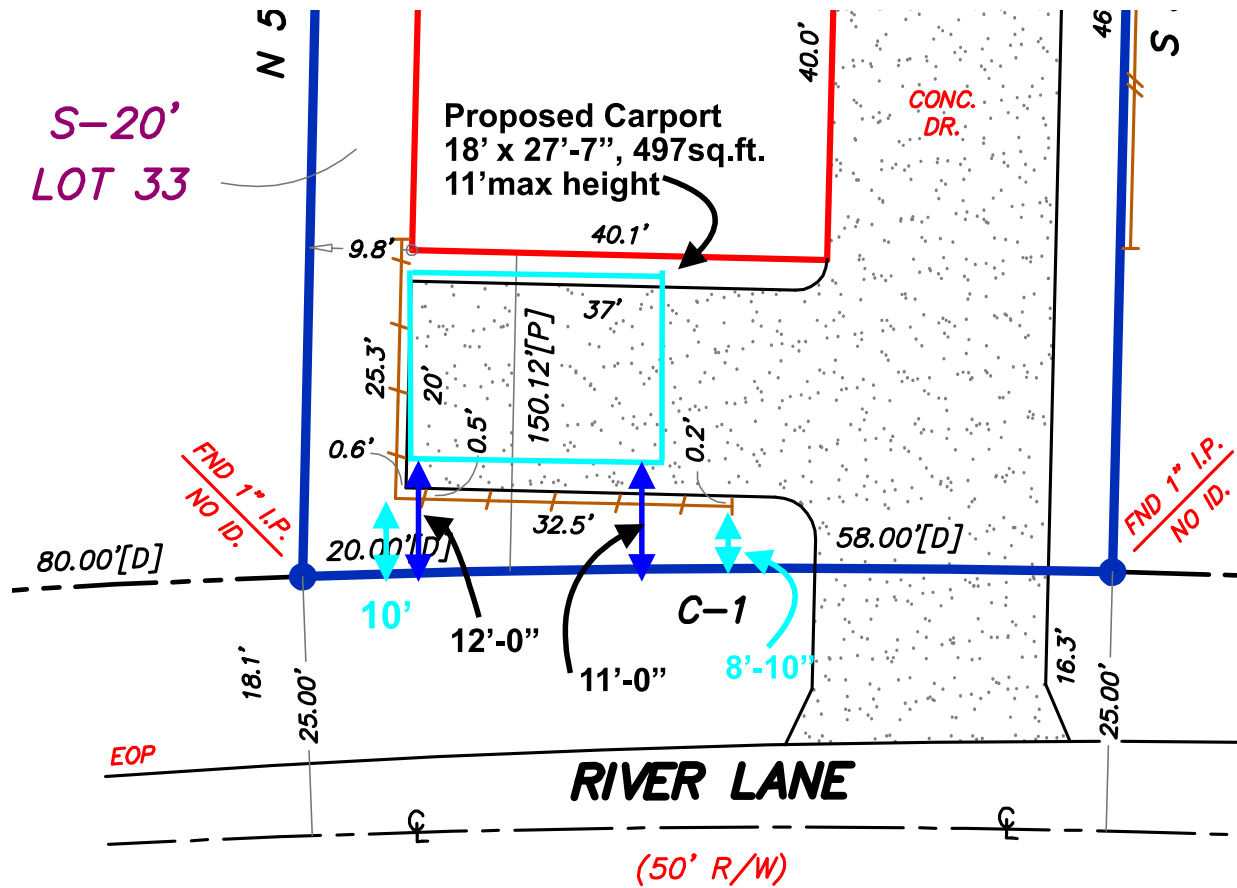
- Variance Site Plan
- Written Petitions
- Survey
- Development Engineering Comments
- Land Development Comments
- Site Photos
- Map Exhibits

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 Site Plan





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?

Living beachside, we are looking to add a carport to protect the value of our cars from sun, wind, and tree damage associated with being exposed to the elements. Since the existing property zone of R3 describes our property as having 2 front yards and no backyard, we are currently restricted from adding a carport.

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?

Because we own a property that is zoned R-3 but has John Anderson Drive in the front yard and River Lane as the back yard, we are considered to have two front yards and no back yard. If we were listed as having a back yard, our current zoning and setback issue(s) would not be a problem for this carport project.

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.

We are requesting that the R-3 setbacks be waived so that we can construct/add a carport less than 500 sq. ft. to protect our vehicles from the Florida wind, sun and rains.

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?

If approved, the addition of this proposed carport shall have minimal impact to the property or neighborhood as the carport is expected to be built behind an existing fence and driveway area. It should not have any adverse effect to the environment nor drainage in the surrounding areas.

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

If approved, the addition of this proposed carport shall have minimal impact to the property or neighborhood as the carport will be built behind an existing fence and on a current driveway. The next door neighbors to the next door to us did receive an approved variance to add a pool to their yard, which is like our property and also considered a front yard. Our proposed carport will be a much smaller footprint than the pool next door and considerably less obtrusive to the set backs than this existing pool.



