



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

PUBLIC HEARING: September 12, 2017 - Planning and Land Development Regulation Commission (PLDRC)

CASE NO: V-17-057

SUBJECT: Variances to Section 72-277(7) for an unenclosed stairway on a single-family dwelling in Urban Single-Family Residential/Indian River Lagoon Surface Water Improvements and Management Overlay (R-9W) zoned property.

LOCATION: 850 Grouper Avenue, New Smyrna Beach

APPLICANT: George Barrett, Beach Towne Construction, agent for owner

OWNER(S): Michael and Beverly Johnson

STAFF: Scott Ashley, AICP, Senior Zoning Manager

I. SUMMARY OF REQUEST

The applicant is requesting a variance to bring into compliance an unenclosed stairway to a single-family residence. The property received a building permit for a single-family residence in March 2014, but the front entry stairway was erroneously constructed within the front yard. Approval of this variance will allow the stairway to remain in its current configuration.

The requested variance is:

A variance to Section 72-277(7) for a front yard from the allowable 21.5 feet to 17.8 feet for an existing, unenclosed stairway on a single-family dwelling in Urban Single-Family Residential/Indian River Lagoon Surface Water Improvements and Management Overlay (R-9W) zoned property.

Staff recommendation: Approve the variance request, case number V-17-036, as the application can meet all five criteria for granting said variance.

II. SITE INFORMATION

1. Location: South side of Grouper Avenue, ±128 feet west of its intersection with Engram Road, New Smyrna Beach.
2. Parcel No(s): 8505-01-60-0090
3. Property Size: ±5,000 square feet
4. Council District: 3
5. Zoning: Urban Single-Family Residential/Indian River Surface Water Improvements and Management Overlay (R-9W)
6. Future Land Use: Urban Low Intensity (ULI)
7. ECO Overlay: No
8. NRMA Overlay: No
9. Adjacent Zoning and Land Use:

DIRECTION	ZONING	FUTURE LAND USE	CURRENT USE
North:	R-9W	ULI	Single-family Residence
East:	R-9W	ULI	Single-family Residence
South:	R-9W	ULI	Single-family Residence
West:	R-9W	ULI	Vacant Residential

10. Location Maps:



Zoning Map



Future Land Use Map

III. BACKGROUND AND PREVIOUS ACTIONS

The applicant was granted approval of this same requested variance for a front yard by the PLDRC in 2014, under case V-14-052. However, the applicant did not satisfy an approved condition to obtain all building permits and inspections for the stairway building permit (20140328043) prior to the expiration date of the 2014 variance. Therefore, the previous case approval subsequently expired. In October 2015, the applicant was granted a 60-day extension of the variance to complete the applicable permit, but he was unable to meet the timeframe.

The subject parcel is comprised of lots from the Bethune Volusia Beach plat. The parcel is rectangular and is 5,000 square feet in size. In 2003, the owners at the time received a variance to separate the lots. In March 2014, a building permit was issued (20130201040) for the development of a three-story, single-family residence. During the design of the house, the topography of the site was misjudged, and the front entry stairs had to be constructed longer than anticipated. Since the house was built first, the stairs were constructed in the required front yard. The applicant is requesting this variance to legitimize the stairway in its current location.

The county issued a certificate of occupancy for the new house in 2014. A building permit for the stairway was under review to allow consideration of the stairs separately from the house. Approval of the previous variance allowed issuance of the front stairway permit.

IV. REVIEW CRITERIA AND ANALYSIS

The survey submitted shows a three-story house setback a distance of 25 feet from the front property line, and a stairway that is setback a distance of 17.8 feet from the front property line. According to section 72-277(7), "...unenclosed stairways may project into any yard for 3.5 feet or half of the yard wherever is less". The unenclosed stairway encroaches into the required yard by 7.2 feet, which exceeds the allowances of the zoning code by 3.7 feet.

The applicant has attempted to redesign the stairs so that they meet the front yard setbacks (see exhibits), but due to the height and angle of the stairs, the redesign cannot meet building code requirements. The first exhibit shows that the stairs cannot be reduced in length, because it would create an unsafe structure. The second exhibit shows that the stairs cannot be extended further along the outside of the house because it would then obstruct access to one of the two garages located on either side of the stairway.

The third and fourth exhibits show the immediate neighborhood and the front setbacks for those houses. The applicant is showing the potential footprints of vacant properties if they were to be developed. The public record on these properties show that out of the 12 properties shown in exhibit 3, four of them have variances, and three properties are vacant. Therefore, only three properties have developed without the benefit of variances. The previously approved variances are listed in the table below.

Property Address	Case Number	Variations Granted
839 Grouper Avenue	V-82-B068	Front yard variance on Grouper Avenue from 25 feet to 10 feet; and Lot size variance from 7,500 sf to 4,900 sf.
845 Grouper Avenue	V-90-019	Front yard variance on Grouper Avenue from 35 feet to 23'10"; and East side yard variance from 7 feet to 4 feet
6499 Engram Road	V-83-B003	Front yard variance on Grouper Avenue from 25 feet to 10 feet
6500 Engram Road	V-82-B035	Front yard variance on Grouper Avenue from 25 feet to 11 feet

Section 72-379 (1) a. 4 *Variations* 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 to be considered for this variance in that the house and the stairs have already been constructed. Given the height of the stairs, and the location of garages on either side of the stairs, it is impossible for the stairs to be redesigned within the 3.5-foot footprint and still meet the Florida Building Code.

Staff finds that the variance requests can meet this criterion with the staff recommended conditions.

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

The special circumstance described in the above paragraph does result from the actions of the applicant. Beach Towne Construction designed the house, submitted permits for construction, and performed the construction.

Staff finds that the 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 demolition of the existing stairway and a redesign of the house to accommodate code requirements. The applicant has submitted some alternative design options to demonstrate that the redesign would either create a safety hazard or block access to a garage. Another design option would be to create a stairway entry along one of the sides of the house. As evidenced in the building permit for the house, retention areas required of the Indian River Lagoon Surface Water Improvements and Management Overlay are located on either side of the house.

Staff finds that the variance request can meet this criterion with the staff recommended conditions.

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 the minimum variance necessary to make possible the use of the stairs as constructed. Staff is recommending that the variance be limited to the existing stairs, and that no other portions of the house may intrude into the front yard and that the stairs may not take up any greater area.

Staff finds that the variance request can meet this criterion with the staff recommended conditions.

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 will not have an effect on traffic or the public health, safety or welfare. There will be no impact on essential services or fire safety. The residence has a two-car garage and ample driveway space. Staff does not anticipate that the structure will have an impact on traffic. The presence of stairs in the front yard is considered a minimal impact to the neighborhood aesthetics.

Staff finds that the variance request can meet this criterion with the staff recommended conditions.

V. STAFF RECOMMENDATION

Staff finds that the requested variance meets all five criteria for the granting of a variance and recommends the PLDRC approve a variance to Section 72-277(7) for the front yard from the allowable 21.5 feet to 17.8 feet for an existing, unenclosed stairway on a single-family residence in Urban Single-Family Residential/Indian River Surface Water Improvements and Management Overlay (R-9W) zoned property, subject to the following conditions:

1. The variances are limited to the proposed construction of an unenclosed stairway as indicated on the variance site plan provided with building permit 20140328043. The structure cannot be enlarged, increased, or extended to further encroach or occupy greater area or other part of the front or other required yards of the property as described by the zoning ordinance without approval of a separate variance and/or building permits and inspections.
2. The property owner shall obtain all building permits and inspections for the additions in compliance with the plans submitted with this variance application prepared for building permit 20140328043 prior to the expiration date of this variance, unless the valid period is extended by the Zoning Enforcement Official.

