



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

**PUBLIC HEARING:** September 16, 2021 – Planning and Land Development Regulation Commission (PLDRC)

**CASE NUMBER:** V-21-110

**SUBJECT:** A variance to the minimum yard requirements on Rural Agriculture (A-2) zoned property

**LOCATION:** 711 Cypress Avenue, Orange City

**APPLICANT:** Nika Hosseini, Attorney

**OWNER:** Yunisleydis Rodriguez Velzaquez

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## I. SUMMARY OF REQUEST

The applicant is seeking an after-the-fact variance associated with an existing 1,716-square-foot accessory structure containing an 809-square-foot accessory dwelling unit with an attached garage. This variance will allow the applicant to obtain building permits for the structure in its current location. The variance request is as follows:

Variance: A variance to reduce the north side yard from the required 25 feet to 5.6 feet for an existing accessory dwelling unit with an attached garage.

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

Deny the variance request, case number V-21-110, as the variance fails to meet three of the five criteria for granting said variance.

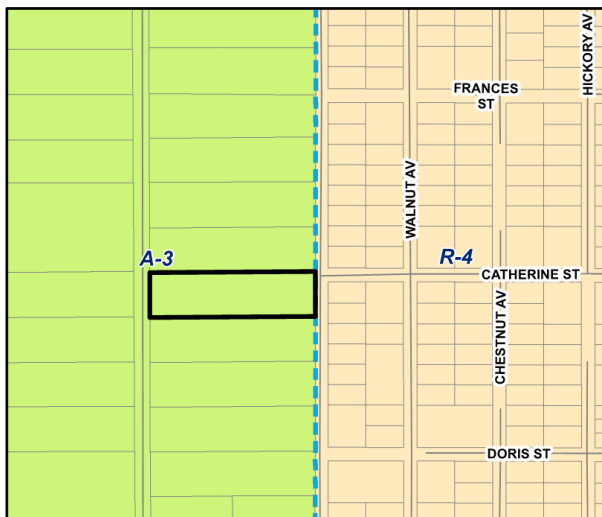
**II. SITE INFORMATION**

- 1. Location: On the west side of the intersection of Cedar Avenue South and Catherine Street, and the east side of Cypress Avenue.
- 2. Parcel Number(s): 8009-00-00-0290
- 3. Property Size: +/- 2.37 Acres
- 4. Council District: 1
- 5. Zoning: Transitional Agriculture (A-3)
- 6. Future Land Use: Urban Low Intensity (ULI)
- 7. Overlays: Not Applicable
- 8. Local Plan Area: Not Applicable
- 9. Adjacent Zoning and Land Use:

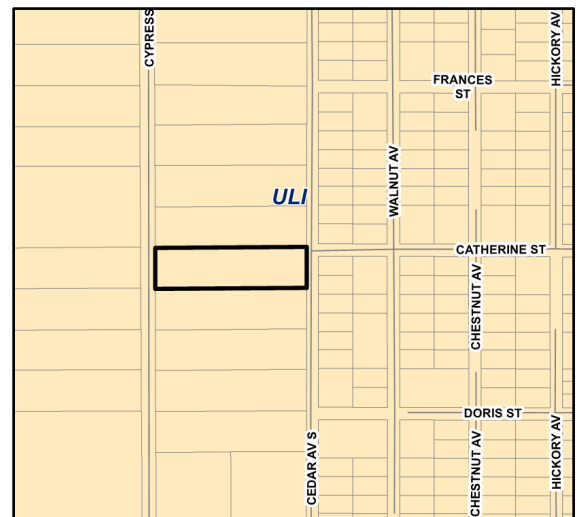
DIRECTION	ZONING	FUTURE LAND USE	EXISTING USE
North:	A-3	Urban Low Intensity	State Road 44, Grazing Land
East:	R-4	Urban Low Intensity	Right-Of-Way, Vacant Residential
South:	A-3	Urban Low Intensity	Right-Of-Way, Vacant Residential
West:	A-3	Urban Low Intensity	Single-Family Residence

10. Location Maps:

**ZONING MAP**



**FUTURE LAND USE MAP**



### III. BACKGROUND AND OVERVIEW



The subject property is located on the west side of Cedar Avenue South at its intersection with Catherine Street, and on the east side of Cypress Avenue, in the Orange City area. The parcel is developed with a 2,957-square-foot single-family residence, constructed in 1982, a 3,500-square-foot garage, and a 1,716-square-foot accessory structure. The parcel is zoned Rural Agriculture (A-3). The A-3 zoning classification

requires a minimum lot size of one acre and a minimum lot width of 150 feet. The lot exceeds the minimum lot size at approximately 2.37 acres in area and 165 feet in width along both Cypress and Cedar Avenues. The lot was created as Lot 29 of Mar-Mac Unrecorded, approved in 1988. The subject property is a through lot due to frontage on two rights-of-way. To the west is Cypress Avenue, an unmaintained dirt county road. To the east is Cedar Avenue, an unpaved county right-of-way with emergency maintenance only. As a through lot, the property must maintain two front yards adjacent to the rights-of-way with a minimum setback of 40 feet. The north yard is a side yard requiring a 25-foot minimum building setback. All accessory structures over 500 square feet must meet the same minimum yard requirements as the principal structure unless used for a bona fide agricultural purpose.

Based on aerial photos, the structure was built between January 2019 and November 2019 prior to the applicant taking ownership of the property. The applicant took ownership of the property in October 2019, although she was living there prior to her ownership based on information shown on the most recent deed. In June of 2020, the applicant applied for an after-the-fact building permit for an in-ground pool. In September of 2020, Code Compliance received a complaint about a garage with an apartment built too close to the property line. A review of a survey provided for the pool permit confirms this. The requested variance is needed to legitimize its location in order for the applicant to obtain an after-the-fact building permit for an Accessory Dwelling Unit (ADU).