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?

Our property is listed as a drive thru lot or a lot having two front yards. With having two front yards, although the property is laid out as having a front and back yard, our yard must meet only front yard zoning rules.

*Note: this fence was originally installed by a professional fence contractor licensed in Volusia County to install fences. We were told that the contractor did secure the proper permits and was meeting code.

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?

Our property looks like all other lots, having a front yard and having a back yard but with our zoning, we must meet only front yard zoning rules. Thus in our case we aren't allowed a privacy fence in our "back" yard, like other properties.

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.

We are simply asking that our existing fence that was installed by a fence contractor and we were told, by code and with a permit, we requesting a variance to keep the 6' foot to allow for privacy to our side driveway as well as protecting our vehicles more, versus changing it to a 4' fence. Also, we like to keep valuable items out of sight as our street is know for many car break ins quite often.

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?

All we are asking for is to have the fence used as a privacy fence at 6' versus the code of a 4' fence, that provides very little privacy or protection for our vehicles. Again, this fence was installed by a licensed contractor and we were told that it met all codes and conditions of Volusia County.

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

A 6' fence versus a 4' code fence creates a more uniformed structure and adds to the esthetic of the property as well as blocking the view of parked vehicles being seen from the side street. As note, when this fence was installed, several of of neighbors commented on how nice the fence looked and how it did in fact add to the esthetics of the property as well as keeping things out of sight.

Survey

LEGAL DESCRIPTION: THE SOUTHERLY 20 FEET OF LOT 33 AND THE NORTHERLY 58 FEET OF LOT 34, O'BRYNE'S HALIFAX SHORES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN MAP BOOK 19, PAGE 49, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.



1434 JOHN ANDERSON DRIVE
ORMOND BEACH, FL.

**LONG
SURVEYING,
INC.**

Long Surveying, Inc.

"Specializing in Residential Surveying"