VI. ATTACHMENTS

- Written Petition
- Survey
- Site Photos
- Exhibits
- Reviewer Comments
- Excerpt from building permit 20130201040
- 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?

THIS IS A NON-CONFORMING LOT ON ONE OF THE LOWEST STREETS IN THE AREA, HOME HAD TO BE RAISED UP TO FLOOD ZONE HEIGHT REQUIREMENT, THE SLOPED FRONT YARD / DRIVEWAY ADDED ADDL STEPS TO MAKE IT DOWN TO SLOPED GRADE, ADDING MORE STEPS MADE STAIRS ENCROACH INTO SETBACK AS STAIRS TOWARD DRIVEWAY COULD NOT GO ANY FURTHER WITHOUT INTERFERING WITH GARAGE ACCESS

- 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?

STAIRS WERE BUILT AFTER 3-STORY STRUCTURE + DRIVEWAY, STAIRS WILL NOT FIT AS DESIGNED OR ANY OTHER WAY WITHOUT ENCROACHING INTO SETBACK. WITHOUT THIS VARIANCE THERE WOULD BE NO ACCESS TO THE HOME'S CENTERED SECOND FLOOR FRONT ENTRY. STAIRS DESIGNED AND BUILT ARE THE CENTER POINT OF THE DESIGN.

- 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:

THIS VARIANCE REQUEST IS A WOODEN SET OF STAIRS, A MINOR STRUCTURE, AND WITHOUT IT, THERE WILL BE NO WAY TO ACCESS THE FRONT OF THE HOUSE. THE STAIRS ARE DESIGNED TO ACCESS EACH SIDE OF DRIVEWAY, THEY ARE VERY FUNCTIONAL AND AESTHETICALLY PLEASING FROM THE ROAD.

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?

STAIRS DO NOT AFFECT PARKING, BUT ACTUALLY MAKE ACCESS EASIER FROM DRIVEWAY. AESTHETICALLY THE CENTERED STAIRS LOOK GREAT AND ARE A CENTER POINT OF THE WHOLE DESIGN. THIS DESIGN ALSO PUSHED MAIN HOUSE BACK, TO GET STAIRS IN FRONT YARD, AS WITH 2' 8 1/2" CANTILEVERED ROOF + DECKS, THIS HOME COULD HAVE BEEN 3' 6 1/2" CLOSER TO THE ROAD CAUSING LESS OFF STREET PARKING

and

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

ON THIS STREET, GROOPER AVENUE, 8 OF THE 12 PROPERTIES ARE CORNER LOTS, THEIR GROOPER SETBACK IS 15' FOR A 3-STORY STRUCTURE, AND 12' 6" FOR A 3-STORY CANTILEVERED ROOF + DECK. THIS REQUEST IS FOR THE LOWER SECTION OF A WOODEN STAIRCASE, WHICH IS 17' 10" BACK, 2' 10" FURTHER BACK THAN ADJACENT HOME AND 6' 4" BACK FROM ADJACENT 2 OR 3 STORY ROOF + DECKS.


Applicant's Signature

Date

Applicant's Signature

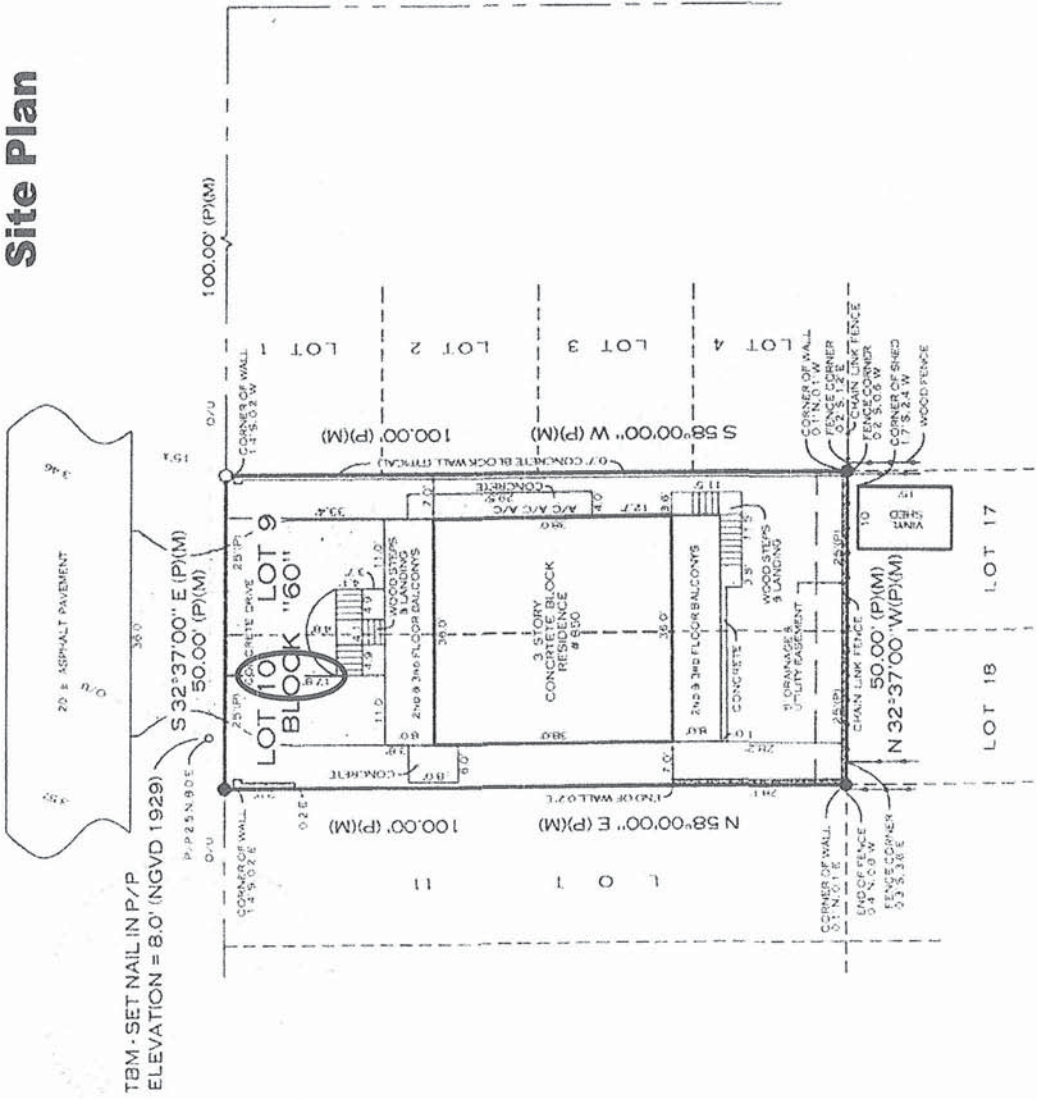
Date

PLAT OF BOUNDARY SURVEY OF

Lots 9 and 10, Block 60, BETHUNE-VOLUNIA BEACH, UNIT 4 OF 7 UNITS, as per map thereof recorded in Map Book 11, Pages 155 through 161, inclusive, Public Records of Volusia County, Florida

Variance Site Plan

GROUPE AVENUE (50' R/W)
PLATTED "14TH STREET"



- SURVEYOR'S NOTES & SURVEY REPORT**
- Legal description provided by client or agent of client.
 - Bearings per plat and based on the Northern line of subject property as being N 55 degrees 00' 00" E.
 - Subject to restrictions, reservations, limitations, easements and rights of way, if any, appearing of record. Per Florida Statutes Chapter 231 "Surveyor is not responsible for any easements that are not provided to him except those shown on the plat of record.
 - This plat of survey is subject to any facts that may be disclosed by a full and accurate title search conducted to the best of the surveyor's knowledge.
 - Underground utilities and features not located.
 - Dimensions are shown in feet and decimals thereof.
 - Denying distance between features such as walls or fences and property line may be exaggerated for clarity.
 - Features shown by symbol are not to scale.
 - Not valid without the signature and the original raised seal of a Florida Licensed Surveyor and Mapper.

