



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

**PUBLIC HEARING:** March 19, 2020 – Planning and Land Development Regulation Commission (PLDRC)

**CASE NUMBER:** V-20-041

**SUBJECT:** A variance to the minimum yard requirements on Urban Single-Family Residential (R-5) zoned property

**LOCATION:** 55 Concord Drive, Ormond Beach

**APPLICANT(S):** John O. and Donna DiFiore

**OWNER(S):** Same as Above

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#### **I. SUMMARY OF REQUEST**

The applicants desire to build a new house on a 50-foot by 110-foot lot located in the north peninsula area of Ormond Beach. The lot requires use of septic and drain field as central utilities are unavailable in this area. The Volusia County Health Department requires a specific sized drain field that can only be accommodated in the rear of the property; however an additional five feet of unobstructed lot area is needed to accommodate the drain field. In order to provide an additional five feet in the rear of the home, the applicants are requesting a five-foot variance to the minimum front yard setback requirement. The variance request is as follows:

Variance: A variance to reduce the front yard from the required 25 feet to 20 feet for a proposed single-family house.

#### ***Staff Recommendation:***

Deny the variance, case number V-20-041, as the variance fails to meet one of the five criteria for granting said variance.

## II. SITE INFORMATION

1. Location: North side of Concord Drive, approximately 850 feet east of its intersection with John Anderson Drive, Ormond Beach
2. Parcel Number: 3241-08-02-0570
3. Property Size: ±5,500 square feet
4. Council District: 4
5. Zoning: Urban Single-Family Residential (R-5)
6. Future Land Use: Urban Medium Intensity (UMI)
7. Overlays: Not Applicable
8. Local Plan Area: Not Applicable
9. Adjacent Zoning and Land Use:

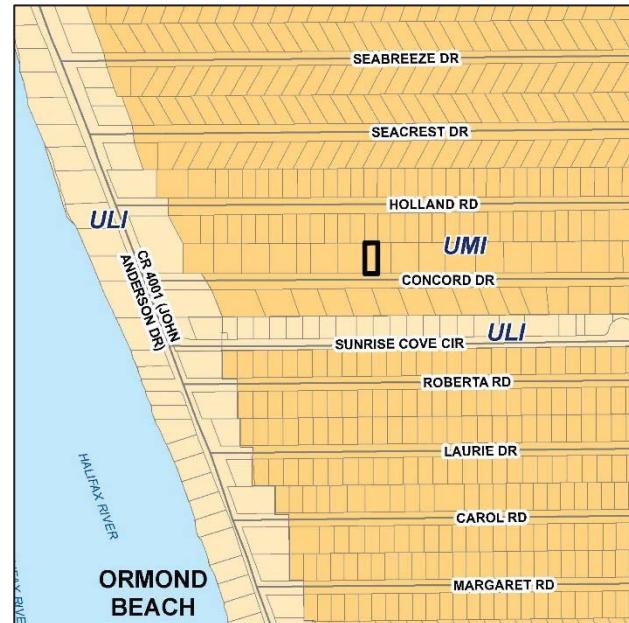
DIRECTION	ZONING	FUTURE LAND USE	EXISTING USE
North:	R-5	UMI	Single-Family Residential
East:	R-5	UMI	Vacant Residential
South:	R-5	UMI	Single-Family Residential
West:	R-5	UMI	Single-Family Residential