L.B. No. 7371

1061 S. Sun Dr. Ste. #1113

Lake Mary, FL 32746

Office 407-330-9717 or 407-330-9716

Fax 407-330-9775

www.longsurveying.com

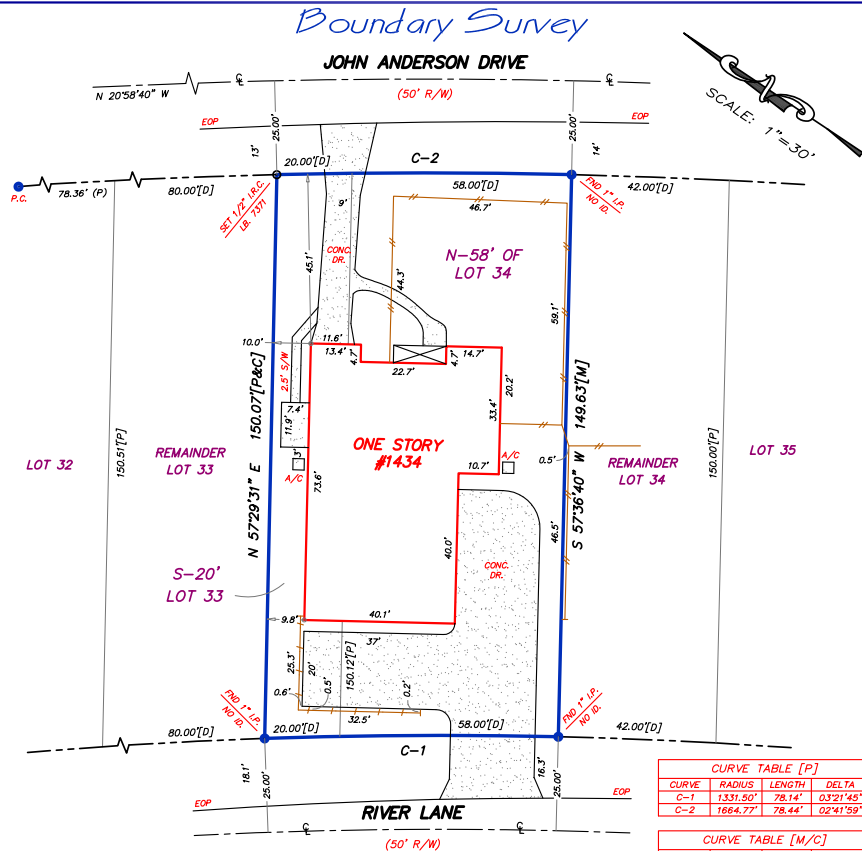
DRAWN BY:
KZR MR

CHECKED BY:
BRETT

CERTIFIED TO:
LAURA J. ORTIZ

COMMUNITY NO:
125136
PANEL:
0204
FLOOD ZONE:
X
SUFFIX:
K
F.I.R.M. DATE:
09/29/17

SURVEY NO.
93520
FIELD DATE:
09/14/18



A/C	AIR CONDITIONER
A/E	ALLEY EASEMENT
B.C.	BLOCK CORNER
BLK	BLOCK
C.B.	CONCRETE BLOCK
C.B.S.	CONCRETE BLOCK STRUCTURE
C.M.	CONCRETE MONUMENT
CONC.	CONCRETE
D	DEED
D.E.	DRAINAGE EASEMENT
E.O.P.	EDGE OF PAVEMENT
F.C.C.	FOUND CROSS CUT
F.F.E.	FINISHED FLOOR ELEVATION
FND	FOUND
ID	IDENTIFICATION
I.P.	IRON PIPE
IR	IRON ROD
I.R.C.	IRON ROD & CAP
L	ARC LENGTH
L.B.	LAND SURVEYING BUSINESS
L.S.	LAND SURVEYOR
L.E.	LANDSCAPE EASEMENT
M	MEASURED
M.E.	MAINTENANCE EASEMENT
N&D	NAIL AND DISK
P	PLAT
P.E.	PEDESTRIAN EASEMENT
P.C.	POINT OF CURVATURE
P.C.C.	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

BEARINGS SHOWN HEREON ARE BASED UPON THE CENTERLINE OF JOHN ANDERSON DRIVE BEING N 20°58'40" W 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 easements, 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 footings 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 or the original raised seal of a Florida licensed Surveyor and Mapper.