The ADU consists of 809 square feet of living space with 907 square feet of open and enclosed storage areas, with the two sections joined under one continuous roof. The ADU is currently occupied by relatives of the property owner.

Environmental Permitting reviewed the request and does not object to the variance; however, any future development must comply with the applicable requirements of the Land Development Code at the time of building permit application.

#### 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.***

The accessory dwelling unit was constructed by a previous owner of the property in 2019, while the applicant was living on the property. There are no special circumstances associated with this variance request.

Staff finds that this criterion is not met.

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

There are no special conditions or circumstances related to this variance request.

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.***

Literal interpretation of this ordinance would require the accessory dwelling to be demolished and relocated elsewhere on the property. Given the size of the structure, and the fact that it is occupied, requiring this structure to be demolished would be an unnecessary hardship.

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.***

The requested variance is the minimum variance that would legitimize the location of the structure, as it exists today, and allow the applicants to obtain an after-the-fact-building permit.

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.***

County staff has received multiple complaints about unpermitted structures on this property prior to and after the applicant taking ownership of the property. Any structures larger than 500 square feet in the A-3 zoning classification must have a side yard setback of at least 25 feet. This structure is much larger than 500 square feet and lies only 5.6 feet from the side property line. In light of this, the granting of the requested variance may be injurious to the area involved.

Staff finds that the criterion is not met.

## **V. STAFF RECOMMENDATION**

Deny the variance request, case number V-21-110, as the variance fails to meet three of the five criteria for granting said variance.

The PLDRC may take into account additional competent substantial evidence presented at the hearing, or may make an alternate finding to already presented evidence, that there is sufficient evidence such that the request meets all five criteria and should be granted. Should the PLDRC find that the applicant has provided competent substantial evidence to support approval of the variances, the following conditions are provided for consideration:

1. The variance shall apply to the 1,716-square-foot accessory dwelling as depicted on the variance site plan. Any enlargement or alteration that does not conform to the site plan and further encroaches into the required setback shall require approval of a separate variance application.
2. The property owner or authorized agent(s) shall obtain and complete all required building permits and inspections for the existing 1,716-square-foot accessory dwelling within 180 days of rendition of the variance determination.
3. If the existing accessory dwelling is removed or damaged in excess of 75 percent of its assessed value, as assessed by the Property Appraiser, any reconstruction of this structure shall thereafter comply with the applicable requirements of the Zoning Ordinance or obtain approval for a new variance.

## **VI. ATTACHMENTS**

- Written Petition
- Variance Site Plan
- Survey
- Environmental Permitting Memo
- ADU Floor Plan
- Site Photographs
- Maps

## **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.

Written Petition for a Variance  
Parcel ID No. 8009-00-00-0290

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 subject property is located at 711 Cypress Avenue in Orange City, Florida (the "Property"). This variance application concerns a garage apartment structure that was constructed prior to the current property owner's acquisition of the Property. Typically, accessory structures require a 5 foot setback from the side yard property line, which the garage apartment complies with. However, due to the size of the garage apartment structure, which is greater than 500 sq. ft., the structure must meet the setbacks of the primary building under the applicable zoning classification. Under the applicable A-3 zoning classification, the garage apartment must abide by a 25 foot side yard setback. The current property owner is attempting to work through the permitting process and correct the issues created by the previous property owner and would like to keep the apartment garage on the Property. Therefore, the request is for a variance to the side yard setback from 25 feet to 6 feet.**

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 request as presented is an attempt to preserve the existing garage apartment, constructed by a previous property owner, on the Property. Removal of the garage apartment, which is utilized as a garage and a space for family members, would work a significant hardship on the current property owner. Without relief from the side yard setback, the entirety of the garage apartment, which is a permitted special exception under the A-3 zoning classification, would have to be removed, thus impacting the reasonable use and enjoyment of the Property as it stands and as contemplated by the Code.**

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.

**The requested variance is the minimum required to preserve the garage apartment as it stands. A special exception for this structure, which is contemplated by the Code, is also being pursued at this time.**

