



**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-21-125

**SUBJECT:** A variance to Section 72-278(5) to reduce the minimum side setback for a dock on Urban Single-Family Residential (R-3) zoned property.

**LOCATION:** 3310 John Anderson Drive, Ormond Beach

**APPLICANT(S):** Darren J. Elkind, Esquire

**OWNER(S):** James and Carol Murray

---

**I. SUMMARY OF REQUEST**

The applicant is seeking a variance for a proposed dock. The requested variance is as follows:

Variance: A variance to Section 72-278(5) to reduce the south setback from the extension of the property line into the water from the required 15 feet to eight feet for a proposed 742-square-foot dock.

***Staff Recommendation:***

Deny variance, case number V-21-125, as the variance fails to meet four of the five criteria for granting said variance.

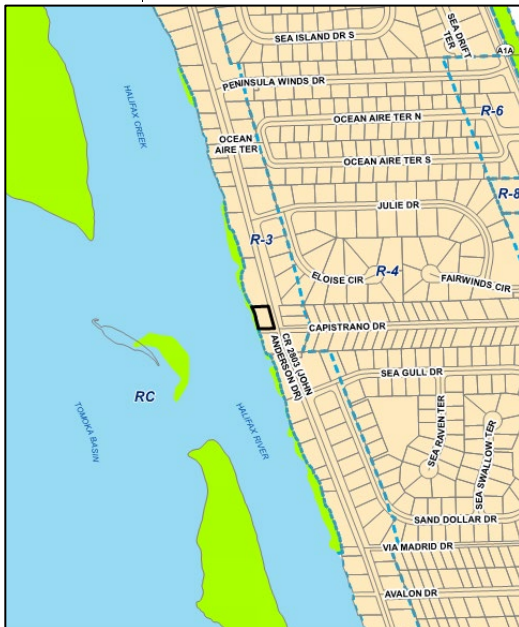
**II. SITE INFORMATION**

- 1. Location: West side of John Anderson Drive, northwest of its intersection with Capistrano Drive, in the Ormond Beach area.
- 2. Parcel Number(s): 3216-03-00-0340
- 3. Property Size: +/- 8,000 square feet
- 4. Council District: 4
- 5. Zoning: Urban Single-Family Residential (R-3)
- 6. Future Land Use: Urban Low Intensity (ULI) and Environmental Systems Corridor (ESC)
- 7. Overlays: N/A
- 8. Local Plan Area: North Peninsula Local Plan
- 9. Adjacent Zoning and Land Use:

DIRECTION	ZONING	FUTURE LAND USE	EXISTING USE
North:	R-3	Urban Low Intensity/ Environmental Systems Corridor	Single-Family Residence
East:	R-3	Urban Low Intensity	Single-Family Residence
South:	R-3	Urban Low Intensity	Single-Family Residence
West:	Resource Corridor - Halifax River	Environmental Systems Corridor - Halifax River	Halifax River

10. Maps:

**ZONING MAP**



**FUTURE LAND USE MAP**



### III. BACKGROUND AND OVERVIEW

The subject property is located on the west side of John Anderson Drive, northwest of its intersection with Capistrano Drive, in the Ormond Beach area. The parcel is developed with a 5,131 square foot residence. The property is zoned Urban Single-Family Residential (R-3). The R-3 zoning classification requires a minimum lot size of 10,000 square feet and minimum lot



width of 85 feet. The lot meets the minimum lot width at 115 feet but does not meet the minimum lot size at approximately 8,000 square-feet. However, the applicant has provided a nonconforming lot letter that indicates this is a legal nonconforming lot. The applicable minimum yard requirements for a principal structure on this property are as follows: front – 30 feet, side – 20 feet combined with a minimum of eight feet on either side, and waterfront – 25 feet. The existing residence does not meet the typical setback requirements of the R-3 zoning classification and was granted a variance in case V-99-011 to be constructed in its current location.

The applicant is requesting the ability to construct a 742-square-foot dock to replace an existing 375-square-foot dock. Section 72-278(5) of the Zoning Ordinance requires that any dock or portion of a dock be setback at least 15 feet from the side property line or that property line's extension into the water. However, the Florida Department of Environmental Protection (FDEP) requires that a dock setback be measured from a Riparian Rights Line, which generally runs perpendicular to the current of a navigable waterway.

In this case, the property line and the Riparian Rights Line do not match up as shown in the diagram below. However, the Zoning Ordinance does not take the Riparian Rights Line into account, as it is not often easily measured without a specialized survey. The result is that a dock must meet both a 15-foot setback from the property line's extension into the water in order to receive zoning approval and a 25-foot setback from the Riparian Rights Line in order to receive FDEP approval. However, the applicant has designed a dock to meet only the FDEP requirement of a 25-foot setback from the Riparian Rights Line. The proposed placement lies approximately eight feet from the property line's extension into the water.



Literal interpretation of this ordinance would require the applicant to revise the FDEP permit and move the proposed dock approximately seven feet to the north in order to meet the requirements of both the Zoning Ordinance and FDEP. This does not deprive the applicant of the right to build a dock on this lot.

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.***

The applicant has an existing dock that appears to meet both the FDEP and Zoning Ordinance requirements. The applicant could revise the plans to place the proposed dock seven feet to the north. Adjusting the location would meet both the Zoning Ordinance and FDEP requirements.