Certification: I certify that this survey was made under my direction and that it meets the minimum technical standards set forth by the Board of Professional Land Surveyors and Mappers in Chapter 478, Part 1, Florida Administrative Code, pursuant to Section 478.027, Florida Statutes.

No. 5910
STATE OF
FLORIDA
LEON L. HAMPTON P.S.M. NO. 5910

CURVE TABLE [P]			
CURVE	RADIUS	LENGTH	DELTA
C-1	1331.50'	78.14'	03°21'45"
C-2	1664.77'	78.44'	02°41'59"

CURVE TABLE [M/C]			
CURVE	RADIUS	LENGTH	DELTA
C-1(M)	1331.50'	78.19'	03°21'53"
C-2(C)	1664.77'	78.44'	02°41'59"

STAFF COMMENTS

Case V-19-024

DEVELOPMENT ENGINEERING

Robert Loveless, Senior Engineering Inspector

Hedrick - Ortiz

V-19-024

Staff has reviewed the requested application and provides the following comments:

1. It appears that the driveway on River Lane was not permitted and should go through the permitting process. Driveway will have to be tested to verify depth. If driveway doesn't meet the VC LDC it may have to be removed.

* * * * *

LAND DEVELOPMENT

Jesse Bowers, Land Development

Hedrick - Ortiz

V-19-024

Staff has reviewed the requested application and provides the following comments:

1. Lots need to be combined to create one (1) unified legal building parcel.

* * * * *

PHOTO 1: Existing professionally installed fence



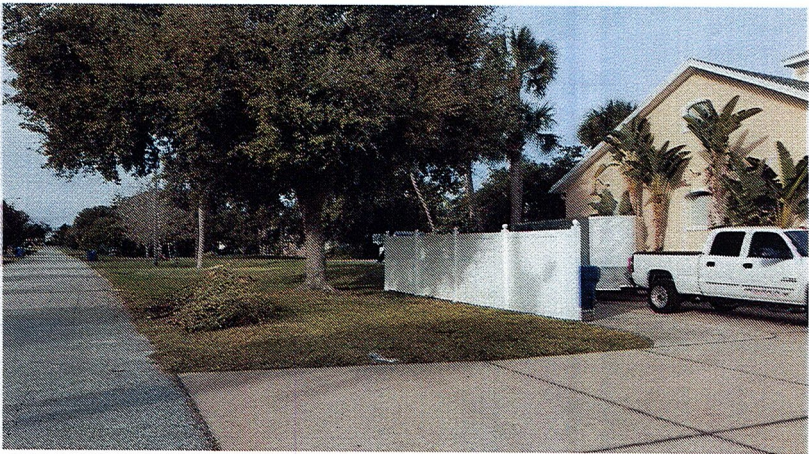
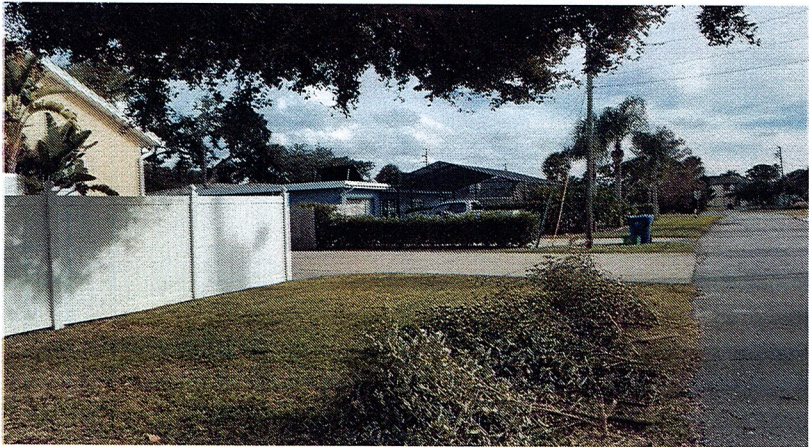
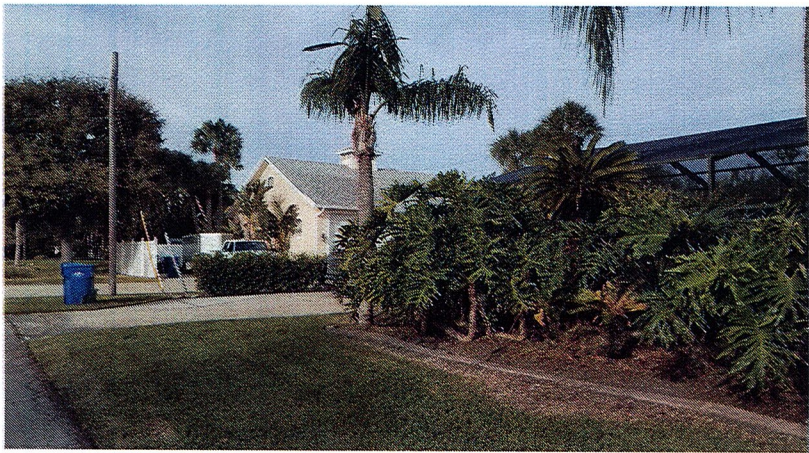
PHOTO 2: Adds to the esthetics of the property