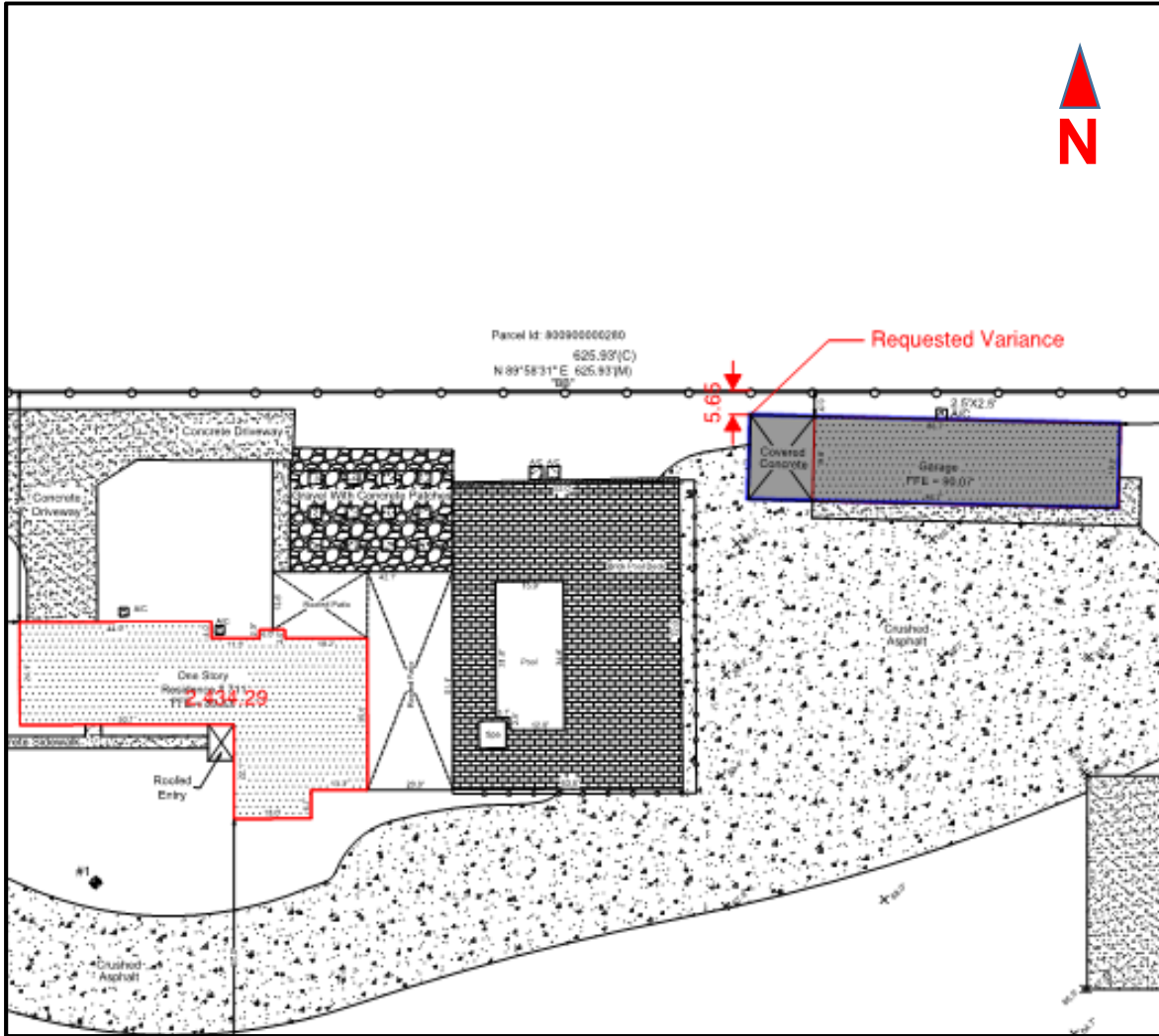
How is your request consistent with the general intent and purpose of the Volusia County Zoning Ordinance and Comprehensive Plan, which are to promote public health, safety, morals, and the general welfare; and to preserve the character, appearance and aesthetic qualities of Volusia County?

**The purpose of the A-3 zoning classification is to provide for a transitional zone between larger properties and agricultural areas and residential areas. The request as presented is an attempt to permit the garage apartment, constructed by a previous property owner, to remain as it stands on the Property. Structures of a similar nature are commonplace in the areas surrounding the Property in the A-3 zoning classification. Therefore, the variance requested, which is to preserve a garage apartment structure, will not result in negative impacts to public health, safety, morals or welfare. It is simply to permit the garage apartment to remain on the Property as it stands.**

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

**The request as presented is an attempt to permit the garage apartment constructed by a previous property owner to remain in its current location and size on the Property. Structures of a similar nature are commonplace in the areas surrounding the Property and therefore, the variance requested, which is to preserve a garage apartment structure, will not be injurious to the surrounding area. It is simply to permit the garage apartment to remain on the Property as it stands.**

## V-21-110 Variance Site Plan



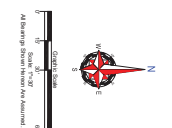
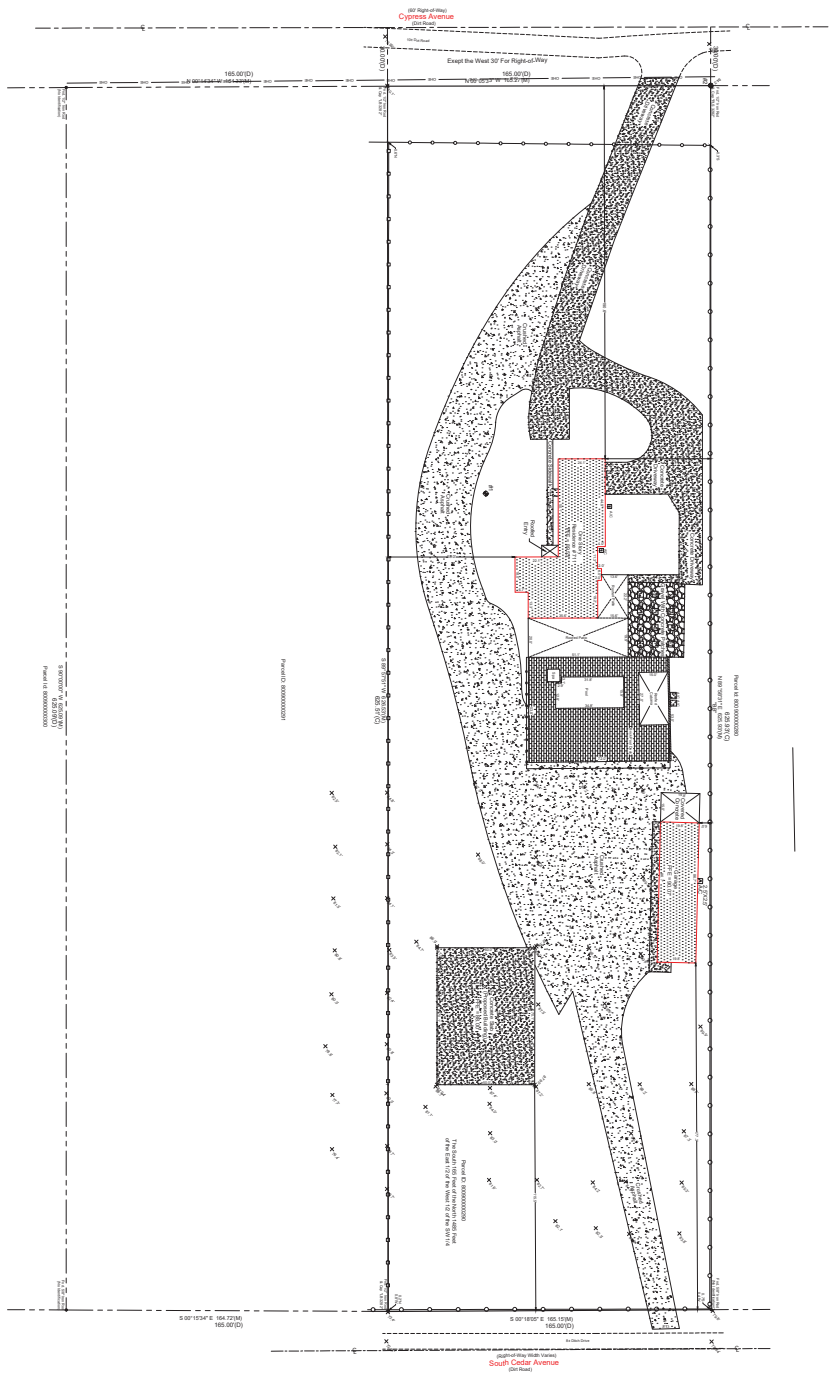
Variance: A variance to reduce the north Side yard from the required 25 feet to 5.65 feet for an existing Accessory Dwelling Unit.