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.***

The grant of the proposed variance would be in harmony with the intent and purpose of the Volusia County Comprehensive Plan and Zoning Ordinance. The purpose of the setback requirement from the extension of the property line is to ensure that boat traffic is not impeded and that a dock does not interfere with a neighbor's ability to build a dock. The Riparian Rights Line serves a similar purpose but is measured differently. Additionally, the property owner to the south, who would be most impacted by the grant of this variance, has provided a letter of no objection. It is unlikely that following the setback from the Riparian Rights Line would be injurious to the area.

Staff finds that this criterion is met.

## **V. STAFF RECOMMENDATION**

Deny variance, case number V-21-125, as this variance fails to meet four of the five criteria for granting said variance.

The PLDRRC 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 PLDRRC find that the applicant has provided competent substantial evidence to support approval of the variance, the following condition is provided for consideration:

1. The variance is limited to the size and location of the dock as shown on the variance site plan.

## **VI. ATTACHMENTS**

- Variance Site Plan
- Written Petition
- Survey
- Environmental Comments
- Letter of Support
- Photographs
- Map Series

## **VII. AUTHORITY AND PROCEDURE**

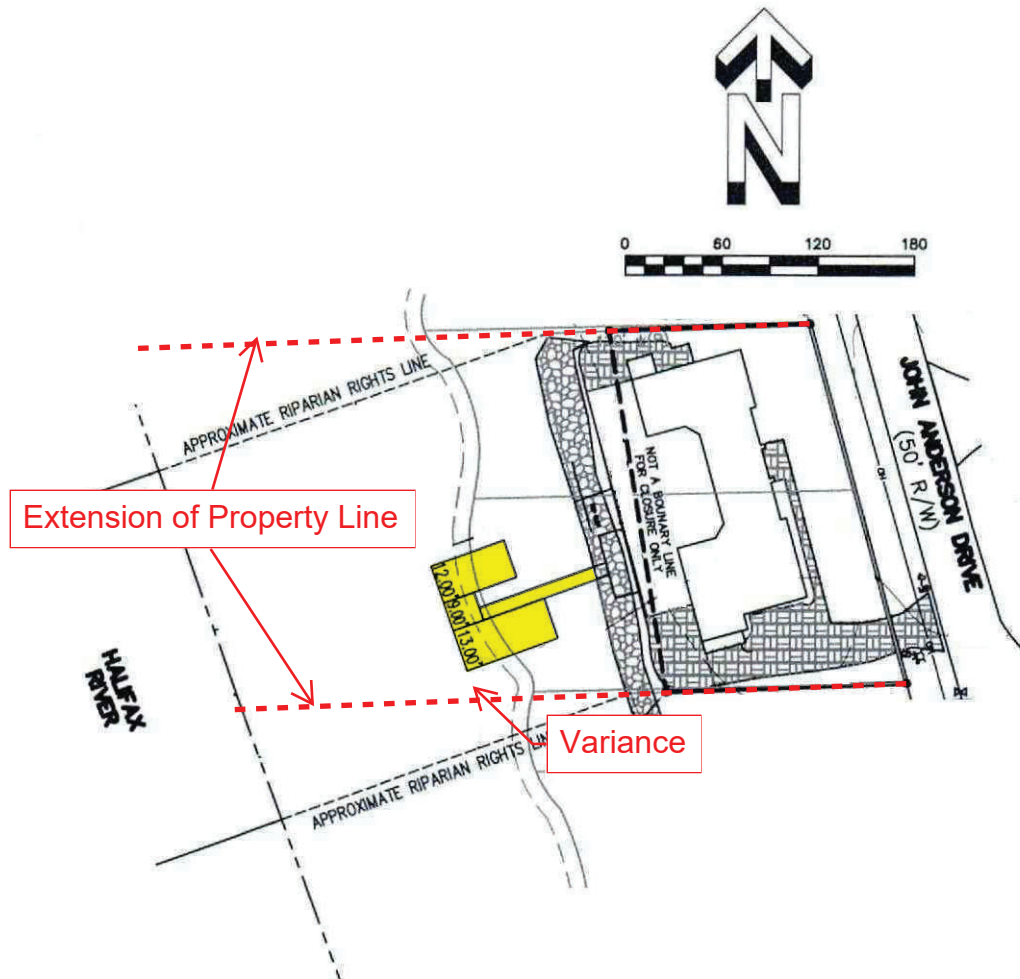
The commission may, except as otherwise provided in Section 72-379 of the Zoning Ordinance, authorize, after due public notice upon application on a form prescribed by the Zoning Enforcement Official, such variance or variances from the terms of this ordinance as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provision of this ordinance would result in unnecessary and undue hardship. Said variance application shall be heard only if it is presented by the person owning 51 percent or more of the specific area of land involved or upon an administrative application by the County Council.

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

Any new information to be presented at the Planning and Land Development Regulation Commission meeting for any application will be grounds to continue an application to the next Planning and Land Development Regulation Commission meeting. Applicants shall inform and provide staff with the new information prior to the Planning and Land Development Regulation Commission meeting.

## Variance Site Plan V-21-125

A variance to reduce the south setback from the extension of the property line into the water from the required 15 feet to eight feet for a proposed 742-square-foot dock.





## 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 lot is oriented on an east/west plan but the Intracoastal Waterway ("ICW") in this location does not run truly north/south. As such, the side lot lines are not perpendicular to the main channel of the ICW. Section 72-278(5) of the LDC does not address this situation.