- DENOTES 1/2" IRON ROD W/ CAP "LB 3450" RECOVERED
- DENOTES 5/8" IRON ROD W/ CAP "LB 2599" RECOVERED

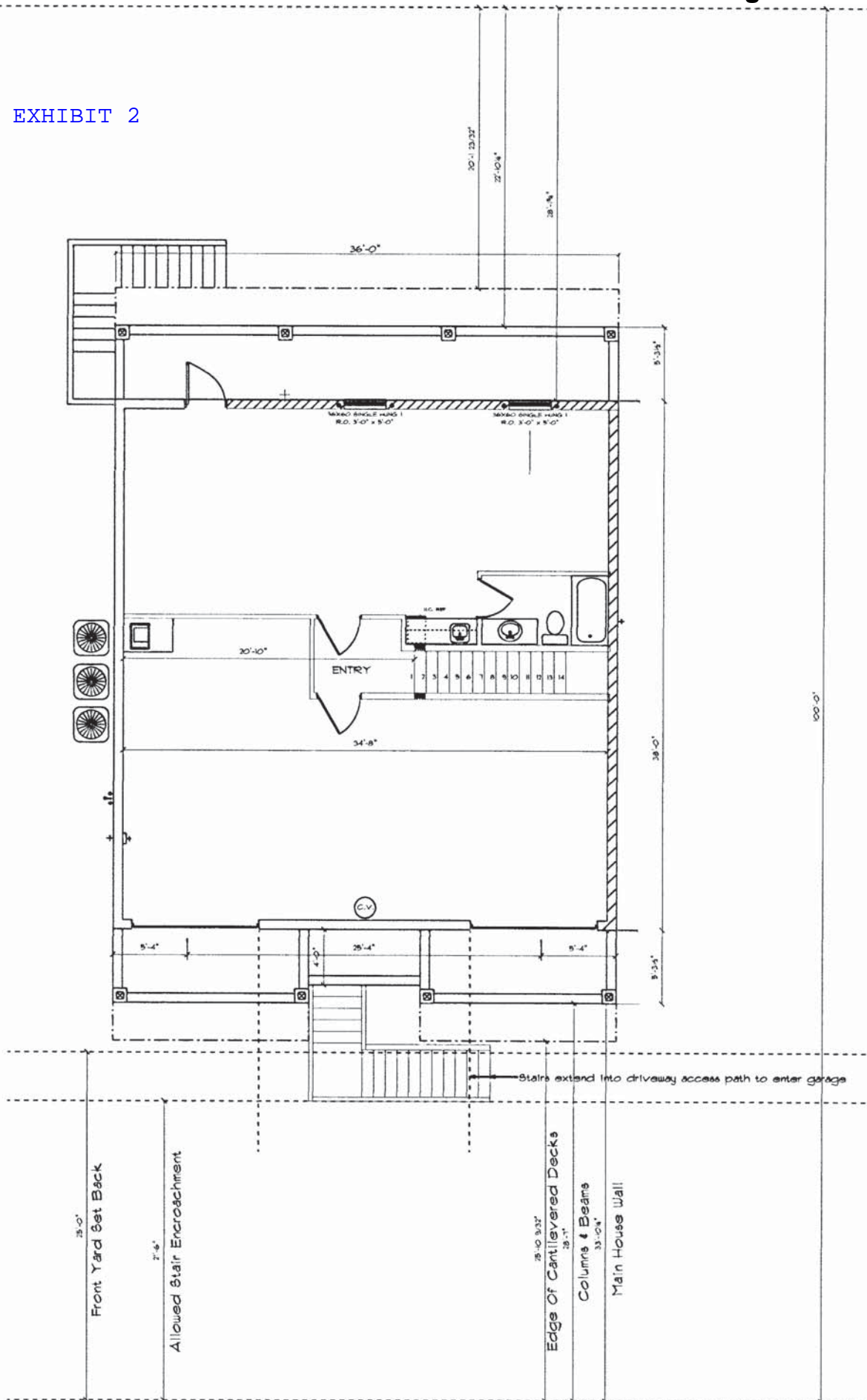


LEGEND & ABBREVIATIONS	SYMBOL TYPE	NUMBER	DATE	SCALE	DATE
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5/8" IRON ROD W/ CAP "LB 2599"	●	04-13-14	04-14-011	KE	AC

ALLEN CAMPBELL & ASSOCIATES, INC.
PROFESSIONAL SURVEYING & MAPPING
500 NORTH GULFVIEW
MELBORNE, FLORIDA 32909
PHONE: (888) 437-2210
FAX: (888) 427-5353