PHOTO 3: Helps hide clutter and keeps things out of sight



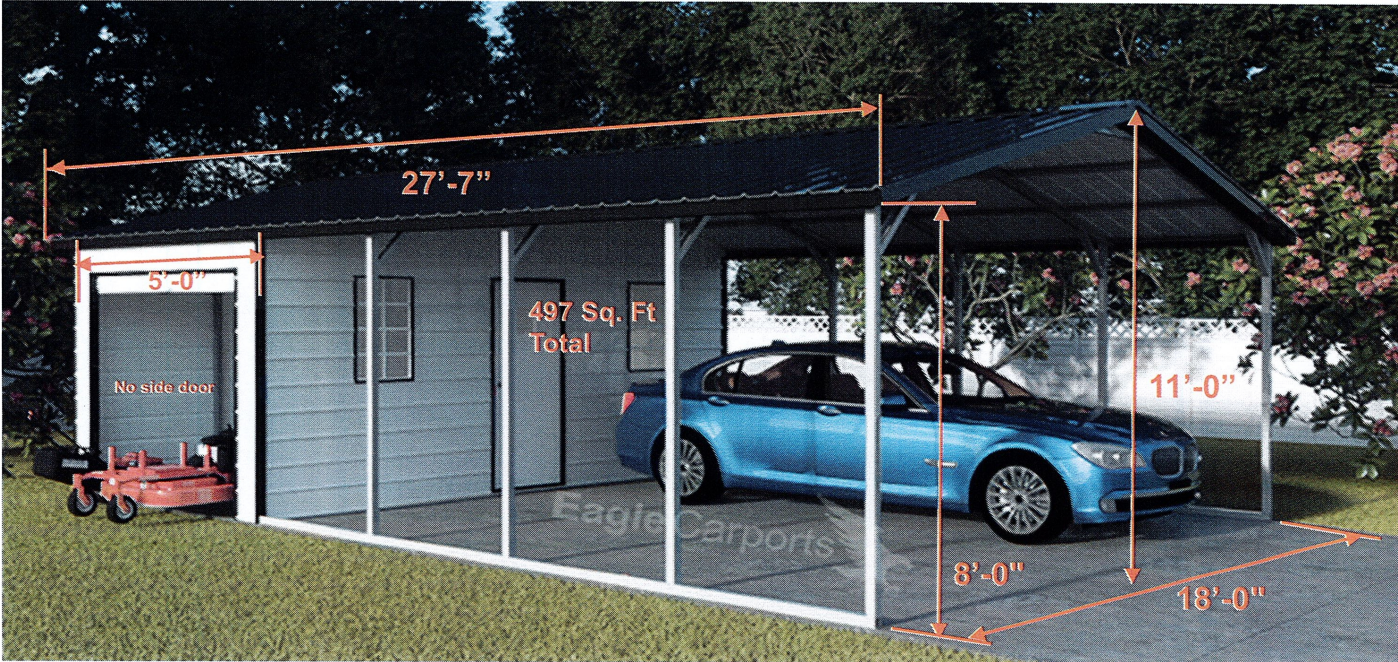
Site Photos - 2



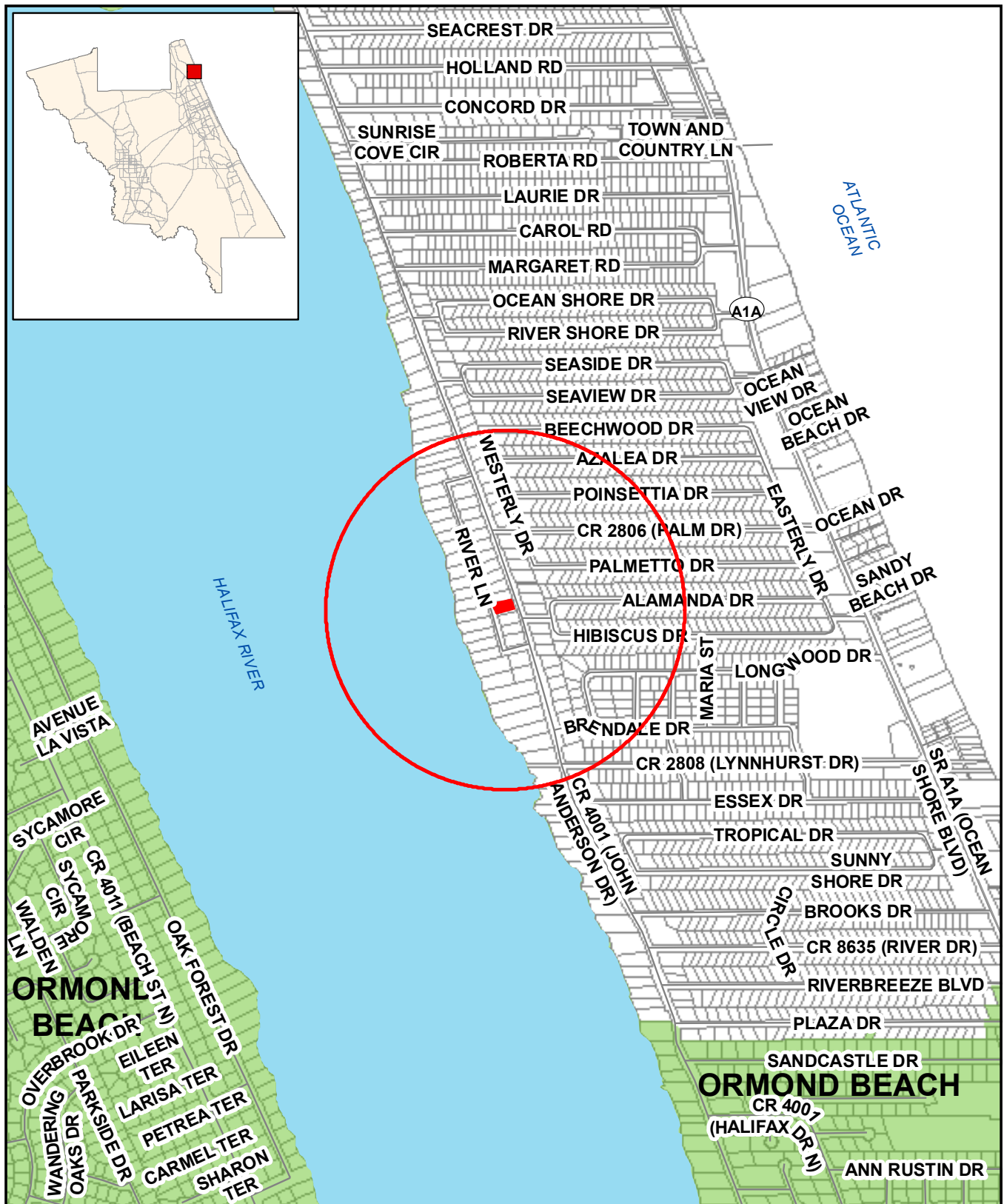
Site Photos - 3



Architectural Elevation