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?

Section 72-278(5) is inconsistent with the FDEP regulations regarding the determination of riparian lines for dock permitting, which generally requires the property lines be extended PERPENDICULAR to the nearest limit of the ICW channel. Literal enforcement of the LDC would result in a not being able to build a dock in the proper location.

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.

This variance is the minimum amount necessary to be consistent with the FDEP dock permitting requirements (state dock permit has already been issued).

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?

This variance will allow the dock to be built in the appropriate location and provide for consistency and a preferred aesthetic appearance of the home and dock, both from land and from the ICW.

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

It will have absolutely no injurious effect as it will allow for consistency with FDEP regulations.

**SLIGER & ASSOCIATES, INC.**

PROFESSIONAL LAND SURVEYORS

LICENSED BUSINESS CERTIFICATION NO. 3019

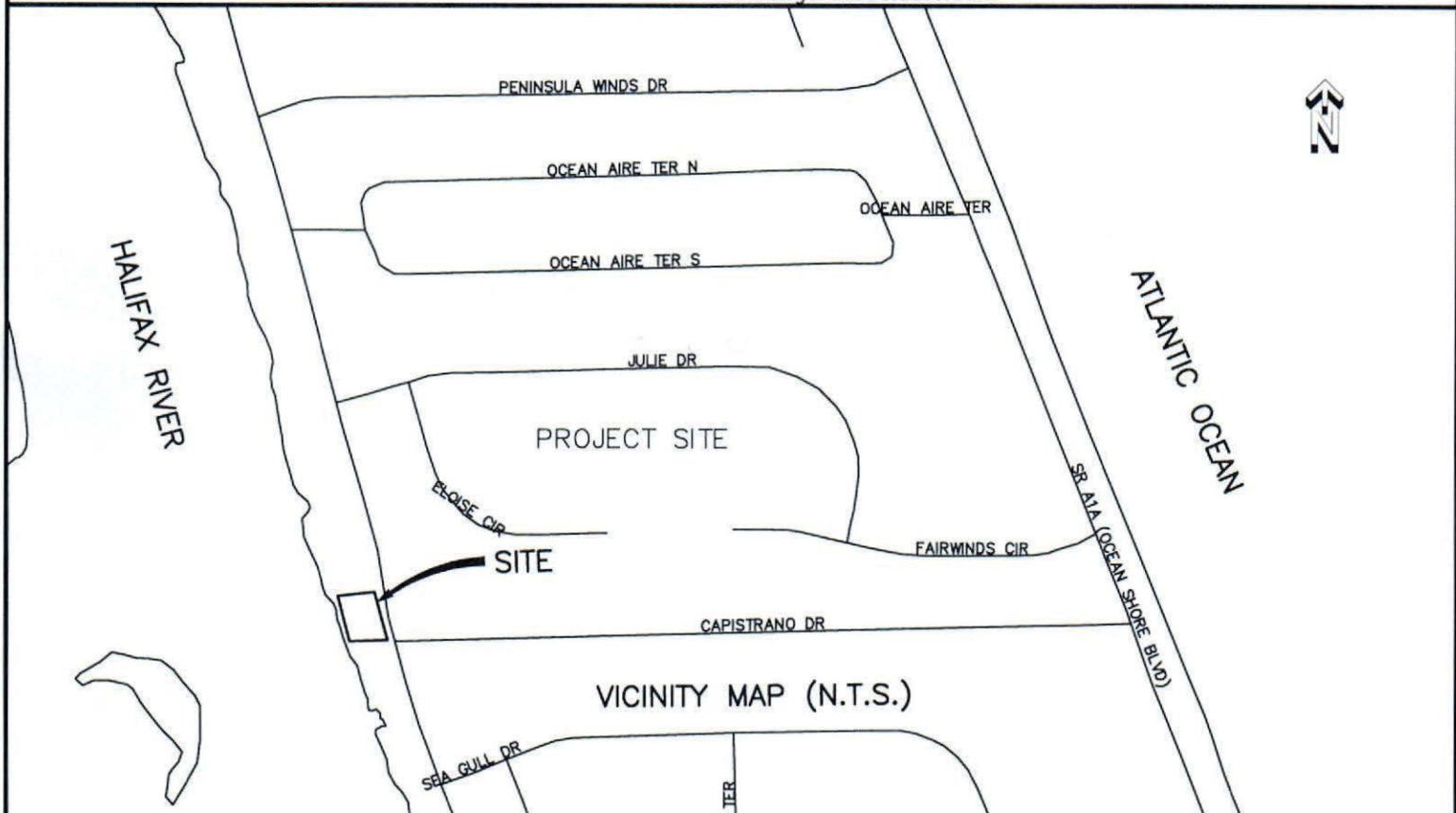
3921 NOVA ROAD

PORT ORANGE, FL. 32127

(386) 761-5385

Copyright © 2020 Sliger &amp; Associates, Inc.

www.sligerassociates.com



## DESCRIPTION:

LOTS 34 AND 35, CAPISTRANO BY THE SEA, ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 11, PAGE 273, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA

## NOTE:

- SHEET 1 VICINITY MAP, DESCRIPTION AND KEY SHEET.
- SHEET 2 BOUNDARY SURVEY AND PROPOSED DOCK.
- SHEET 3 HOUSE AND DOCK DETAIL
- SHEET 4 SURVEYORS NOTES AND CERTIFICATIONS.