10. Maps:

**ZONING MAP**



**FUTURE LAND USE MAP**

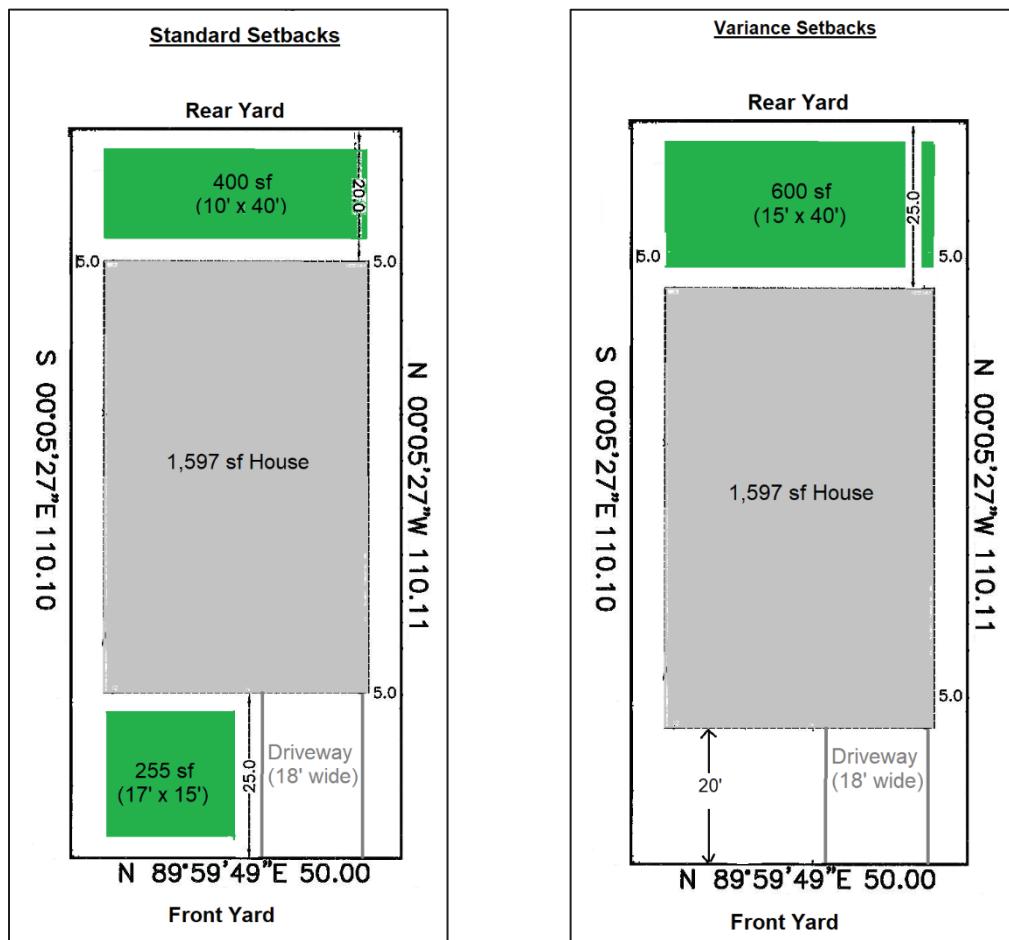


### III. BACKGROUND AND OVERVIEW

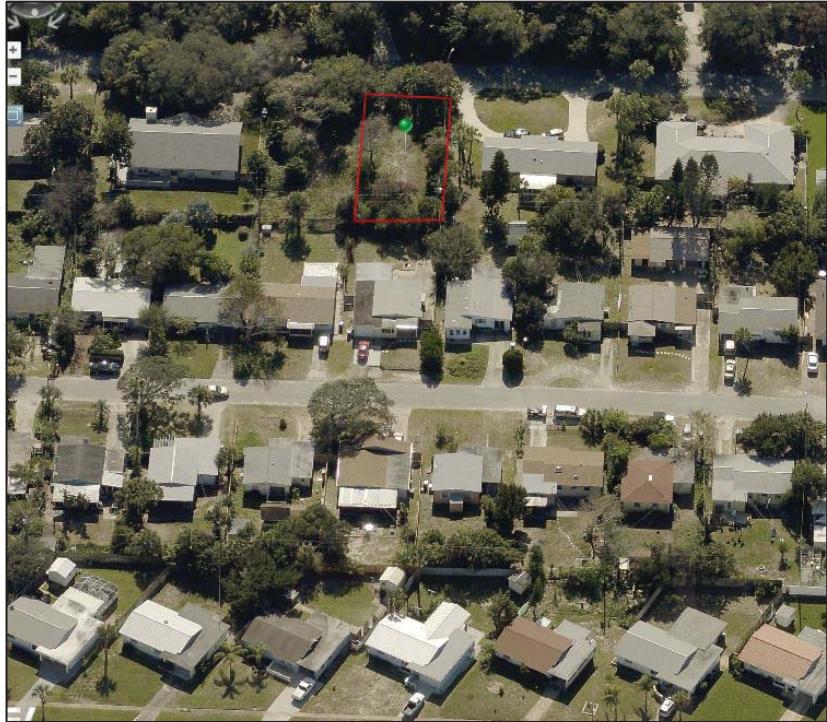
The subject property is zoned R-5, which requires a minimum lot size of 5,000 square feet and minimum lot width of 50 feet. The lot conforms to these standards. It is 5,500 square feet in area and 50 feet in width. The applicable setbacks in the R-5 classification are as follows: front – 25 feet, sides – 5 feet, rear – 20 feet.

The applicants propose to build a 1,597-square-foot, single-story house on the property. They designed the home to fit within the standard setback requirements. However, when applying for an on-site sewage treatment and disposal system permit through the Volusia County Health Department they were denied because they do not have enough “unobstructed area” on the lot. A minimum of 563 square feet is needed for the drain field area. According to the Health Department’s regulations, this area needs to be setback 5 feet from any property line and 5 feet from any structure, including a slab, such as a driveway. (See Health Department Rule 64E-6.005, attached.)

Calculating the available area for a drain field under standard front and rear yard setbacks, there is approximately 255 square feet of unobstructed area in the front yard and 400 square feet of unobstructed area in the rear yard. If the front setback is reduced to 20 feet and the rear yard setback is increased to 25 feet, there is approximately 600 square feet of unobstructed area in the rear yard. See graphics below.



There are many like-sized lots in the area that are developed with homes that have less than 25-foot front yard. In the 1950's, when this area was originally subdivided, the area used to be zoned under the North Ormond Peninsula Zoning District, sub-district Residence "E". The Residence "E" sub-district required a minimum lot area of 5,000 square feet and a 20-foot front yard setback. In 1961 the area was administratively rezoned to R-1 under the North Peninsula Zoning District. At that time the R-1 District required a minimum lot area of 7,000 square feet and a 20-foot front yard setback. It wasn't until 1980, with the adoption of the Uniform Zoning Ordinance, that the area was administratively rezoned to R-4 and the front yard setback was changed to 25 feet. In 2019 this area was again subject to an administrative rezoning, from R-4 to R-5, to more closely match the majority of the lot sizes in the area, however the 25-foot front yard requirement did not change as a result of the zoning change. As shown in the graphic above, the majority of the homes in this area were built under prior zoning classifications and have the lesser front yard setback.



#### 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.*

Properties that are the size of the subject property are usually served by central utilities. Per Health Department regulations, a 5,500- square foot lot is not considered large enough for an individual septic and drain field system unless there are no other options. In this case, central utilities are not available in the north peninsula area and all properties provide their own sanitary sewer systems. There are many lots of the same size within this area that have septic and drain fields in their rear yards.

Staff finds that this criterion is met.

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

The size of the lot and the lack of central sanitary sewer utilities are not the result of the applicant's actions.

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.***

Literal interpretation of this ordinance would not deprive the applicant of rights commonly enjoyed by other R-5 zoned properties. However, typical R-5 zoned properties have central utilities available. There are no central utilities available in the North Peninsula area and each lot must provide its own septic and drain field system. Most of these R-5 zoned properties were built under previous zoning codes that allowed a 20-foot front yard setback. Therefore, literal interpretation of this ordinance would work an unnecessary hardship on the applicant by requiring a 25-foot setback and limiting the area available for the septic system.

Staff finds that this criterion is met.

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

There are other options that could be employed to increase the unobstructed area of the lot. The house could be made smaller, or designed as a two-story house in order to provide additional unobstructed yard area for the septic system. Therefore, this request is not the minimum variance that will make possible reasonable use of the land.

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.***

There are many like-sized lots in the area that are developed with homes that have a 20-foot front yard. As discussed in the background information, in the 1950s and 60s, when the area was first subdivided, a 20-foot front yard was allowed per the zoning in place at that time. It wasn't until the 1980's that the front yard setback was increased to 25 feet. The majority of the homes in this area were built prior to the 25-foot requirement. Allowing this lot to maintain a 20-foot front yard will not be injurious to the area.

Staff finds that this criterion is met.

## **V. STAFF RECOMMENDATION**

Deny the variance, case number V-20-041, as the variance fails to meet one of the five criteria for granting said variance.

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

1. The variance is limited to the variance site plan attached to this report. Any change to the depicted location of the house, except to comply more closely with the Zoning Ordinance, shall require an additional variance.