PROPERTY LOCATION
V-19-024

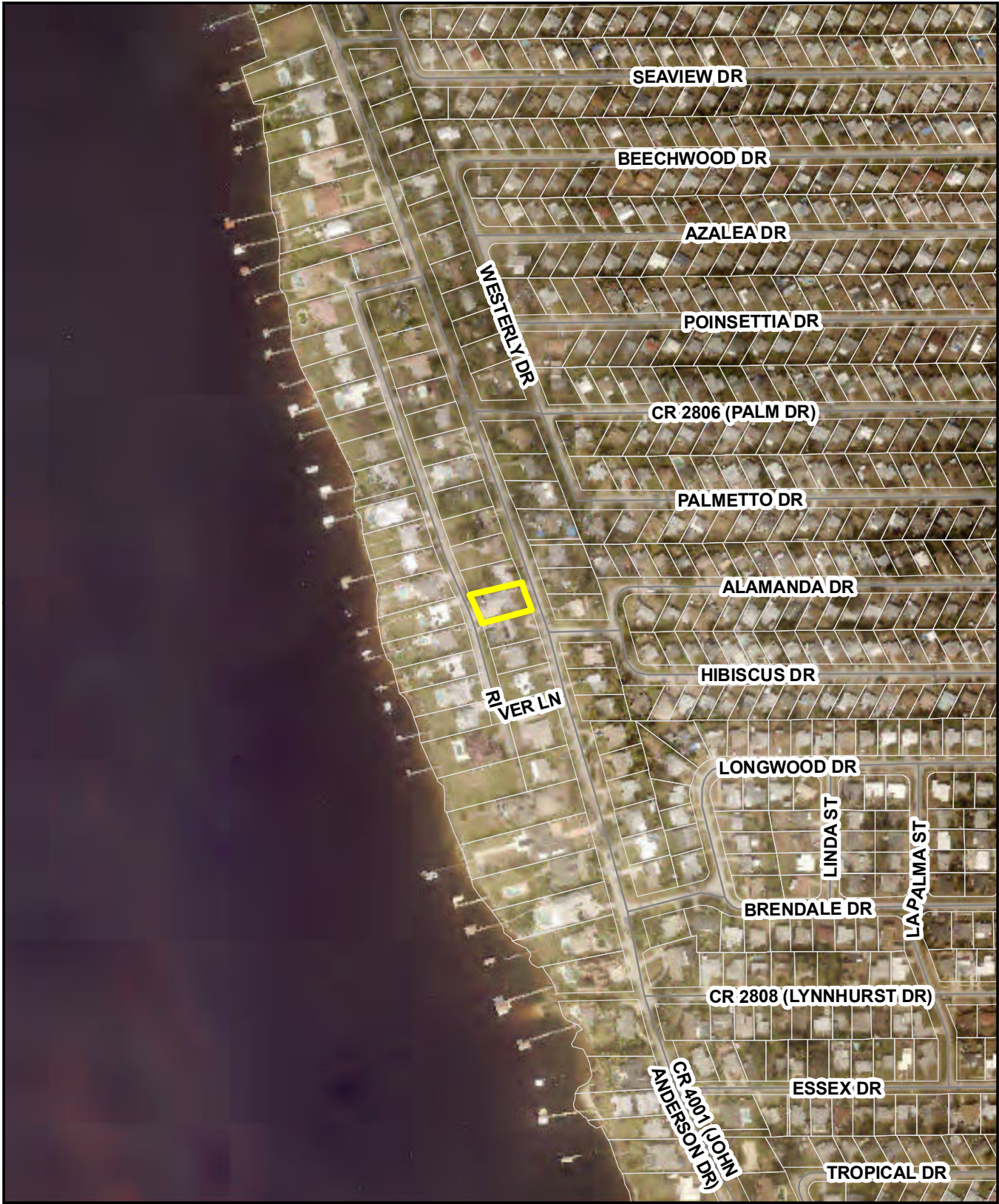


SUBJECT PROPERTY

$$1'' = 1,000'$$

1/28/2019

AERIAL
V-19-024



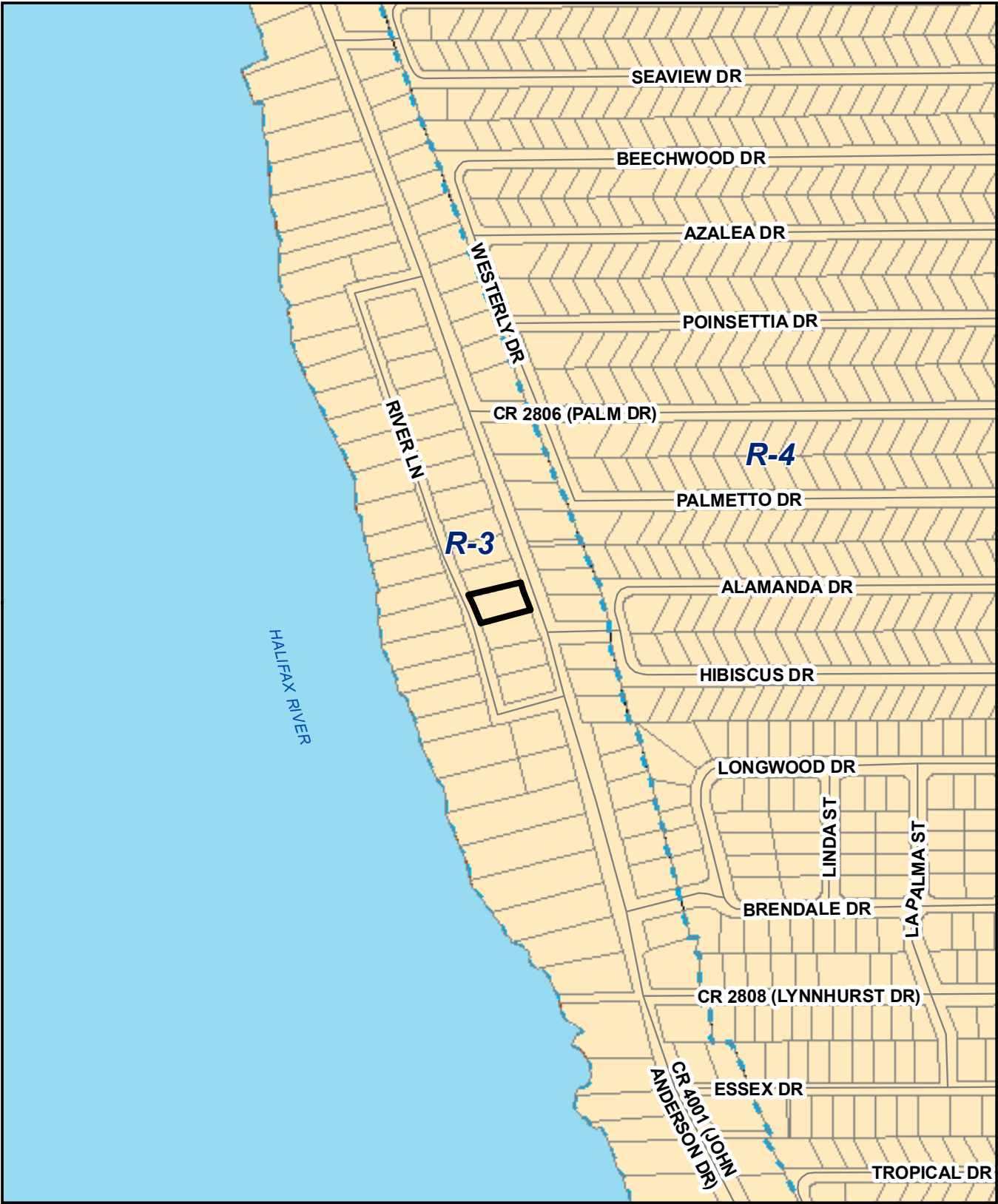
 SUBJECT PROPERTY

IMAGE DATE 2018