***BOUNDARY SURVEY***

513 NORTH RIVERSIDE DRIVE  
EDGEWATER, FL 32132



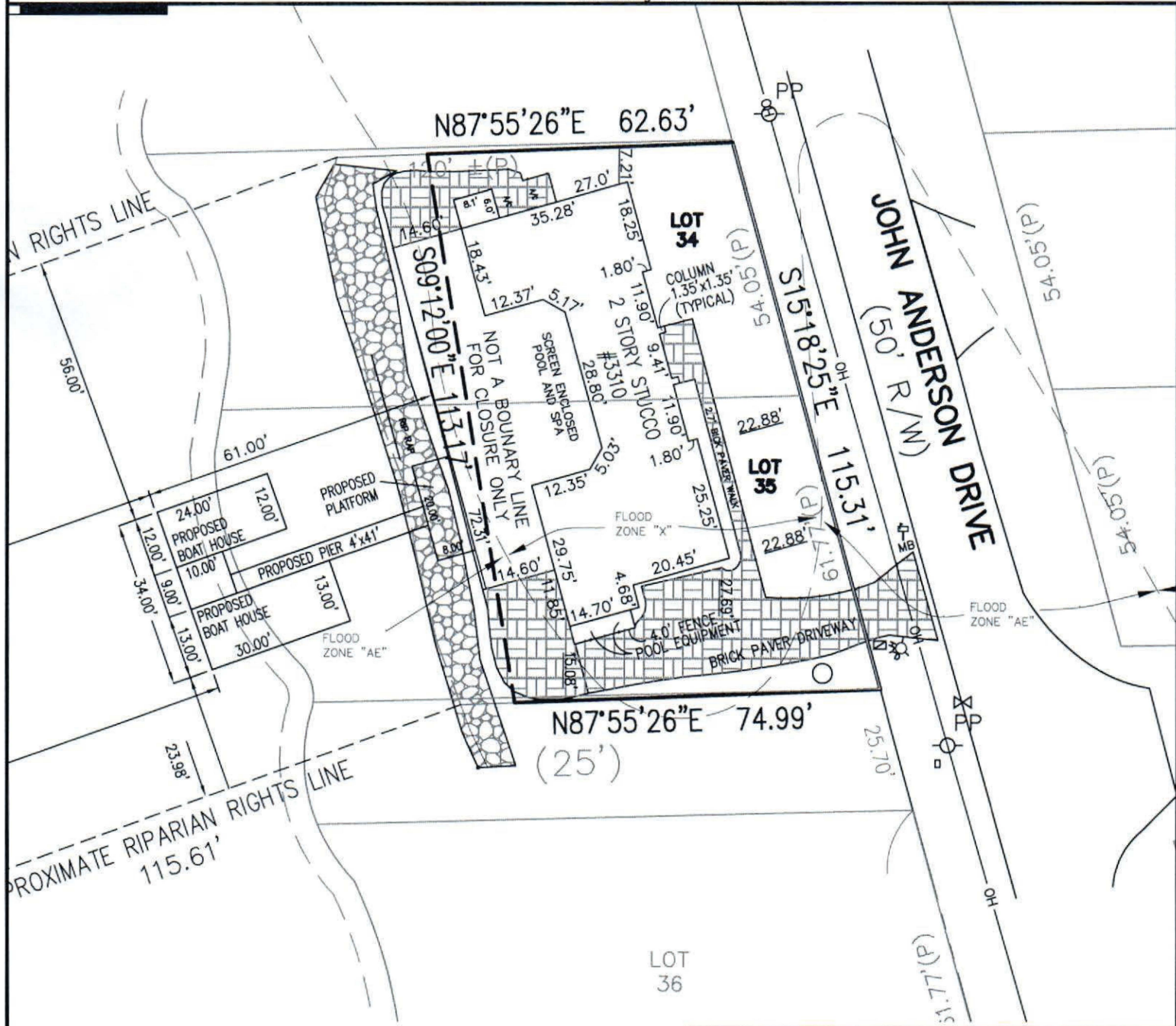
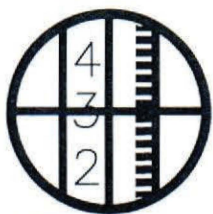
# SLIGER & ASSOCIATES, INC.

PROFESSIONAL LAND SURVEYORS

LICENSED BUSINESS CERTIFICATION NO. 3019

3921 NOVA ROAD  
PORT ORANGE, FL. 32127  
(386) 761-5385

Copyright © 2020 Sliger & Associates, Inc.  
www.sligerassociates.com



HOUSE AND DOCK DETAIL

JOB #20-1348

SCALE: 1"=30'

FIELD BOOK: 1432

PAGE: 49-52

### ABBREVIATIONS

(P)	PLATTED DIMENSION
(D)	DEEDED DIMENSION
(M)	MEASURED DIMENSION
(C)	CALCULATED DIMENSION
ID	IDENTIFICATION
R/W	RIGHT OF WAY
GND	GROUND
TOW	TOP OF WALL
CL	CENTERLINE
∠	CENTRAL ANGLE
R	RADIUS
L	ARC LENGTH
FP&L CO.	FLORIDA POWER & LIGHT COMPANY
N.G.V.D.	NATIONAL GEODETIC VERTICAL DATUM
U.S.C. & G.S.	UNITED STATES COAST