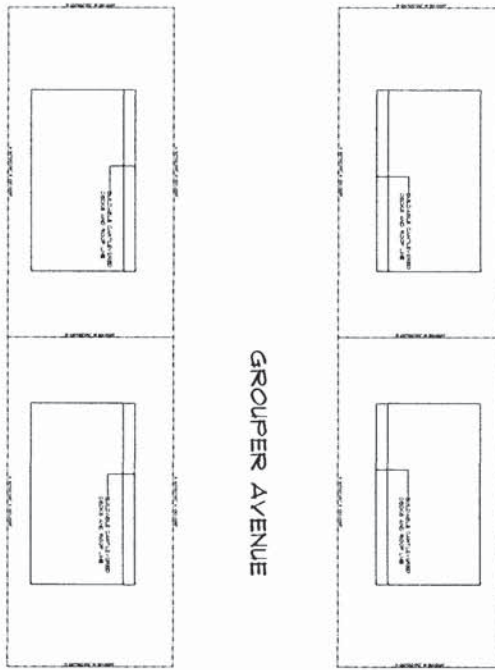
DATE: 11-19-20
FILE: BETHUNE VOLUNIA #4
PREPARED FOR: MICHAEL & BEVELYN JOHNSON

EXHIBIT 2



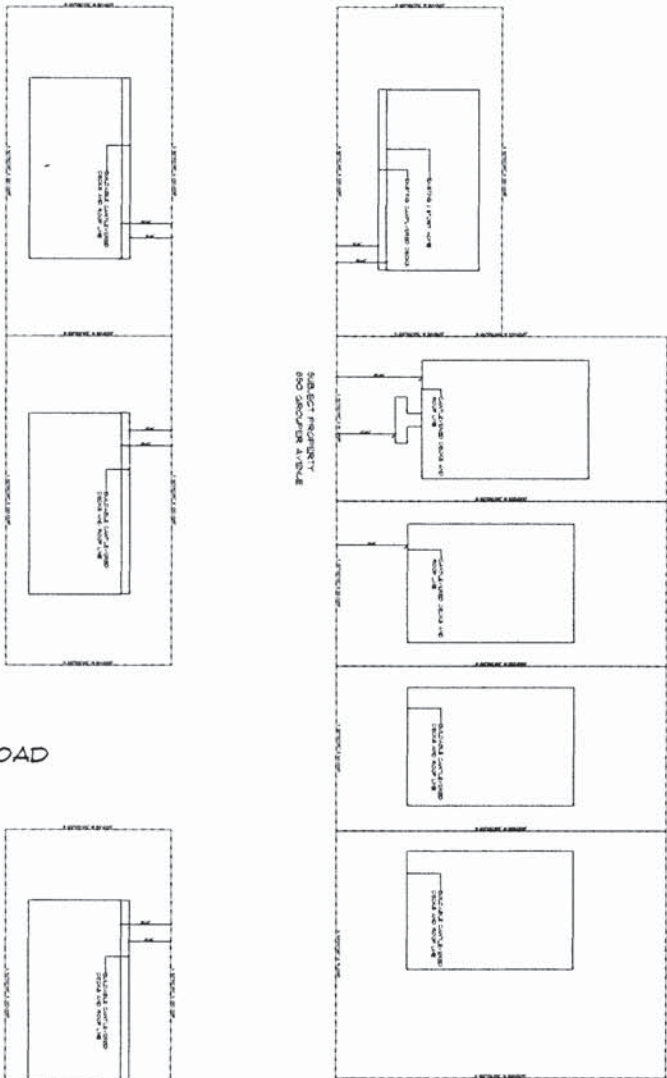
850 GROUPER AVENUE
STAIR OPTION 2 - ENCLOSES INTO DRIVEWAY TO GARAGE

EXHIBIT 3



GROUPEY AVENUE

ENGRAM ROAD



RIVER ROAD

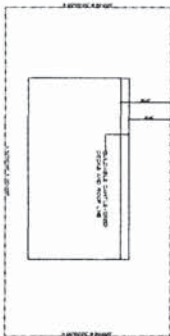
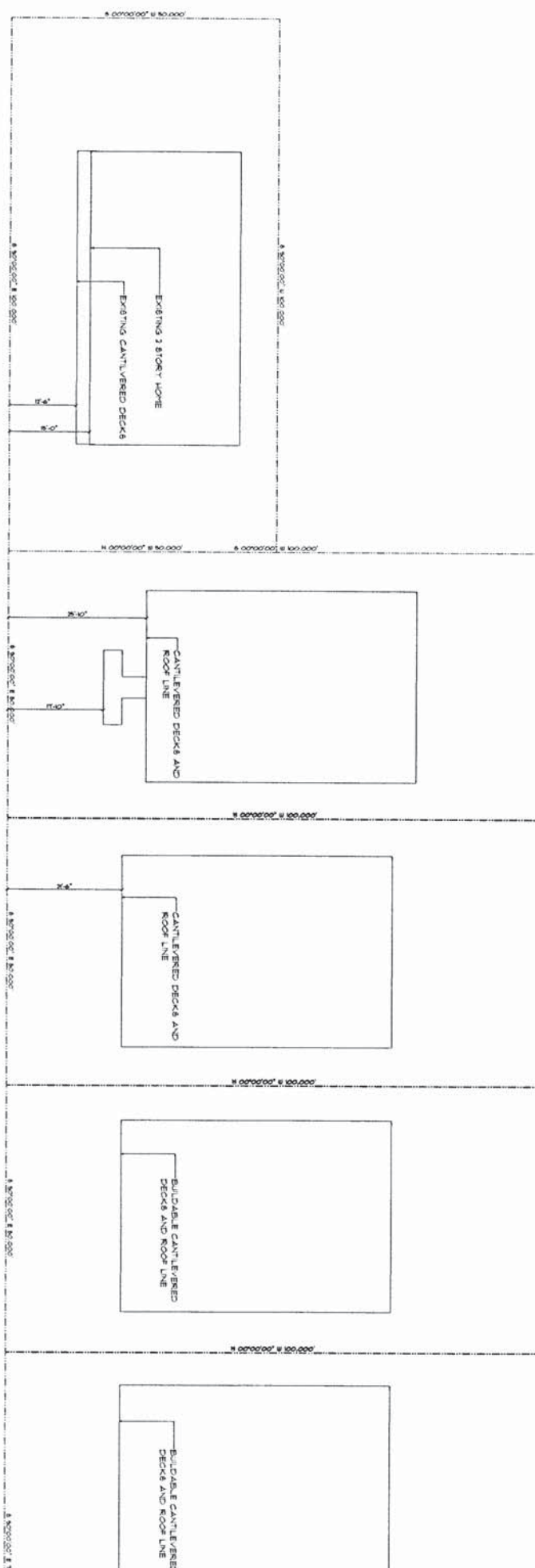
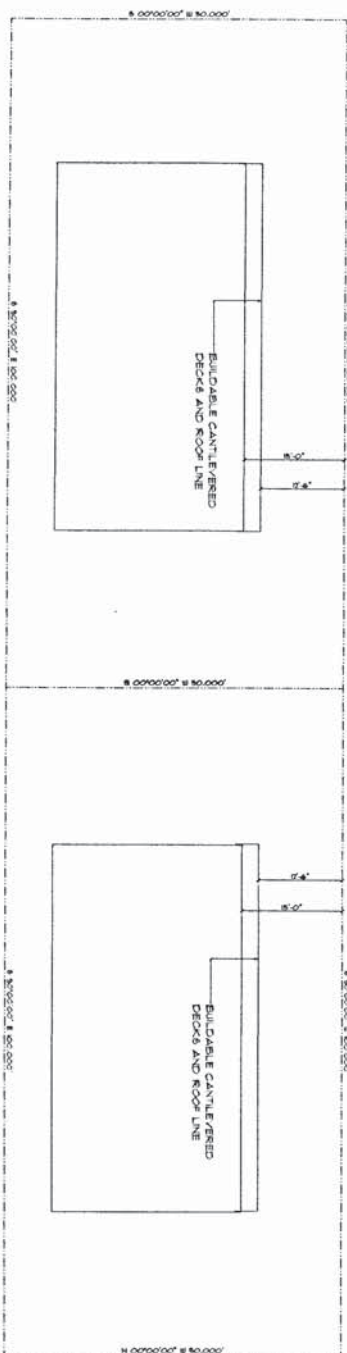
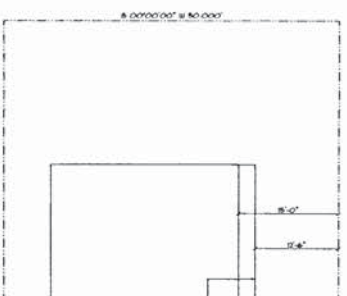


EXHIBIT 4

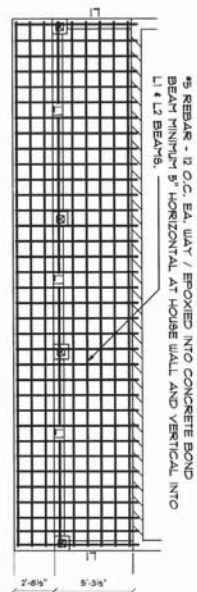
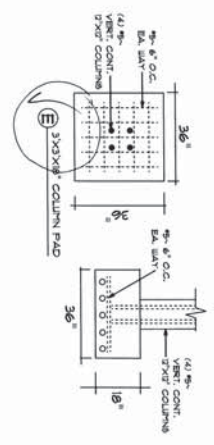
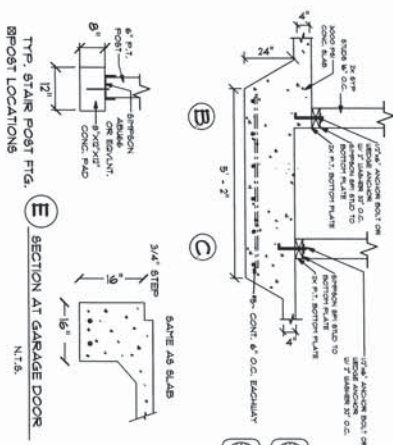
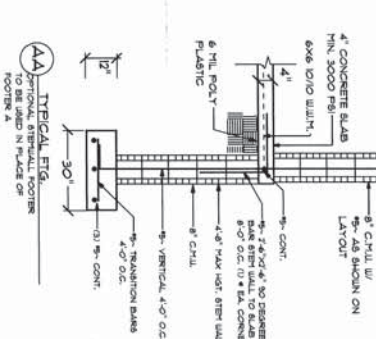
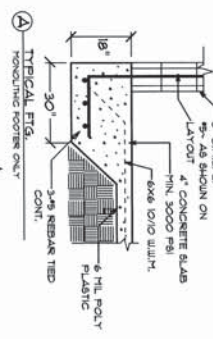