1 " = 400 '
1/28/2019

ZONING CLASSIFICATION
V-19-024



 SUBJECT PROPERTY

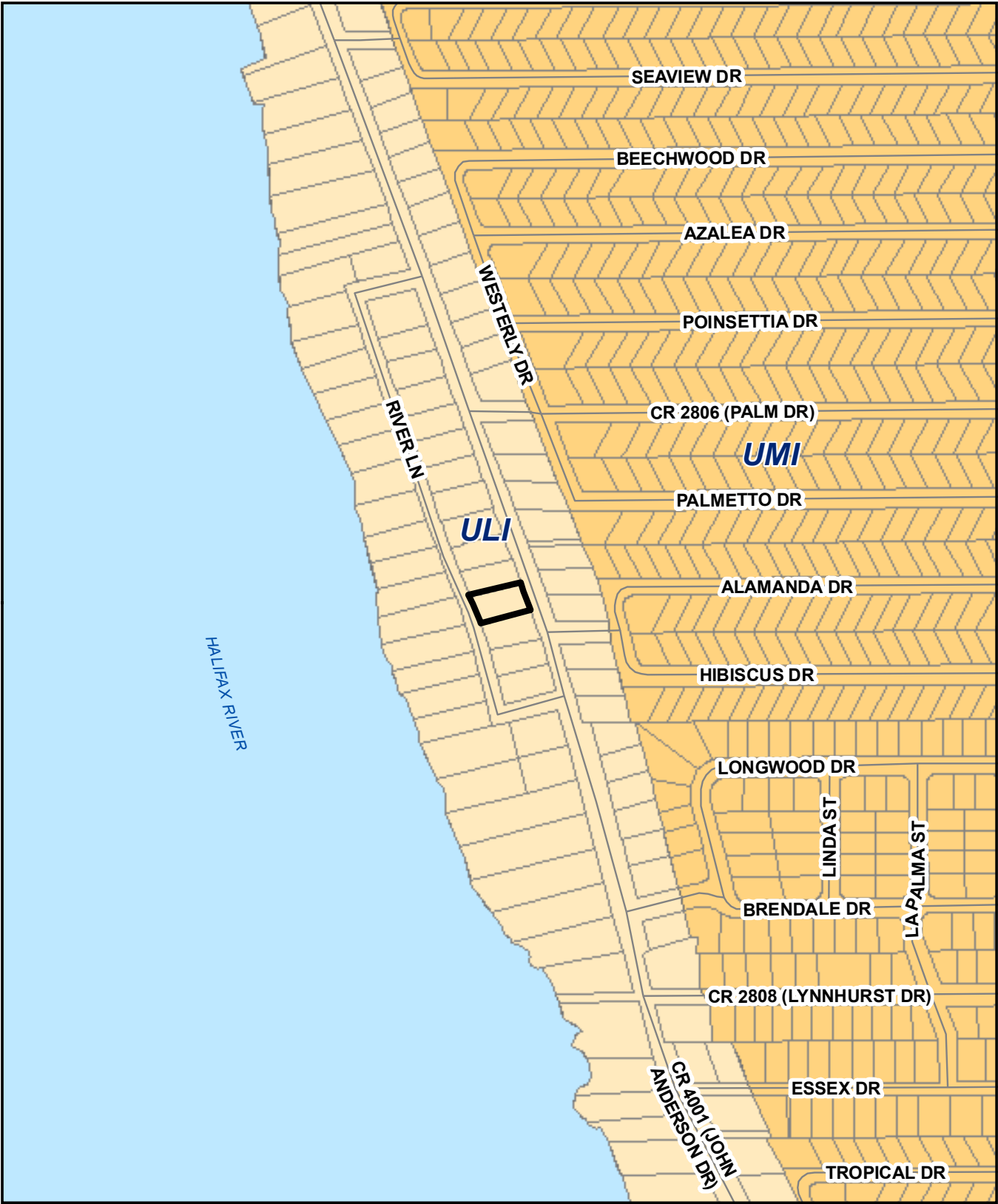
 RESIDENTIAL  ZONING BNDY

 INCORPORATED



1" = 400'
1/28/2019

FUTURE LAND USE
V-19-024