**Boundary Survey**

**Legal Description:** THE SOUTH 60 FEET OF THE NORTH 145 FEET OF THE EAST 1/2 OF THE WEST 1/2 OF THE SOUTH 1/4 SECTION 8, TOWNSHIP 35 SOUTH, RANGE 30 WEST, COUNTY OF VOLUSIA COUNTY, FLORIDA, EXCEPT THE WEST 30 FEET FOR PUBLIC RIGHT OF WAY OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

Final Plat to be recorded with the local governing authority or municipality, the property appears to be located in zone X. This Plat was found in Volusia County Community Platbook 031156, dated 07/19/2014.

**CERTIFIED TO STEP UP CONSTRUCTION**



**PROFESSIONAL INFORMATION**  
 I, the undersigned, being a duly licensed Professional Engineer in the State of Florida, do hereby certify that I am the author of the foregoing plat and that it is a true and correct copy of the original as the same appears in my files.

**DATE OF SURVEY:** 08/11/2014  
**DATE OF PLAT:** 08/11/2014  
**PLAT NO.:** 031156  
**BOOK:** 031156  
**PAGE:** 10

**RECORDING INFORMATION**  
 This plat was recorded in the Public Records of Volusia County, Florida, on 08/11/2014 at 10:00 AM. The recording fee was \$1,000.00. The recording jurisdiction is Volusia County, Florida.

**PLAT INFORMATION**  
 This plat was prepared by the undersigned on 08/11/2014. The plat is a true and correct copy of the original as the same appears in my files.

**PLAT NO.:** 031156  
**BOOK:** 031156  
**PAGE:** 10

**PROFESSIONAL ENGINEER**  
 R. J. ROBERTS, P.E.  
 R. J. ROBERTS SURVEYING, INC.  
 1000 N. W. 10th Street, Suite 200  
 Palm Bay, FL 32909  
 Phone: 321-329-8100  
 Fax: 321-329-8101  
 Email: info@rjroberts.com  
 Website: www.rjroberts.com

**Inter-Office  
Memorandum**



**TO:** Darren Ebersole, Planner II **DATE:** August 8, 2021  
**FROM:** Samantha J. West, Environmental Specialist III  
**SUBJECT:** Parcel #: 8009-00-00-0290  
Case #: V-21-110

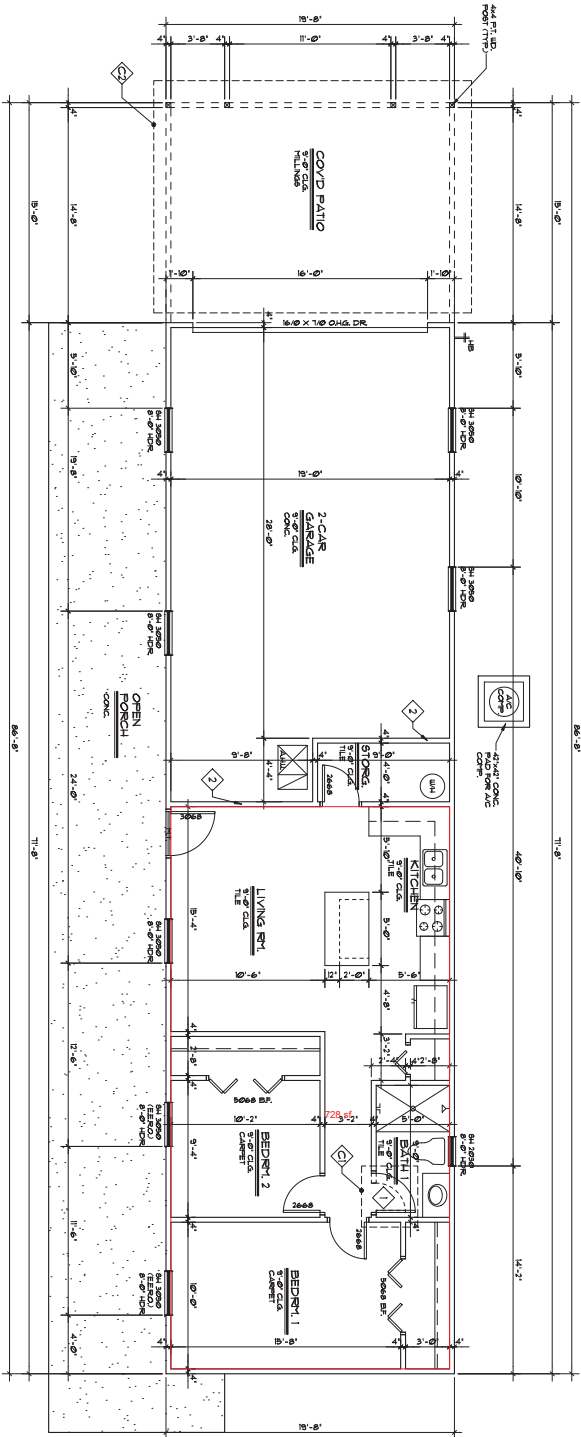
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Environmental Permitting (EP) has reviewed the application for a variance to minimum yard requirements and maximum ADU size on Transitional Agriculture (A-3) zoned property and provides the following report:

The subject property is located within the St. Johns River and DeLand Ridge watersheds and has been identified as containing suitable habitat for the gopher tortoise. The gopher tortoise is a Candidate species for federal protection and designated as threatened in the State of Florida. Any future development of the site will require compliance Division 17 *Gopher Tortoise Ordinance*, of the Land Development Code.