SUBJECT PROPERTY
850 GROUPIER AVENUE

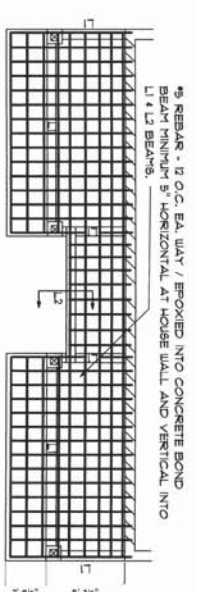
R ROAD



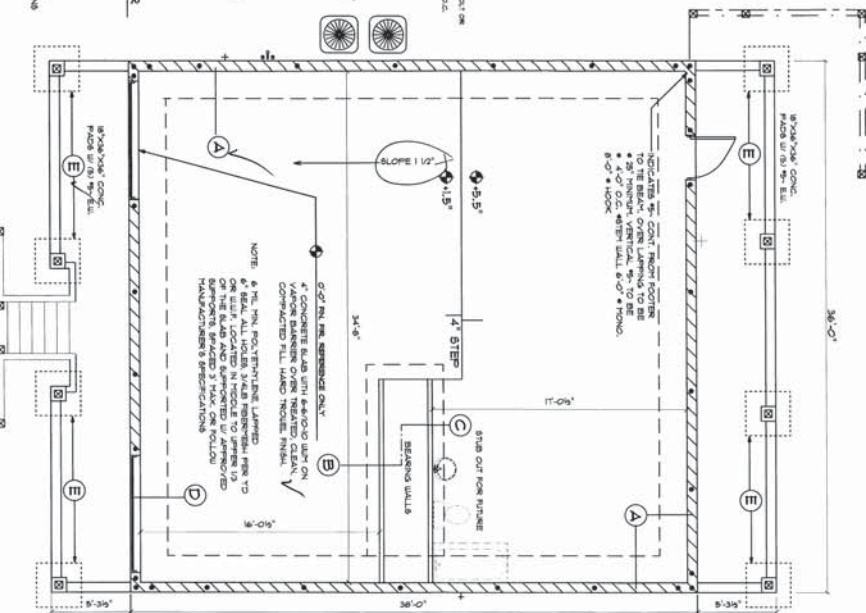
NOTE: THE SOIL BEARING CAPACITY IS ASSUMED TO BE A MINIMUM OF 2000 P.S.F. IF SOIL CONDITIONS ARE FOUND TO BE LESS THAN THE ASSUMED, CONTACT ENGINEER OF RECORD FOR A REEVALUATION OF FOUNDATION PLAN.



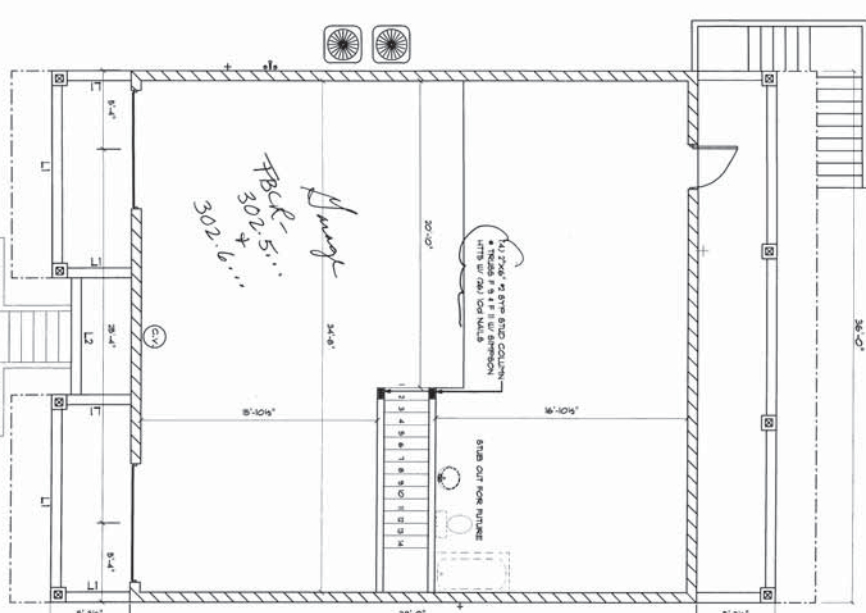
STEEL LAYOUT DETAIL
FRONT 2ND FLOOR
REAR 2ND / 3RD FLOORS



STEEL LAYOUT DETAIL
FRONT 2ND FLOOR
REAR 2ND FLOOR



FOUNDATION PLAN
SCALE: 1/4\"/>



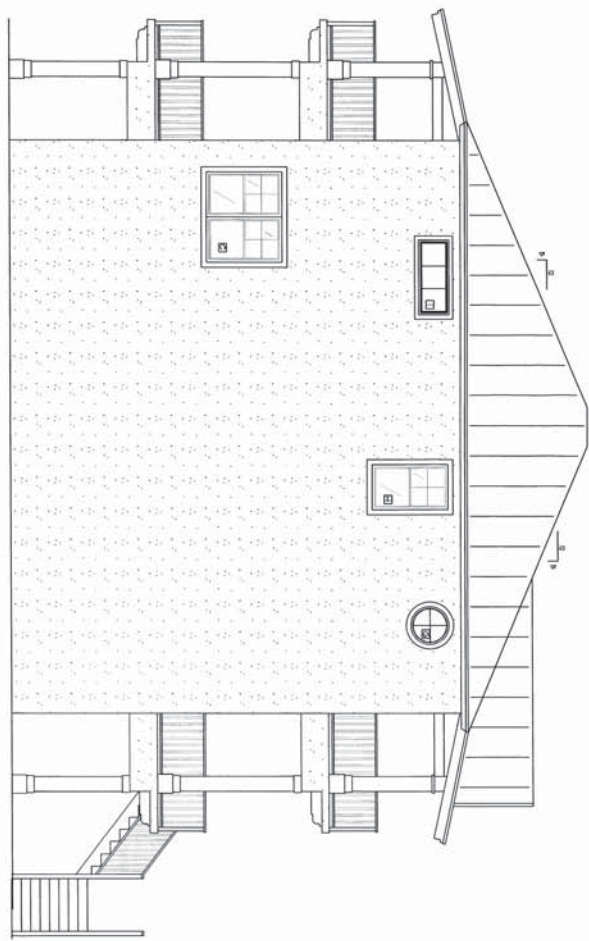
FIRST FLOOR PLAN
SCALE: 1/4\"/>

DATE: 12/15/12
 DRAWN BY: J. JOHNSON
 CHECKED BY: J. JOHNSON
 PROJECT: 300 WILSON STREET, SUITE 200, FT. SMYRNA, GA 30135
 PHONE: (770) 427-7333 FAX: (770) 427-7338