 SUBJECT PROPERTY

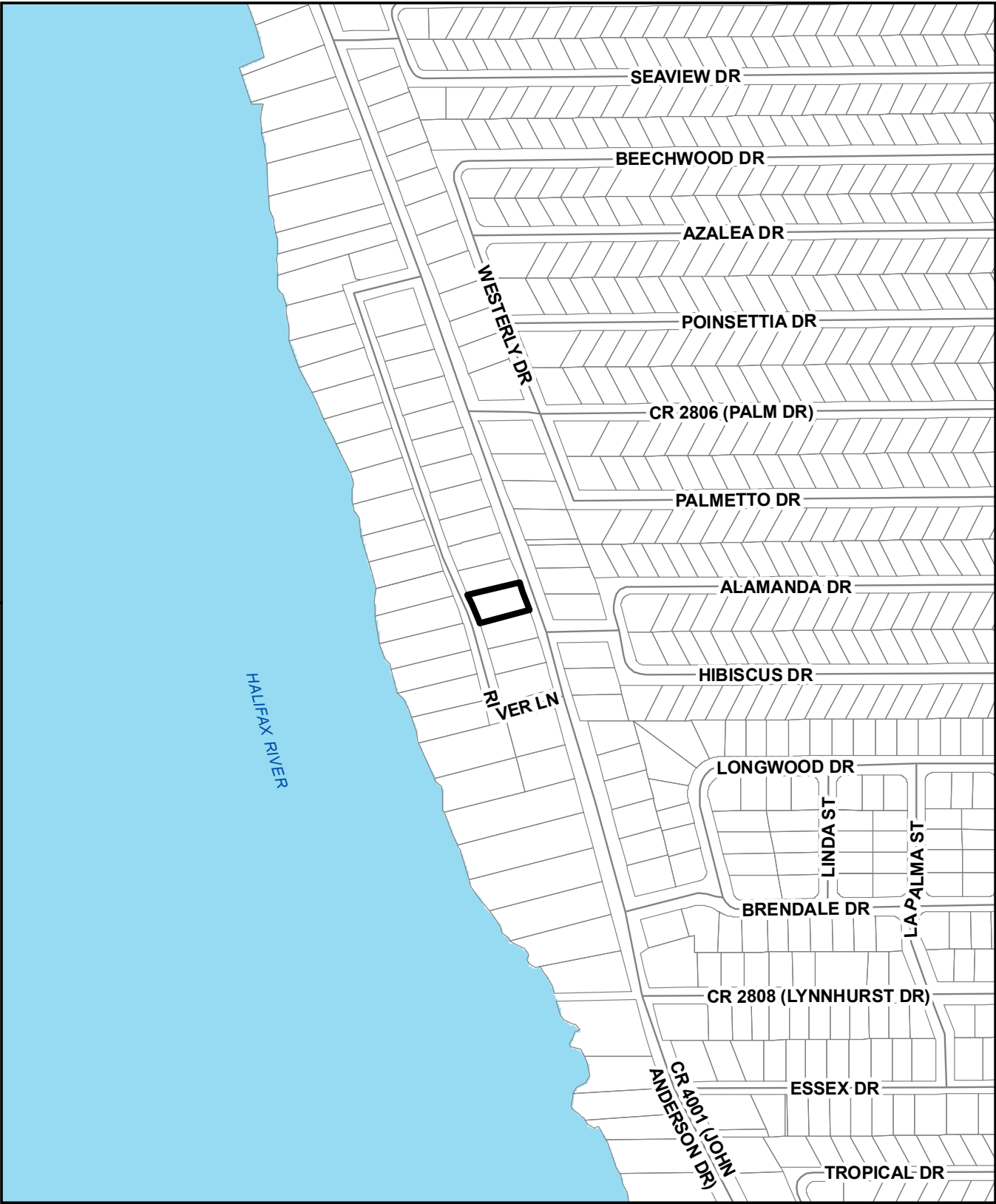
 URBAN LOW INTENSITY




 URBAN MEDIUM INTENSITY



1" = 400'
1/28/2019

ECO/NRMA OVERLAY
V-19-024



-  SUBJECT PROPERTY
-  ECO
-  NRMA



1 " = 400 '
1/28/2019