## **VI. ATTACHMENTS**

- Variance Site Plan
- Written Petition
- Survey
- House Plans
- Health Department Rule 64E-6.005
- 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.

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.





## 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?

The required septic field per the Volusia County health department requires a larger unobstructed septic field for new construction. These are state health guidelines and the home is within required setbacks for Volusia County, however the health department is requiring a larger septic field. This will require moving the home 5' ft. forward to have a minimum septic field per the health department in the rear of the lot. In constructing the new home, we are caught between two agencies, the health department requirements and the recent zoning change to R-5 residential, in which we are in compliance with required setbacks.

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 home is in accordance with proper setbacks by Volusia County zoning in the new R-5 zoning that was passed in 2019, but it will prevent me from building a new home. This lot did have a home on it previously that would not have had an issue, but due to new construction, the septic field must be larger and is preventing the home from being built. There are very few vacant lots to build on in this area of Ormond by the Sea.

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.

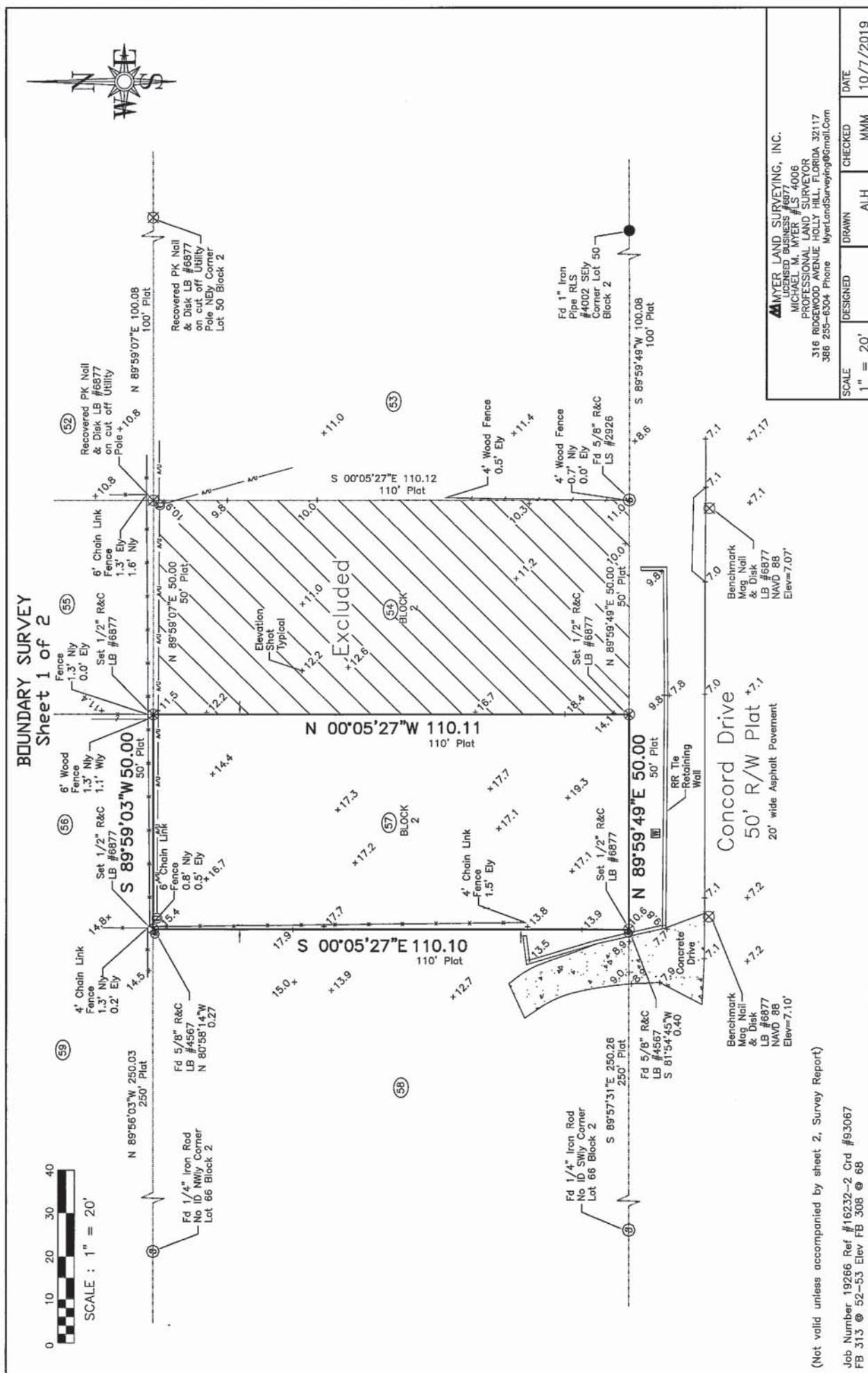
I am requesting the home be moved 5' ft forward to accommodate the requirement in the rear of the home to bring it up to current health code for a septic field. This would reflect a 25' ft setback in the rear of the lot and a 20' ft setback in the front of the lot. The health department views the driveway as a structure and the septic field needs to be a minimum of 5'ft from any structure, making it impossible to put a septic field in front of the home. The current setbacks are 25' ft in the front and 20' in the rear of the lot.

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 am within the setbacks required by zoning and I am trying to accommodate the required health department septic guidelines to bring the home into code. The home size is consistent with the surrounding neighborhood and would add value to the neighborhood being new construction.

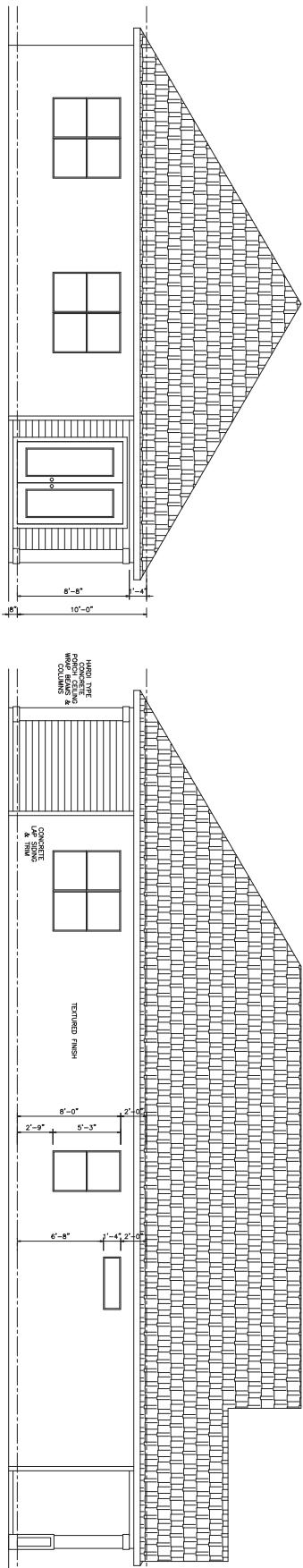
5. Explain how your request for a variance will not be injurious to the surrounding area.