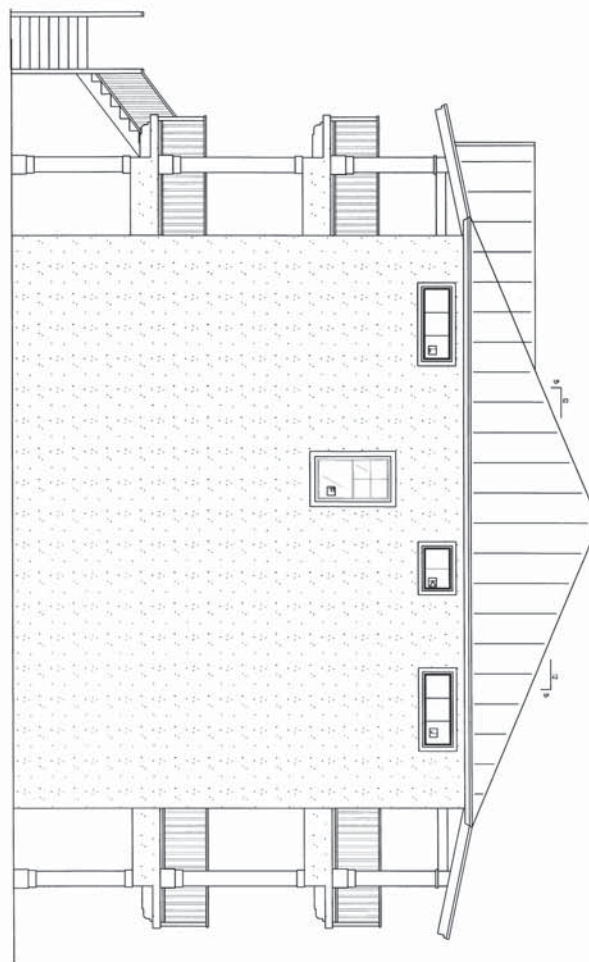
NO.	DATE	REVISION
1	12/15/12	REVISED PER PLAN
2	12/15/12	REVISED PER PLAN
3	12/15/12	REVISED PER PLAN

CUSTOM HOME FOR:
THE JOHNSON FAMILY
 850 GROUPEL AVENUE
 NEW SMYRNA BEACH FL 32169
 PERMIT #

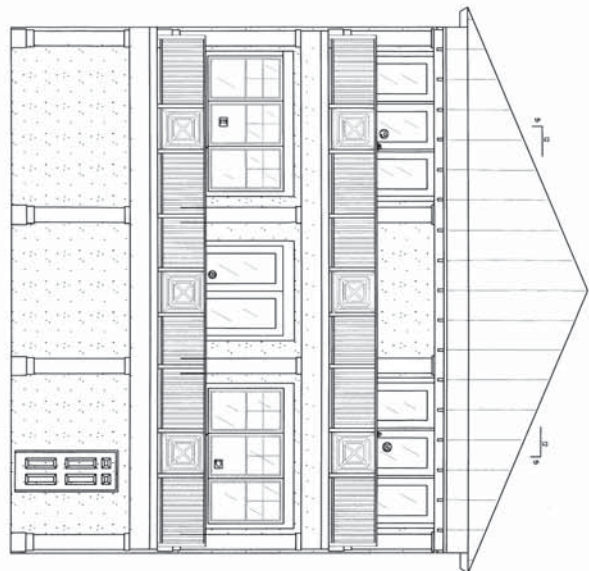
beach towne construction
 6418 TURTLEMOUND ROAD
 NEW SMYRNA BEACH, FLORIDA 32169
 PHONE: (386) 663-4339 / MOBILE: (386) 516-4341
 E-MAIL: BTCSNB@GMAIL.COM WEBSITE: BTCSNB.COM



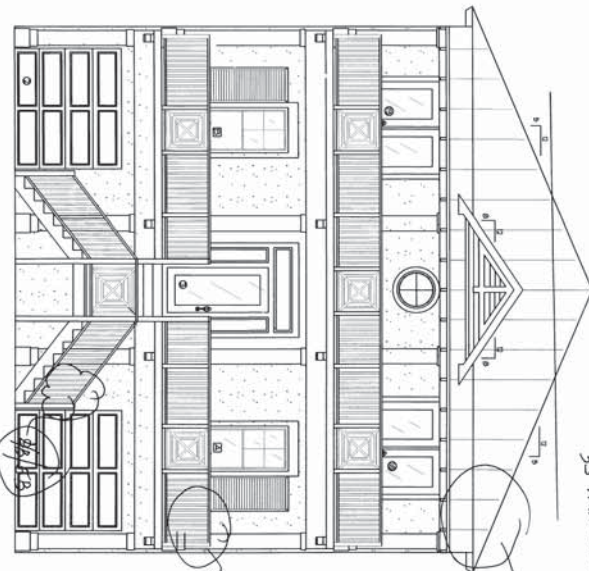
LEFT ELEVATION
SCALE: 1/4"=1'-0"



RIGHT ELEVATION
SCALE: 1/4"=1'-0"



REAR ELEVATION
SCALE: 1/4"=1'-0"



FRONT ELEVATION
SCALE: 1/4"=1'-0"

95' MAX. BLDG. HGT.

68' Typical

- ◆ FINISH ROOF HEIGHT
- ◆ FINISH 1ST FLOOR
- ◆ FINISH 2ND FLOOR
- ◆ FINISH 3RD FLOOR
- ◆ FINISH 4TH FLOOR
- ◆ FINISH 5TH FLOOR
- ◆ FINISH 6TH FLOOR
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- ◆ FINISH 17TH FLOOR
- ◆ FINISH 18TH FLOOR
- ◆ FINISH 19TH FLOOR
- ◆ FINISH 20TH FLOOR

REVISED

DAVIS & CLAYTON ENGINEERS, INC.
200 BAYVIEW SQUARE, SUITE 1000
MIAMI, FLORIDA 33133
TEL: (305) 371-1234 FAX: (305) 371-1235

NO.	DATE	REVISION
1	01/28/13	ISSUE FOR PERMIT SET
2	01/28/13	PERMIT SET
3	01/28/13	REVISION

NO.	DATE	REVISION
1	01/28/13	ISSUE FOR PERMIT SET
2	01/28/13	PERMIT SET
3	01/28/13	REVISION

CUSTOM HOME FOR:

THE JOHNSON FAMILY
850 GROUPEY AVENUE
NEW SMYRNA BEACH FL, 32169

PERMIT #

beach towne construction

6418 TURTLEMOUND ROAD
NEW SMYRNA BEACH, FLORIDA 32169
PHONE: (386) 663-4339 / MOBILE: (386) 576-4341
E-MAIL: BTCNBB@GMAIL.COM WEBSITE: BTCNBB.COM