### SHEET 3 OF 4

#### LEGEND

●	IRON ROD WITH CAP
○	IRON PIPE
□	CONCRETE MONUMENT
■	PERMANENT REFERENCE MONUMENT
△	PERMANENT CONTROL POINT
(R)	RADIAL LINE
(NR)	NON-RADIAL LINE
○	EXISTING ELEVATION
□	PROPOSED ELEVATION



# SLIGER & ASSOCIATES, INC.

PROFESSIONAL LAND SURVEYORS

LICENSED BUSINESS CERTIFICATION NO. 3019

3921 NOVA ROAD  
PORT ORANGE, FL. 32127  
(386) 761-5385

Copyright © 2020 Sliger & Associates, Inc.  
www.sligerassociates.com

## SURVEYORS NOTES

1. NOTICE: THERE MAY BE ADDITIONAL RESTRICTIONS AND/OR OTHER MATTERS THAT ARE NOT SHOWN ON THIS PLAT OF SURVEY/SKETCH OF DESCRIPTION THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THIS COUNTY. THIS SURVEY/SKETCH OF DESCRIPTION PREPARED WITHOUT BENEFIT OF AN ABSTRACT.
2. DIMENSIONS ARE SHOWN IN FEET AND DECIMALS THEREOF.
3. BEARING STRUCTURE BASED ON STATE PLANE COORDINATES WITH THE BEARING ON THE SOUTH LINE OF LOT 35 BEING N87°55'26"E.
4. UNLESS OTHERWISE SHOWN, RECORD DISTANCES AND DIRECTIONS AND FIELD MEASURED DISTANCES AND DIRECTIONS ARE THE SAME.
5. UNDERGROUND FOUNDATIONS, IF ANY, NOT LOCATED.
6. THIS PROPERTY IS LOCATED IN FLOOD INSURANCE RATE MAP (F.I.R.M.) ZONE X. THIS LOCATION IS DETERMINED BY SCALING FROM F.I.R.M. MAP NO. 12127C0064J . MAP EFFECTIVE DATE: SEPT. 29, 2017. APPROXIMATE SCALE: 1"= 500'.
7. "NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OR A VALID ELECTRONIC SIGNATURE OF A FLORIDA LICENSED SURVEYOR AND MAPPER."
8. ADDED PROPOSED PIER, PLATFORMS AND BOAT HOUSES. (8-26-2020)(JM)

REFERENCE: LOTS 34 AND 35, CAPISTRANO BY THE SEA

PLAT PREPARED FOR THE FOLLOWING: (ONLY THE LAST DATE IS CERTIFIED ON SEALED COPY)

THIS PLAT OF SURVEY IS CERTIFIED TO AND PREPARED FOR THE SOLE AND EXCLUSIVE BENEFIT OF THE ENTITIES AND/OR INDIVIDUALS LISTED BELOW, ON THE MOST CURRENT DATE, AND SHALL NOT BE RELIED UPON BY ANY OTHER ENTITY OR INDIVIDUAL WHOMSOEVER.

TYPE OF SURVEY	CERTIFIED TO	SURVEY DATE	JOB NUMBER
BOUNDARY SURVEY	JAMES DAVID MURRY	JUNE 09, 2020	20-1348
NOT CERTIFIED	TO ANY ENTITIES AND/OR INDIVIDUALS OTHER THAN THOSE		LISTED ABOVE.

SHEET 4 OF 4

VALID WITH SIGNATURE & EMBOSSED SEAL ONLY

FOR: JAMES DAVID MURRY

	DATE	JOB NO.	P.C.	DRW.	CHECKED BY
SPECIFIC PURPOSE SURVEY	JUNE 09, 2020	20-1348	JP	JM	JB
BOUNDARY SURVEY					
TOPOGRAPHIC SURVEY					
FOUNDATION LOCATED					
FINAL IMPROVEMENTS					
RECERTIFICATION					
PROPOSED HOUSE LOCATION					

I HEREBY CERTIFY THAT THIS PLAT MEETS THE STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 61-17.15, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

JEFF BARNES, P.S.M. NO. 4048  
JEFF BARNES, P.S.M. NO. 5576  
C.O. VAN KLEECK, JR., P.S.M. NO. 6149

**Inter-Office  
Memorandum**



**TO:** Trevor Bedford, Planner II **DATE:** August 8, 2021  
**FROM:** Samantha J. West, Environmental Specialist III  
**SUBJECT:** Parcel #: 3216-03-00-0340  
Case #: V-21-125

---

Environmental Permitting (EP) has reviewed the application for a variance to minimum yard requirements for a dock on Urban Single-Family Residential (R-3) and Resource Corridor (RC) zoned property. EP provides the following report for the requested variance:

**Overview**

The subject property is within the Halifax watershed and adjoins the Tomoka Marsh Aquatic Preserve, an Outstanding Florida Waterway (OFW) within the Natural Resource Management Area (NRMA).

*Wetlands*

As the property adjoins an OFW and the NRMA, a minimum 50-foot buffer is required from the surface water. Waters are designated as an OFW to prevent the lowering of existing water quality due to permitted activities and to preserve the exceptional ecological and recreational significance of the waterbody.

*Protected Species*

The property has been identified as containing suitable habitat for the gopher tortoise, a threatened species. Any future development of the site will require compliance with Division 17 *Gopher Tortoise Protection*, of the Land Development Code.