EP does not object to the variance requests. However, any future development must comply with the applicable requirements of the Land Development Code at the time of building permit application.

# Building Plans



FLOOR PLAN

**COMPLIANCE SCHEDULE**

1	EXISTING ROOMS ARE TO BE REMOVED AND RECONSTRUCTED TO MEET ALL CURRENT AND FUTURE REQUIREMENTS. ALL ROOMS TO BE ADJUSTED TO 7' OC.
2	EXISTING ROOMS ARE TO BE REMOVED AND RECONSTRUCTED TO MEET ALL CURRENT AND FUTURE REQUIREMENTS. ALL ROOMS TO BE ADJUSTED TO 7' OC.

**FLOOR PLAN NOTES**

1. THIS SET OF PLANS CONFORMS TO BATHROOM TOILET (RMC 2008)
2. ALL OPENINGS ARE TO BE 7' MINIMUM CLEARANCE UNLESS OTHERWISE NOTED.

**FLOOR PLAN LEGEND**

REMOVE EXISTING WALLS AND RECONSTRUCT TO BE 7' MINIMUM CLEARANCE UNLESS OTHERWISE NOTED.

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

DESIGNER HEREBY EXPRESSLY RESERVES HIS COPYRIGHT AND OTHER PROPERTY RIGHTS IN THESE PLANS. THESE PLANS AND DRAWINGS ARE NOT TO BE REPRODUCED, CHANGED OR COPIED IN ANY FORM OR MANNER WHATSOEVER, NOR ARE THEY TO BE ASSIGNED TO ANY PARTY WITHOUT FIRST OBTAINING THE EXPRESSED WRITTEN PERMISSION AND CONSENT OF WHITE HEART DESIGNS.

DATE	10/21/2021
ISSUE	001
SCALE	1/4" = 1'-0"
CONTRACT NO.	298
TOTAL TILES	1095

**FLOOR PLAN**  
A CUSTOM HOME FOR:  
**Yunisledis Rodriguez**  
71 Cypress Ave. Orange City, FL

VERSION - 1

**LEVEL UP**  
CONSTRUCTION

CONTACT:  
304.216.9999  
304.216.9999

**white heart designs**  
RESIDENTIAL CONSTRUCTION  
7800 Collins Road, Suite 103  
Orlando, Florida 32817

## Photographs

Facing north, showing the front of the unpermitted ADU. The storage area is the left half of the structure, starting to the left of the door



Facing northeast, from the west end of the structure, showing the areas of the building used for storage.



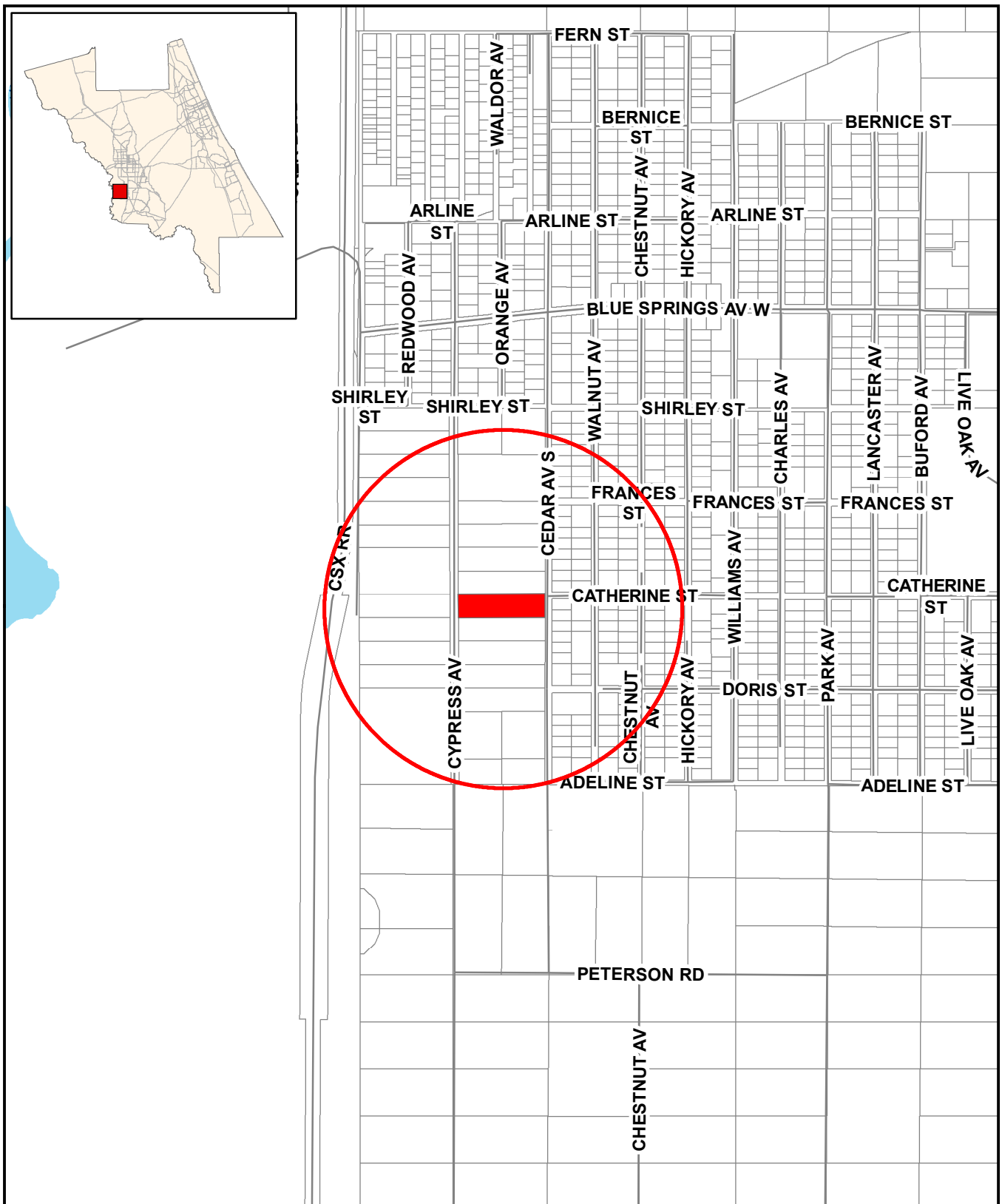
Facing northwest, showing the front of the ADU.