Building a new home will have no negative impact to the neighborhood as it will be the newest home on the street increasing neighborhood value and the size will be more consistent with the neighboring residences. The home will still be approximately 38' ft. from the street.



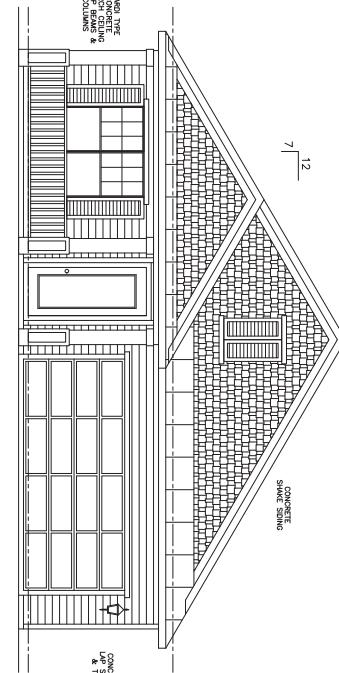
REAR ELEVATION

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



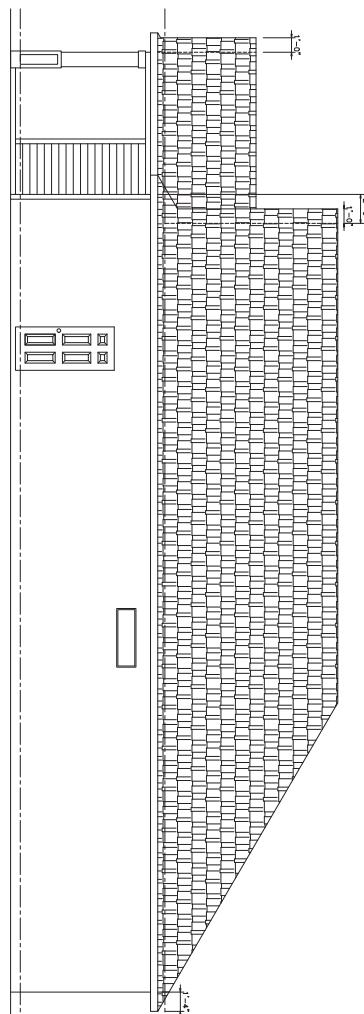
FRONT ELEVATION

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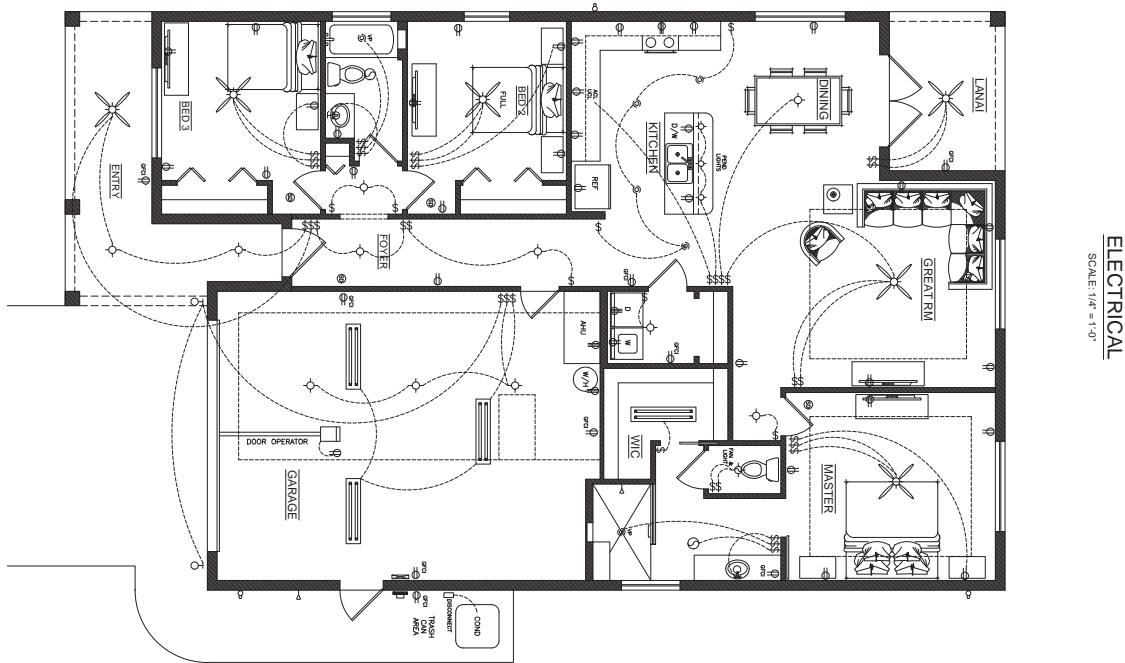
RIGH ELEVATION

111





## Plans



ELECTRICAL

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

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ALL CONTRACTORS & SUB-CONTRACTORS PLEASE CHECK & TRY TO HELP RESPECT THESE RESTRICTIONS OR ELSE THEY ARE NOT HELD RESPONSIBLE TO INFORM THE DESIGNER AND BUILDER AFTER CONSTRUCTION.

30  
SHEET

#### 64E-6.005 Location and Installation.

All systems shall be located and installed so that with proper maintenance the systems function in a sanitary manner, do not create sanitary nuisances or health hazards and do not endanger the safety of any domestic water supply, groundwater or surface water. Sewage waste and effluent from onsite sewage treatment and disposal systems shall not be discharged onto the ground surface or directly or indirectly discharged into ditches, drainage structures, ground waters, surface waters, or aquifers. To prevent such discharge or health hazards:

(1) Systems and septic stabilization facilities established after the effective date of the rule shall be placed no closer than the minimum distances indicated for the following:

(a) Seventy-five feet from a private potable well as defined in paragraph 64E-6.002(44)(a), F.A.C., or a multi-family water well as defined in paragraph 64E-6.002(44)(c), F.A.C.