**Recommendation**

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

July 18, 2021

Via Email Only – pssmith@volusia.org

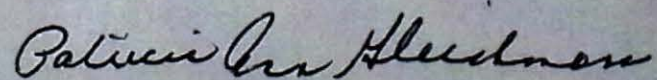
Patricia Smith, AICP  
Volusia County Planning and Development Services  
123 West Indiana Avenue, Room 202  
DeLand, FL 32720-4604

Re: Dock Variance Application – Volusia County  
3310 John Anderson Drive

Dear Ms. Smith:

Please accept this letter as confirmation that I do not object in any way to the granting of the variance from the set-back requirement for my neighbor's dock referenced above.

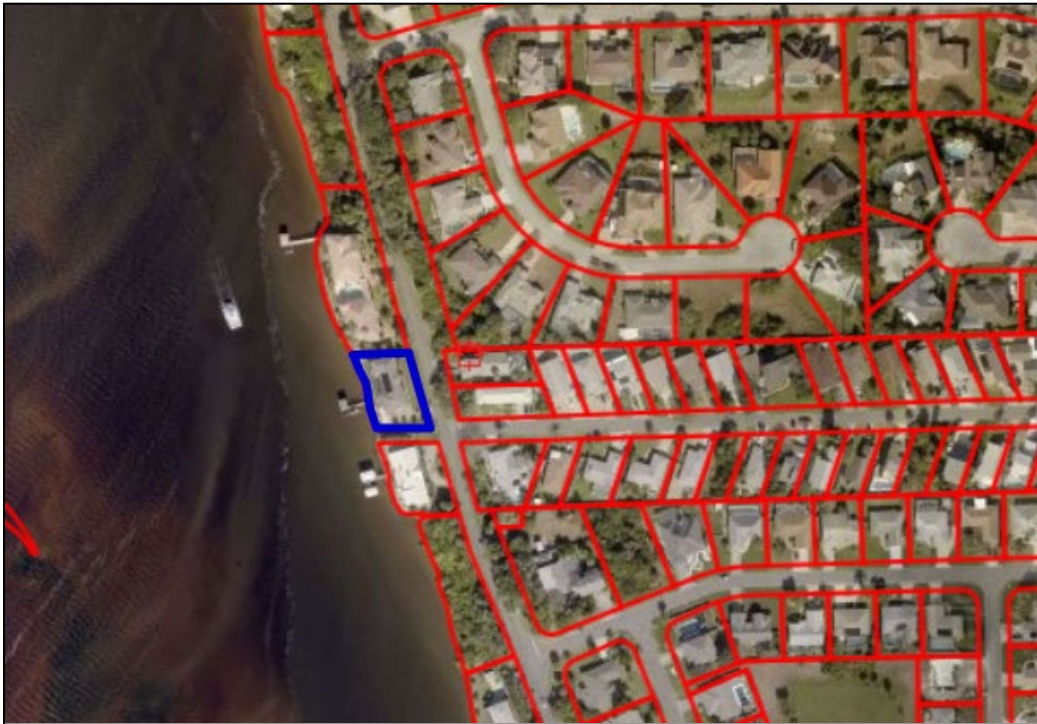
Sincerely,



Patricia Ann Gleichman, Trustee of the  
Patricia Ann Gleichman Revocable Trust,  
Dated February 3, 2011