The interior of the unit. Showing a fully equipped kitchen with a stove, overhead cabinet, microwave, refrigerator, sink and center island.



# PROPERTY LOCATION V-21-110

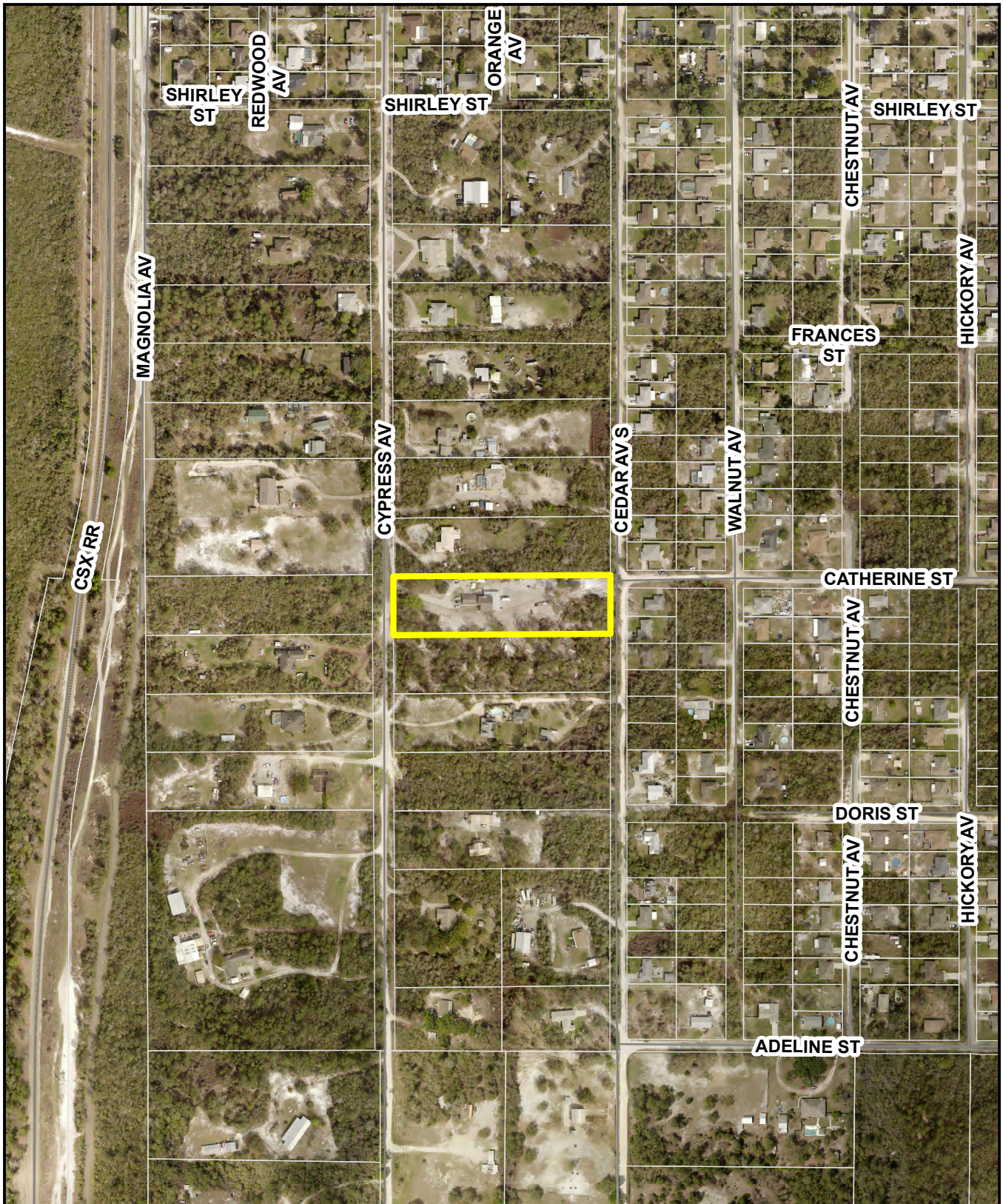


 SUBJECT PROPERTY



1" = 1,000'  
6/3/2021