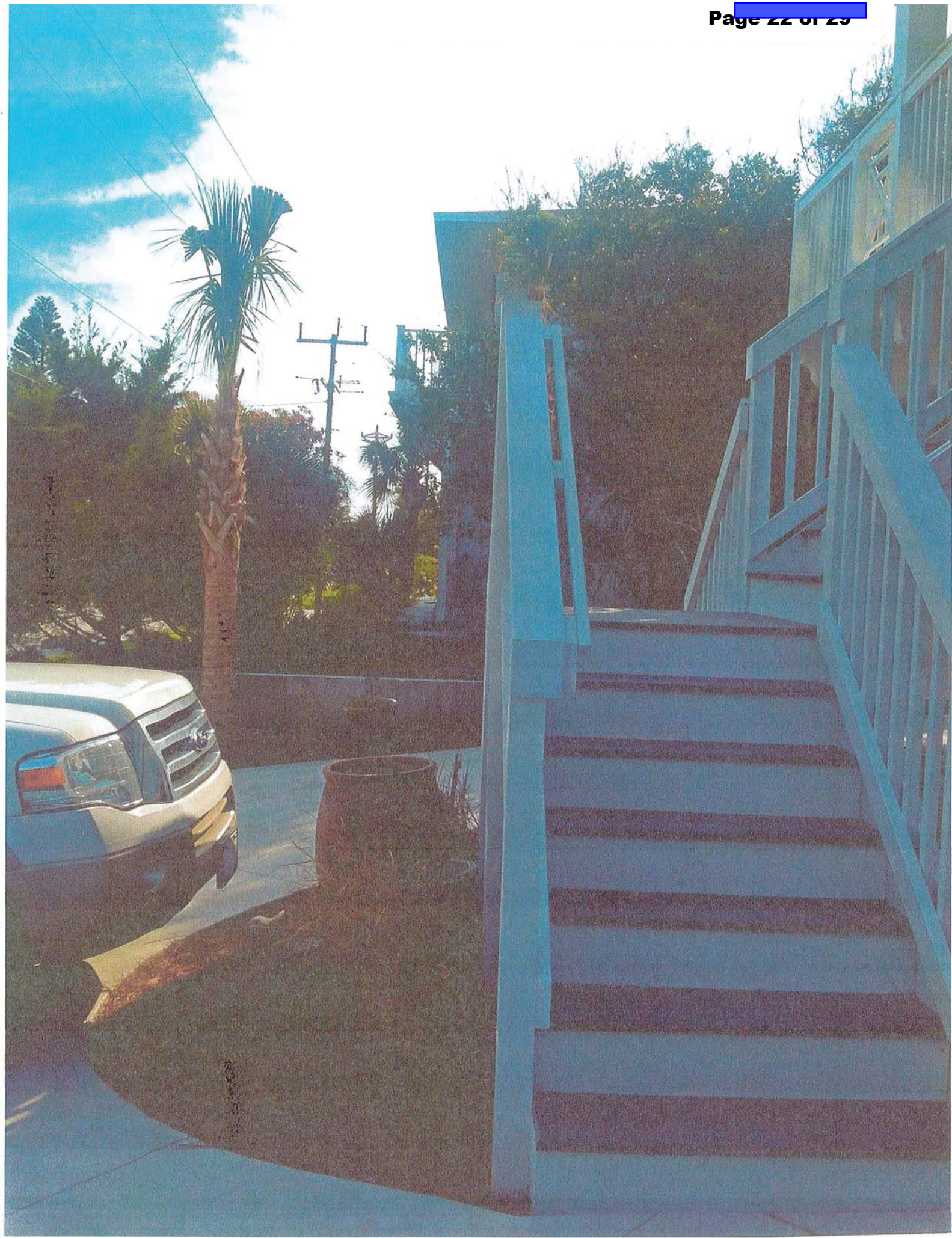




beach town
construction
Residential/Commercial
Custom Home
350
beach town

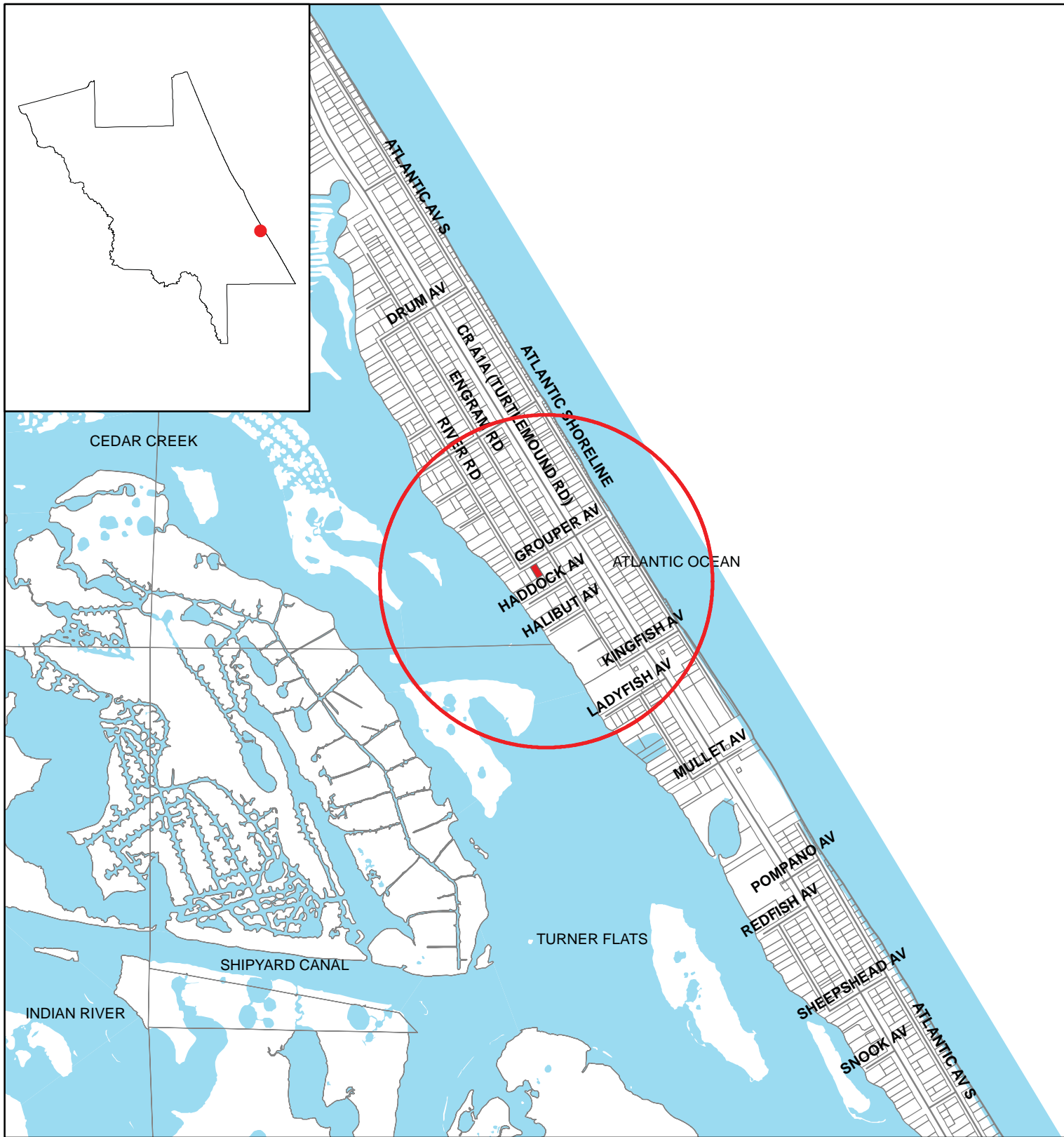
350











REQUEST AREA LOCATION



1" = 1000'