## Photographs

Aerial photograph of the area



Aerial photograph of the property



# PROPERTY LOCATION V-21-125



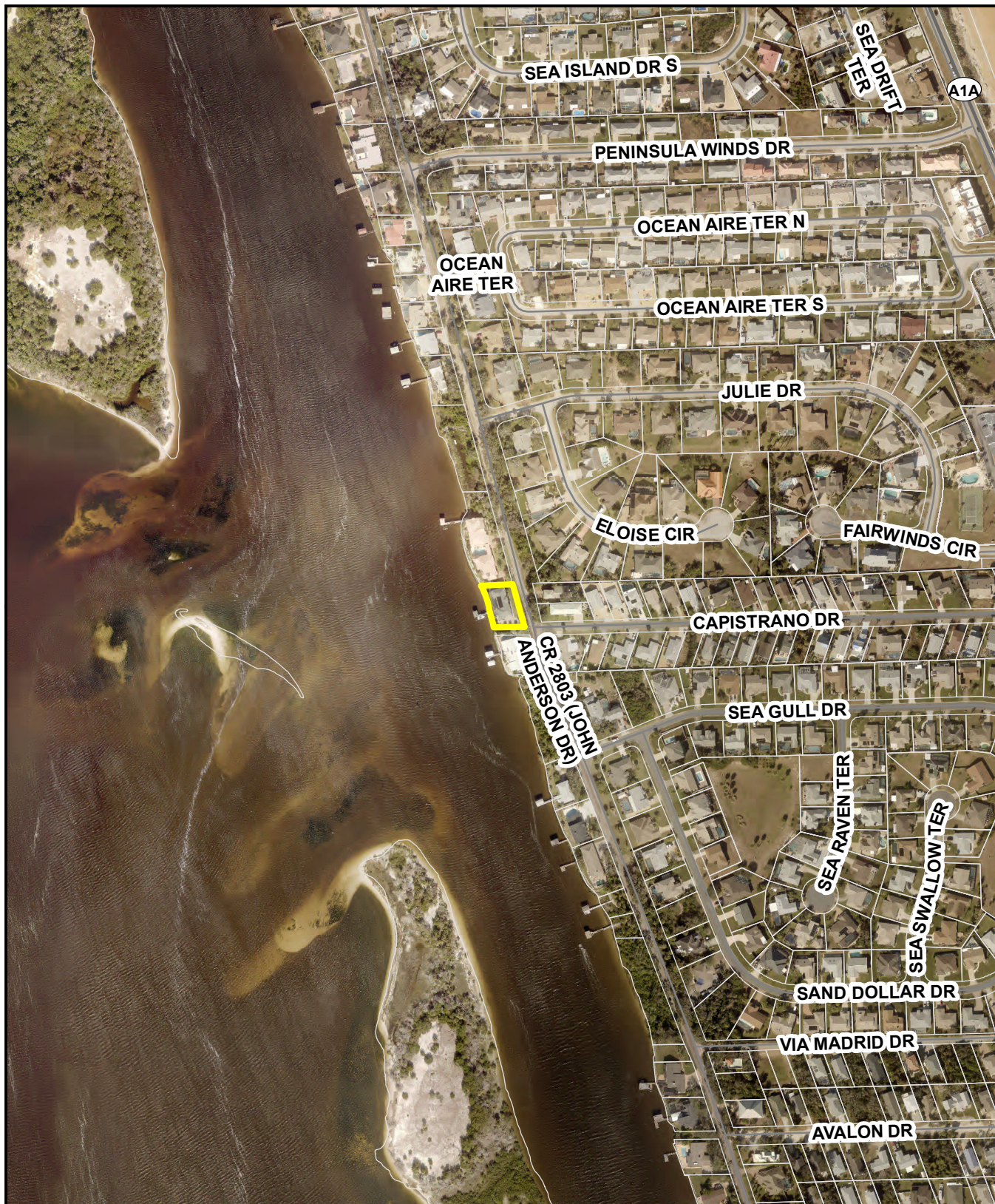
 SUBJECT PROPERTY



1" = 1,000'