# AERIAL V-21-110



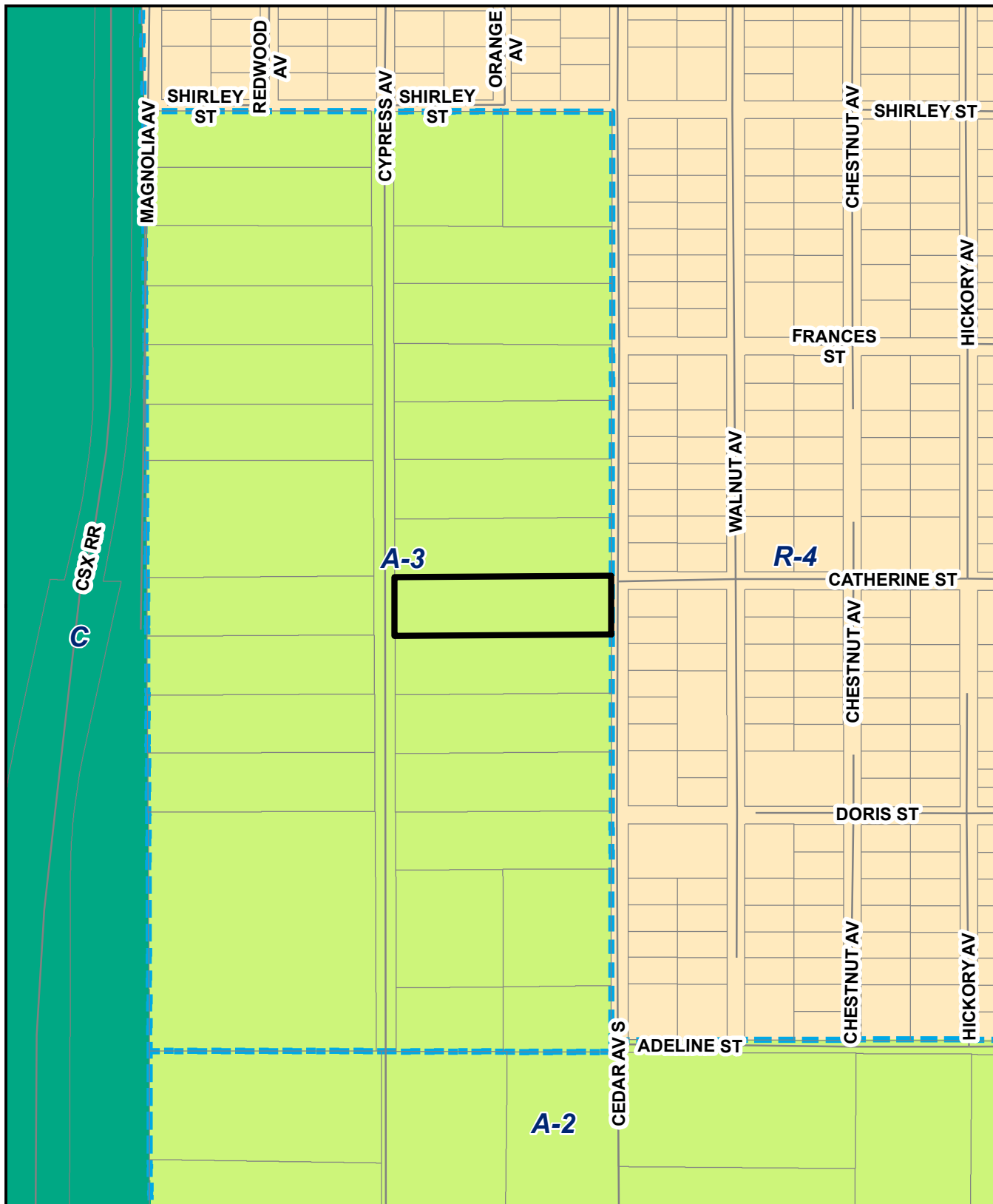
 SUBJECT PROPERTY

IMAGE DATE 2018



1" = 400'  
6/3/2021

# ZONING CLASSIFICATION V-21-110

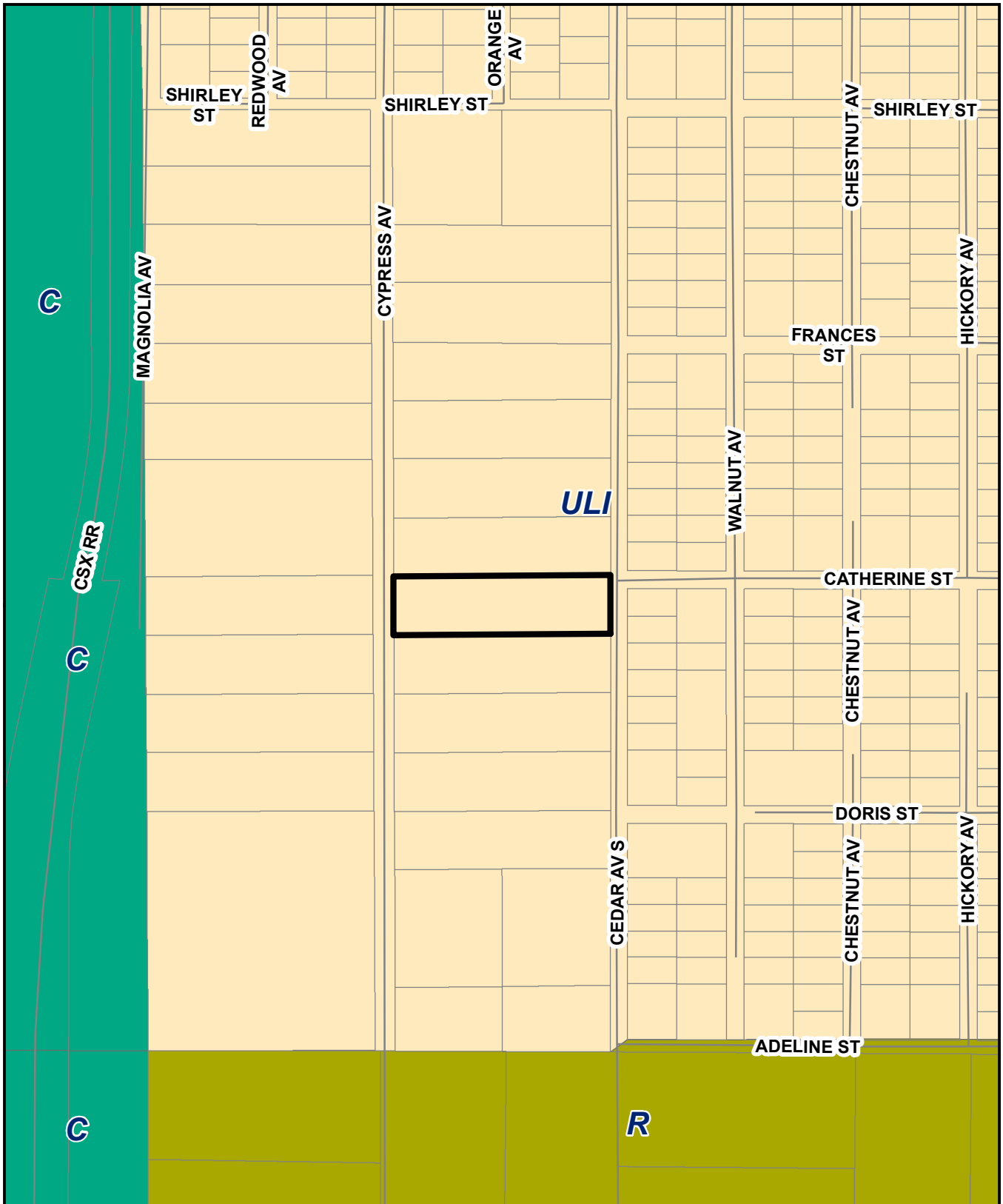


-  SUBJECT PROPERTY
-  ZONING BNDY
-  AGRICULTURAL
-  RESIDENTIAL
-  CONSERVATION