(b) One-hundred feet from a public drinking water well as defined in paragraph 64E-6.002(44)(b), F.A.C., if such a well serves a facility with an estimated sewage flow of 2,000 gallons or less per day.

(c) Two-hundred feet from a public drinking water well as defined in paragraph 64E-6.002(44)(b), F.A.C., if such a well serves a facility with an estimated sewage flow of more than 2,000 gallons per day.

(d) Fifty feet from a non-potable water well as defined in subsection 64E-6.002(39), F.A.C.

(e) Ten feet from any storm sewer pipe, to the maximum extent possible, but in no instance shall the setback be less than 5 feet.

(f) Fifteen feet from the design high-water line of retention areas, detention areas, or swales designed to contain standing or flowing water for less than 72 hours after a rainfall or the design high-water level of normally dry drainage ditches or normally dry individual-lot stormwater retention areas.

(2) Systems shall not be located under buildings or within 5 feet of building foundations, including pilings for elevated structures, or within 5 feet of mobile home walls, swimming pool walls, or within 5 feet of property lines except where property lines abut utility easements which do not contain underground utilities, or where recorded easements are specifically provided for the installation of systems for service to more than one lot or property owner.

(a) Sidewalks, decks and patios shall not be subject to the 5 foot setback, however, drainfields shall not be installed beneath such structures. Any tank located beneath a driveway shall have traffic lids as specified in paragraph 64E-6.013(1)(f), F.A.C. Concrete structures which are intended to be placed over a septic tank shall have a barrier of soil or plastic material placed between the structure and the tank so as to preclude adhesion of the structure to the tank.

(b) Systems shall not be located within 10 feet of water storage tanks in contact with the ground or potable water lines unless such lines are sealed with a water proof sealant within a sleeve of similar material pipe to a distance of at least 10 feet from the nearest portion of the system or the water lines themselves consist of schedule 40 PCV or stronger. In no case shall the water line be located within 24 inches of the onsite sewage treatment and disposal system. Potable water lines within 5 feet of the drainfield shall not be located at an elevation lower than the drainfield absorption surface. Non-potable water lines shall not be located within 24 inches of the system without backflow devices per Sections 381.0065(2)(1) and 2., F.S., being installed on the water line to preclude contamination of the water system.

(c) Systems shall be setback a minimum of 15 feet from groundwater interceptor drains.

(3) Except for the provisions of Section 381.0065(4)(g)1. and 2., F.S., systems and septic stabilization facilities shall not be located laterally within 75 feet of the boundaries of surface water bodies. Systems and septic stabilization facilities shall be located a minimum of 15 feet from the design high water line of a swale, retention or detention area designed to contain standing or flowing water for less than 72 hours after a rainfall, or the design high water level of normally dry drainage ditches or normally dry individual lot storm water retention areas.

(4) Suitable, unobstructed land shall be available for the installation and proper functioning of the system. The minimum unobstructed area shall:

(a) Be at least 1.5 times as large as the drainfield absorption area required by rule. For example, if a 200 square feet drainfield is required, the total unobstructed area required, inclusive of the 200 square feet drainfield area, would be 300 square feet. Unobstructed soil area between drain trenches shall be included in the unobstructed area calculation.

(b) Be contiguous to the drainfield.

(c) Be in addition to the setbacks required in subsections (1), (2), and (3), above.

(5) Onsite sewage treatment and disposal systems if installed in fill material, the fill shall be required to settle for a period of at least 6 months, or has been compacted to a density comparable to the surrounding natural soil. The fill material shall be of a suitable,

slightly limited soil material.

(6) To prevent soil smear and excessive soil compaction, drainfields shall not be installed in soils with textures finer than sand, loamy sand, or sandy loam when the soil moisture content is above the point at which the soil changes from semi-solid to plastic.

(7) Onsite sewage treatment and disposal systems shall be installed where a sewerage system is not available and when conditions in Sections 381.0065(4)(a)-(g), F.S., are met. Onsite graywater tank and drainfield systems may, at the homeowners' discretion, be utilized provided blackwater is disposed into a sanitary sewerage system when such sewerage system is available. Graywater systems may, at the homeowners' discretion, be utilized in conjunction with an onsite blackwater system where a sewerage system is not available for blackwater disposal.

(a) The minimum area of each lot under Section 381.0065(4)(a), F.S., shall consist of at least 1/2 acre (21,780 square feet) exclusive of all paved areas and prepared road beds within public rights-of-way or easements and exclusive of surface water bodies.

(b) The determination of lot densities under Section 381.0065(4)(b), F.S., shall be made on the basis of the net acreage of the subdivision which shall exclude from the gross acreage all paved areas and prepared road beds within public or private rights-of-way or easements and shall also exclude surface water bodies.

(c) Maximum daily sewage flow allowances specified in Sections 381.0065(4)(a), (b) and (g), F.S., shall be calculated on an individual lot by lot basis. The acreage or fraction of an acre of each lot or parcel of land shall be determined and this value shall be multiplied by 2,500 gallons per acre per day if a public drinking water well serving a public system as defined in subparagraph 64E-6.002(44)(b)1., 2., or 3., F.A.C., is utilized, or be multiplied by 1,500 gallons per acre per day if a public drinking water well serving a public water system as defined in subparagraph 64E-6.002(44)(b)4., F.A.C., or a private potable well or cistern is utilized. Contiguous unpaved and non-compactated road rights-of-way, and easements with no subsurface obstructions that would affect the operation of drainfield systems, shall be included in total lot size calculations. Where an unobstructed easement is contiguous to two or more lots, each lot shall receive its pro rata share of the area contained in the easement. Surface water bodies shall not be included in total lot size calculations. subsection 64E-6.008(1), F.A.C., Table I, shall be used for determining estimated average daily sewage flows.

(d) Platted residential lots shall be subject to the requirements set forth in Sections 381.0065(4)(g)1. and 2., F.S.

(e) When portions of a lot or lots which were platted prior to January 1, 1972 are combined in such a manner that will decrease the total density of the subdivision, pre-1972 lot provisions shall apply. However, the maximum setback possible to surface water bodies shall be maintained with a minimum setback of 50 feet.