8/4/2021

# AERIAL V-21-125



 SUBJECT PROPERTY

IMAGE DATE 2018



1" = 400'  
8/4/2021

# ZONING CLASSIFICATION V-21-125



 SUBJECT PROPERTY

 ZONING BNDY  INCORPORATED

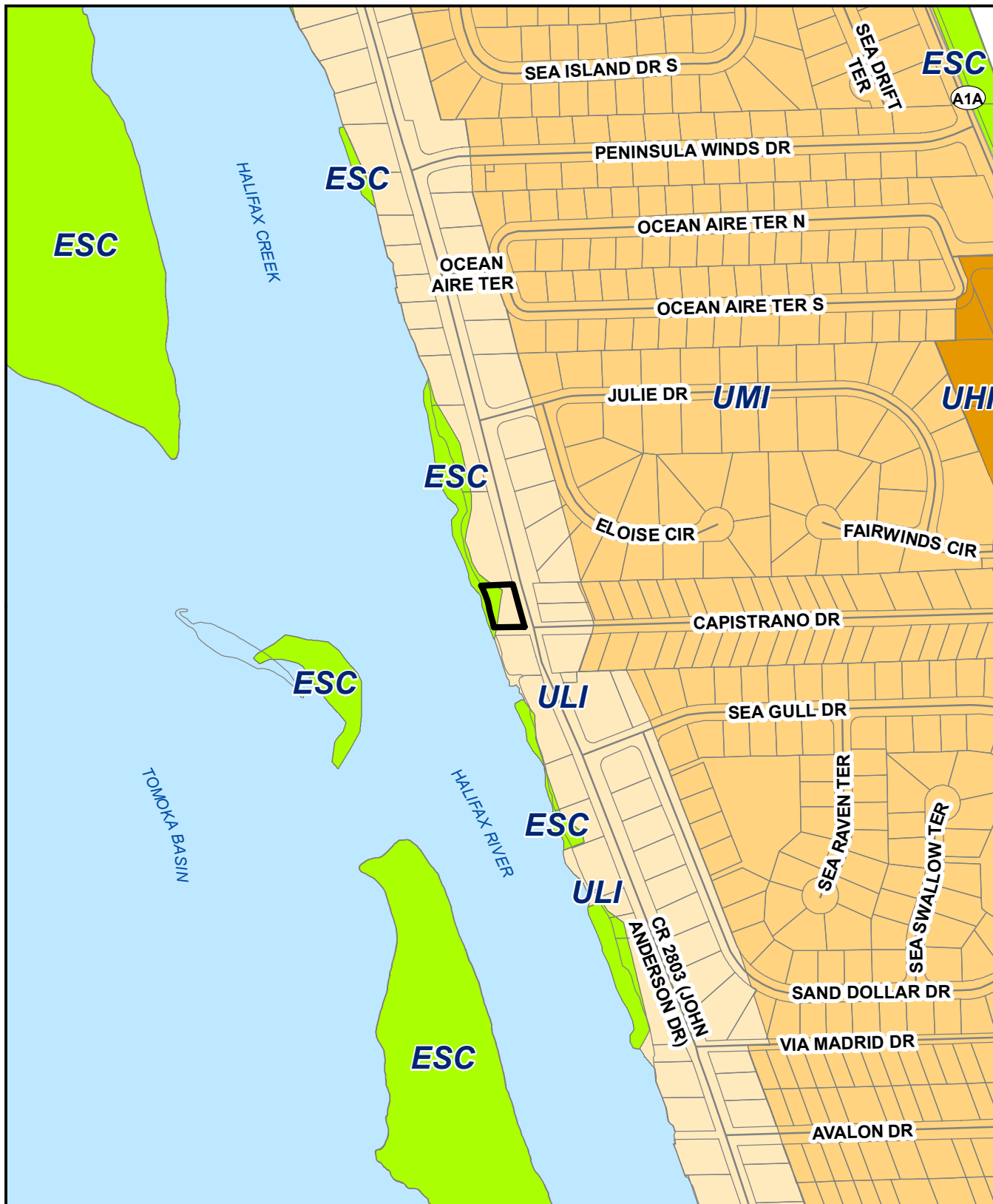
 RESIDENTIAL  RESOURCE CORRIDOR










1" = 400'

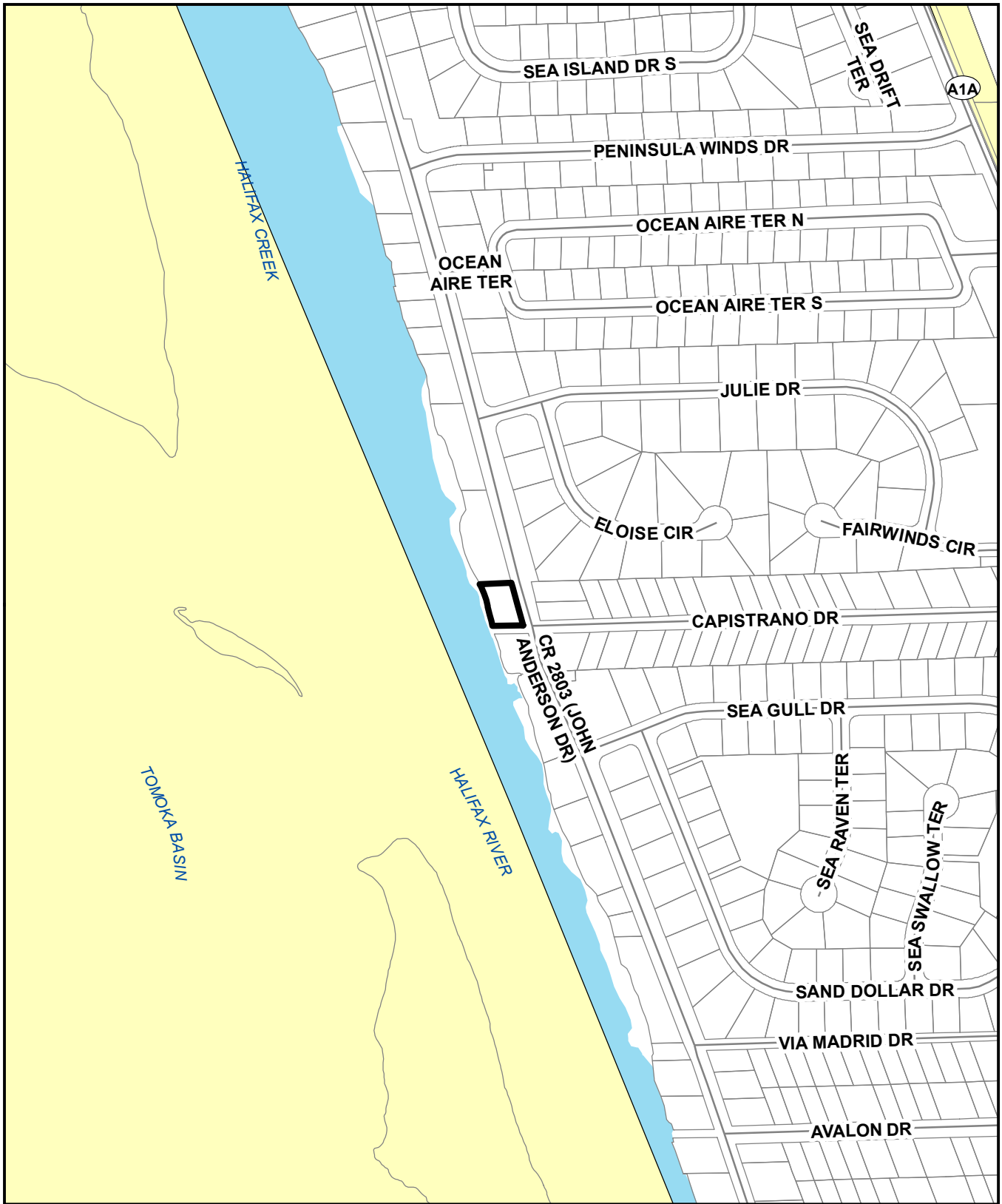
8/4/2021




# FUTURE LAND USE V-21-125



 SUBJECT PROPERTY	 URBAN LOW INTENSITY	 1" = 400'
 ENVIRONMENTAL SYSTEMS CORRIDOR	 URBAN MEDIUM INTENSITY	8/4/2021
 URBAN HIGH INTENSITY	 WATER	

# ECO/NRMA OVERLAY V-21-125



-  SUBJECT PROPERTY
-  ECO
-  NRMA



1" = 400'

8/4/2021