1" = 400'  
6/3/2021

# FUTURE LAND USE V-21-110

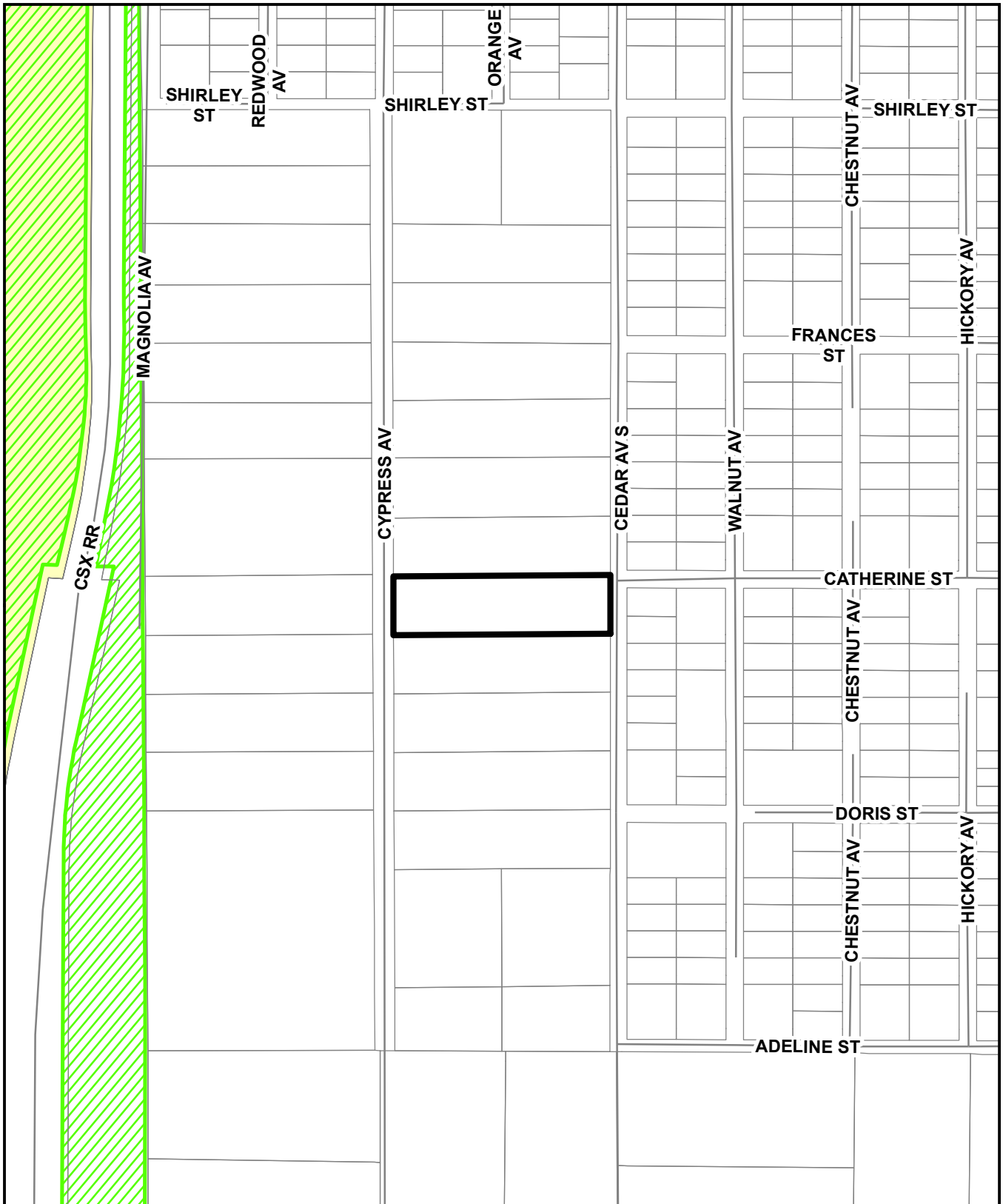





 SUBJECT PROPERTY


 CONSERVATION  URBAN LOW INTENSITY  
 RURAL

 1" = 400'  
6/3/2021

# ECO/NRMA OVERLAY V-21-110



-  SUBJECT PROPERTY
-  ECO
-  NRMA

 1" = 400'  
6/3/2021