VARIANCE

CASE NUMBER

V-17-057



AERIAL 2015

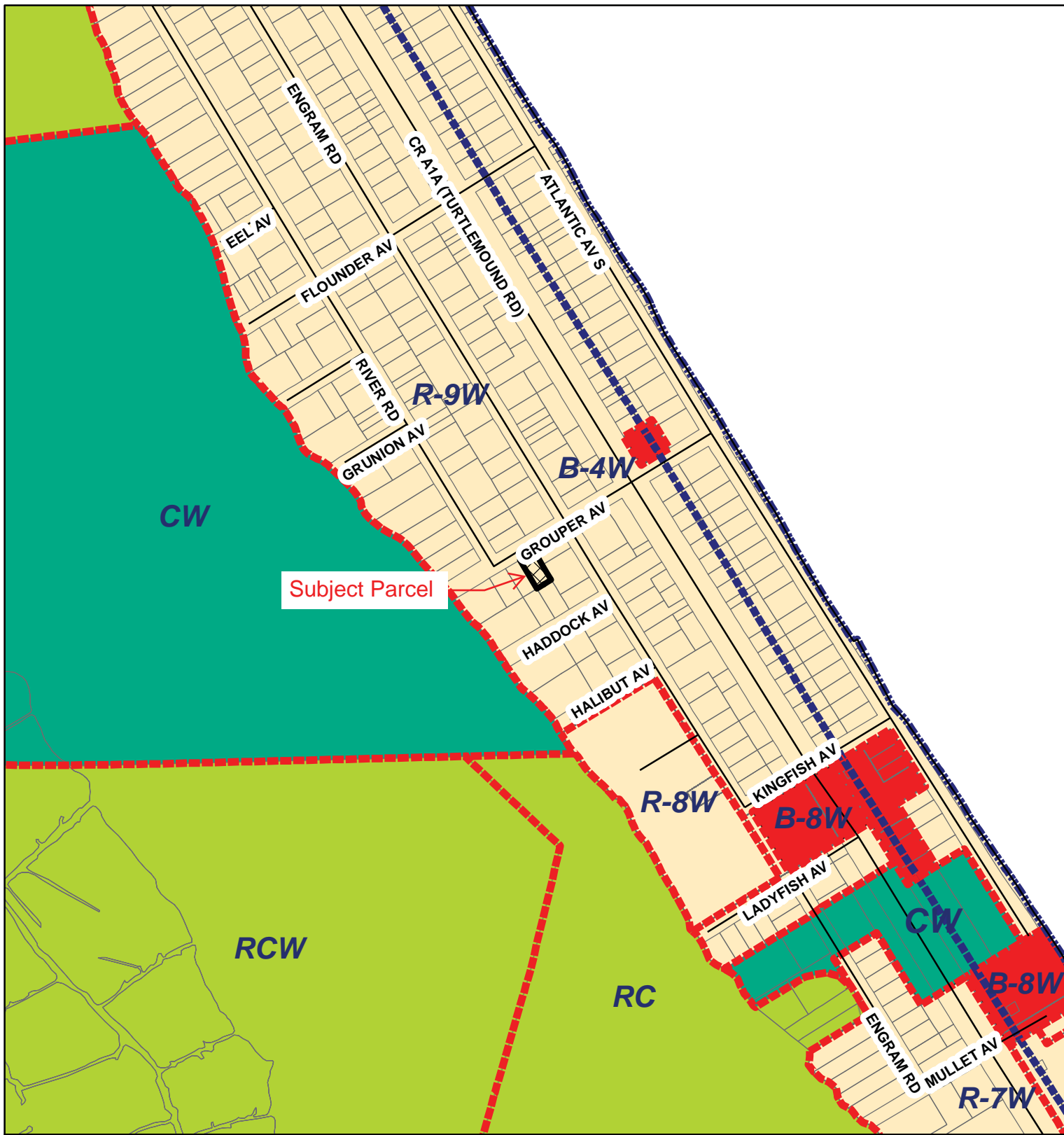
1" = 400'



VARIANCE
CASE NUMBER
V-17-057



REQUEST AREA



ZONING CLASSIFICATION

- COMMERCIAL
- RESIDENTIAL
- CONSERVATION
- RESOURCE CORRIDOR
- REQUEST AREA

1" = 400'



VARIANCE
CASE NUMBER
V-17-057



FUTURE LAND USE

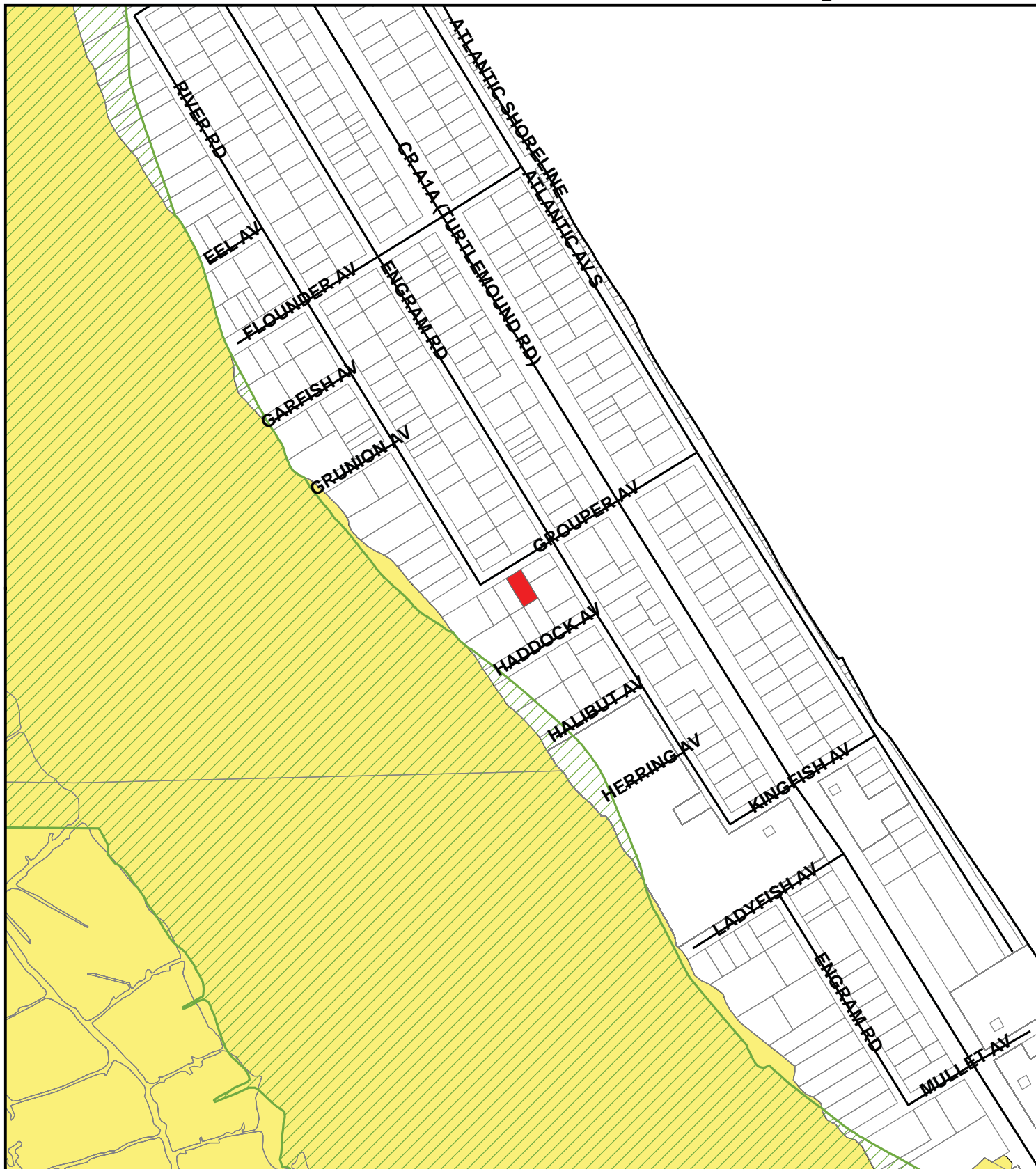
- ENVIRONMENTAL SYSTEMS CORRIDOR
- URBAN LOW INTENSITY
- URBAN HIGH INTENSITY
- WATER
- REQUEST AREA

1" = 400'



VARIANCE

**CASE NUMBER
V-17-057**



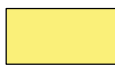
ECO/NRMA

1" = 400'

 **VARIANCE**
CASE NUMBER



ECO



NRMA



REQUEST AREA

V-17-057