(8) Notwithstanding the requirements of this section, where an effluent transmission line consists of schedule 40 PVC, the transmission line shall be set back from private potable wells, irrigation wells or surface water bodies by not less than 25 feet when installed. Effluent transmission lines constructed of schedule 40 PVC shall be set back from property lines and building foundations by not less than 2 feet. Schedule 40 PVC effluent transmission lines shall be set back from potable water lines and storm water lines by no less than 5 feet unless all portions of the potable water line or storm water line within 5 feet of the effluent transmission line are:

(a) A minimum of 12 inches above the top of the effluent transmission line; and,

(b) Sealed with a waterproof sealant within a sleeve of schedule 40 PVC or stronger pipe or the water line itself consists of schedule 40 PVC or stronger pipe.

(9) Onsite sewage treatment and disposal systems for estimated establishment domestic sewage flows exceeding 5,000 gallons per day but not exceeding 10,000 gallons per day shall be located and installed under the following conditions.

(a) The average estimated daily sewage flow from the establishment shall be divided by the net land area associated with the establishment. The resulting number shall not exceed 2,500 gallons per acre per day for establishments which use a water supply as defined in subparagraphs 64E-6.002(44)(b)1., 2. and 3., F.A.C.

(b) No more than 5,000 gallons of wastewater shall be discharged into any single onsite sewage treatment and disposal system serving the establishment.

*Rulemaking Authority 381.0065(3)(a), 489.553, 489.557(1) FS. Law Implemented 381.0065, 489.553 FS. History—New 12-22-82, Amended 2-5-85, Formerly 10D-6.46, Amended 3-17-92, 1-3-95, Formerly 10D-6.046, Amended 11-19-97, 2-3-98, 3-22-00, 5-24-04, 6-25-09.*

## PROPERTY LOCATION

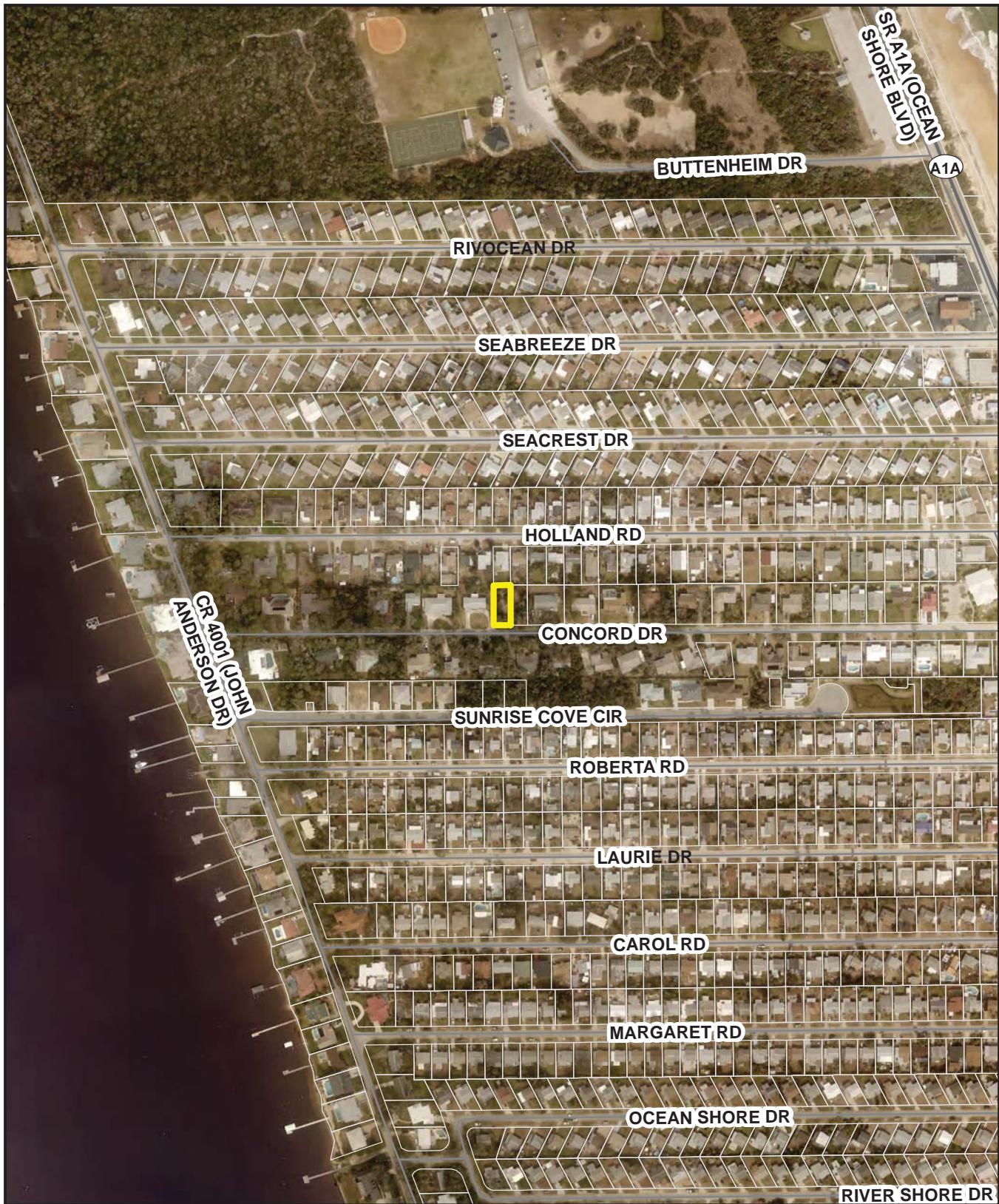
V-20-041



SUBJECT PROPERTY



1" = 1,000'  
2/20/2020

AERIAL  
V-20-041

 SUBJECT PROPERTY

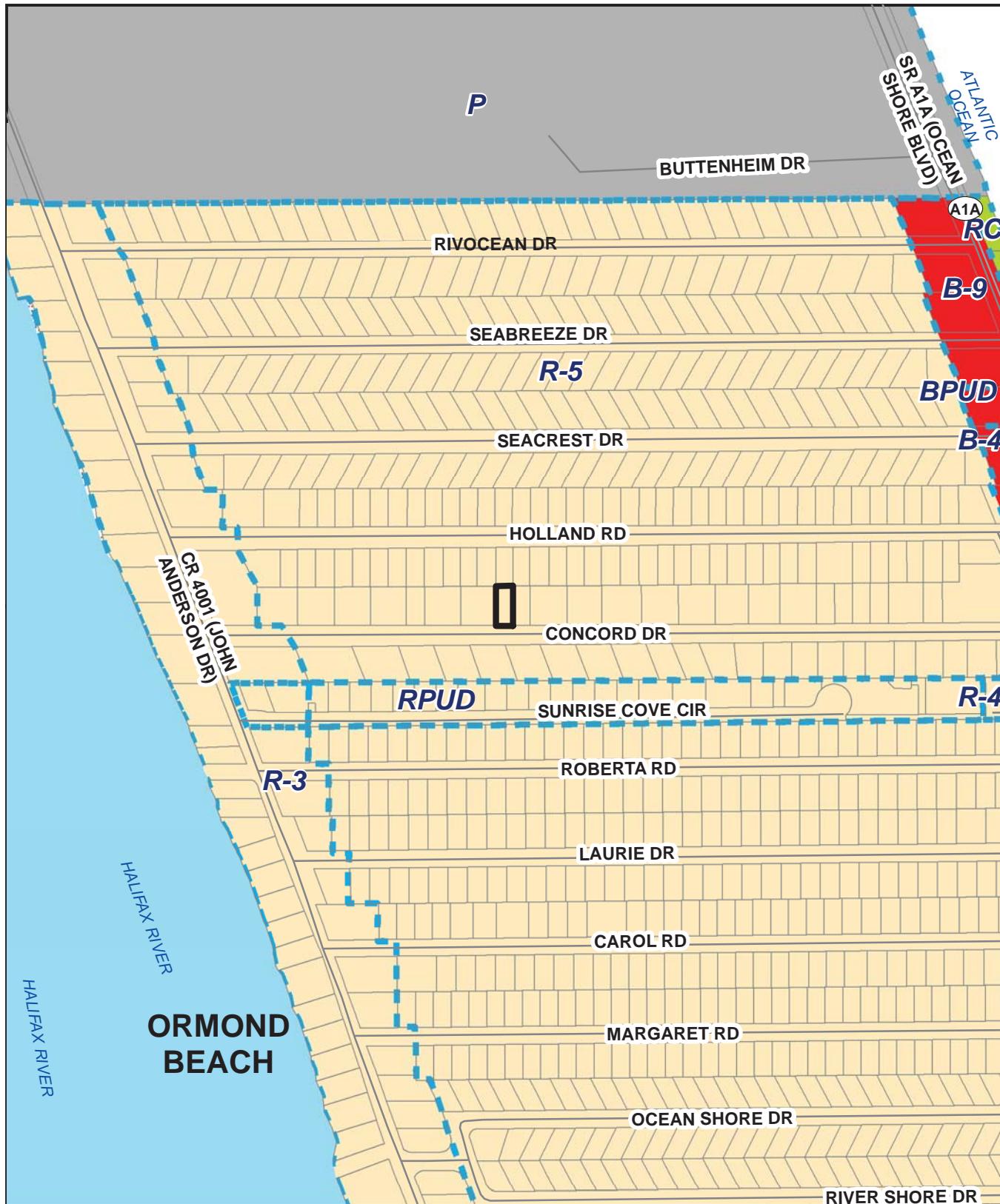
IMAGE DATE 2018



1 " = 400'  
2/20/2020

# ZONING CLASSIFICATION

## V-20-041



 SUBJECT PROPERTY

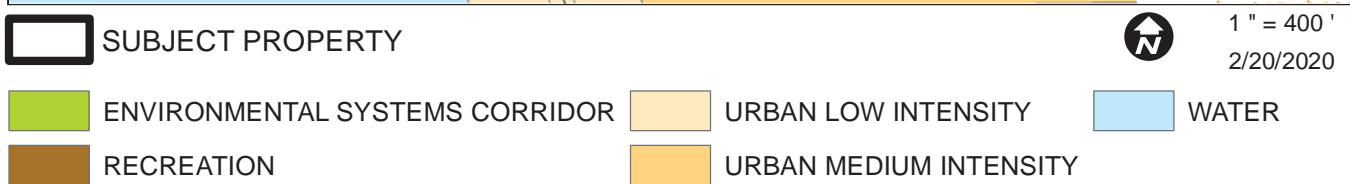
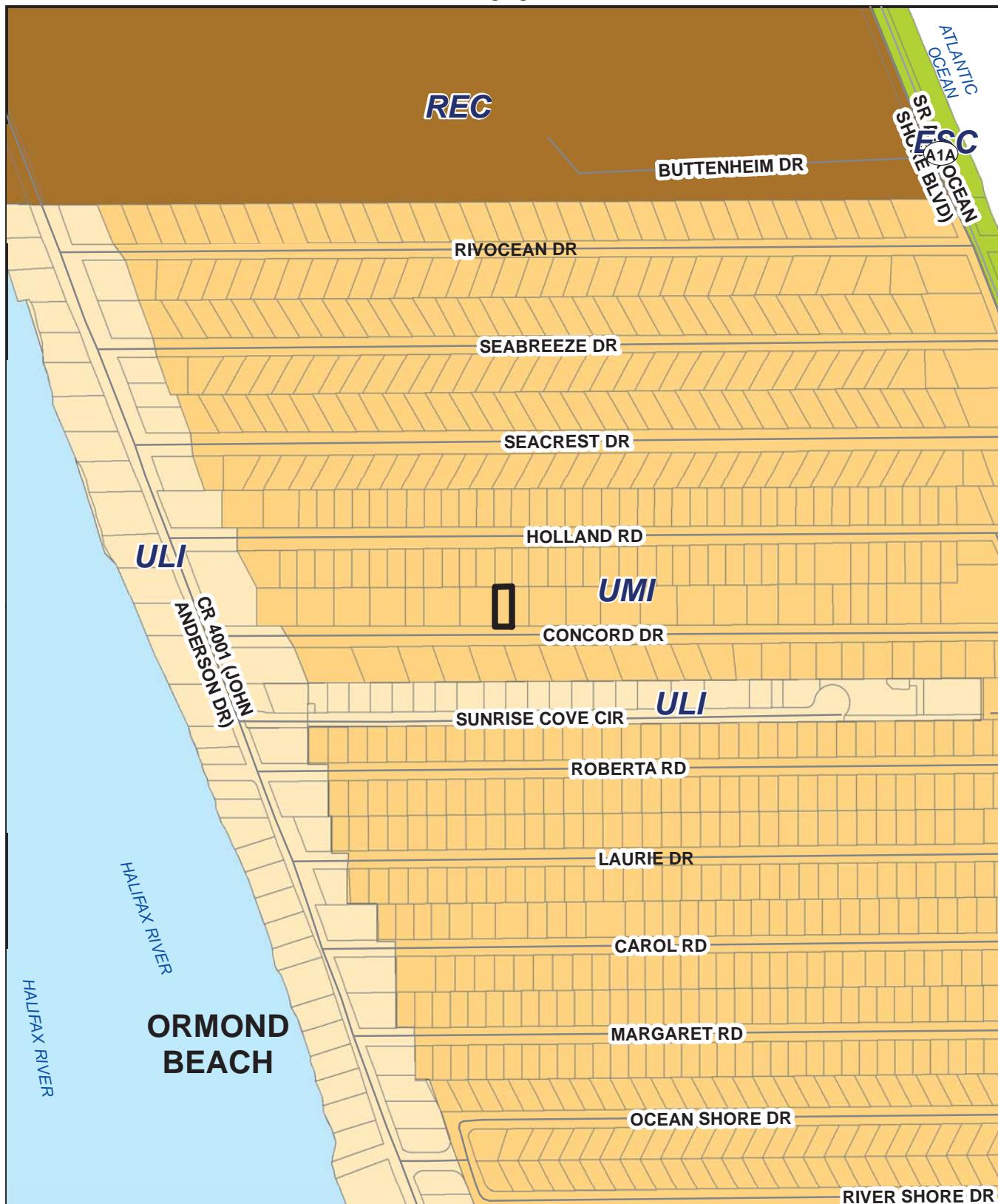


1" = 400'  
2/20/2020

 ZONING BNDY  
  RESIDENTIAL  
  PUBLIC  
 COMMERCIAL  
  INCORPORATED  
  RESOURCE CORRIDOR

# FUTURE LAND USE

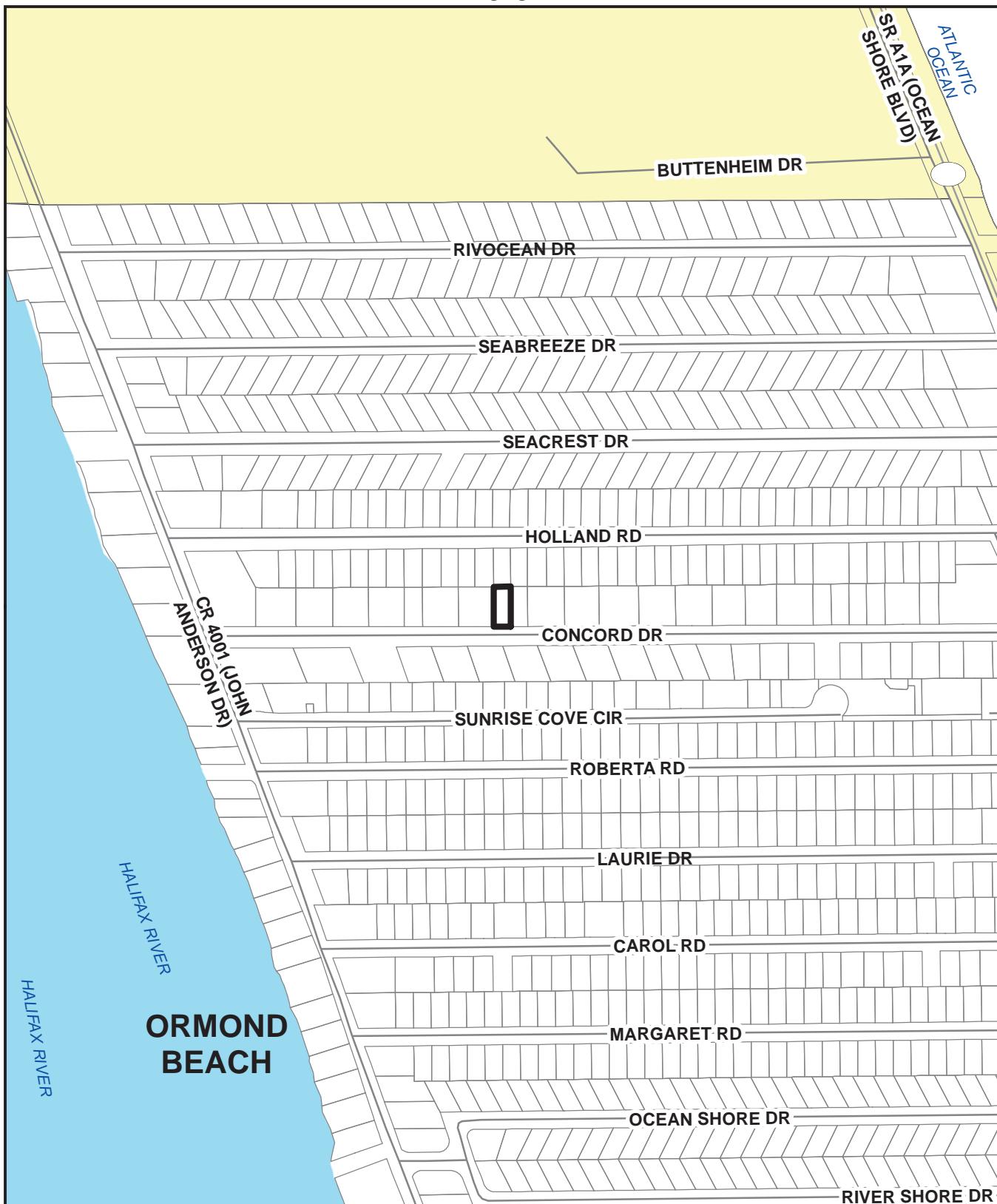
## V-20-041



1" = 400'  
2/20/2020

## ECO/NRMA OVERLAY

V-20-041



SUBJECT PROPERTY



ECO



NRMA



1 " = 400 '

2/20/2020