



**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-21-127

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

LOCATION: 2124 John Anderson Drive, Ormond Beach

APPLICANT(S): Arun Reddy

OWNER(S): Same as above

I. SUMMARY OF REQUEST

The applicant is seeking a variance for proposed fence gates and to legitimize the location of the existing house. The requested variances are as follows:

Variance 1: A variance to Section 72-282(2) to increase the maximum front yard fence height from four feet to six feet for two proposed six-foot high gates.

Variance 2: A variance to reduce the side yard from eight feet to 7.6 feet for an existing house.

Staff Recommendation:

Deny variance 1, case number V-21-127, as the variance fails to meet three of the five criteria for granting said variance.

Approve variance 2, case number V-21-127, as this variance meets all of the five criteria for granting said variance.

II. SITE INFORMATION

- 1. Location: West side of John Anderson Drive, northwest of its intersection with Sunset Boulevard, in the Ormond Beach area.
- 2. Parcel Number(s): 3227-03-02-0040
- 3. Property Size: +/- 17,650 square feet
- 4. Council District: 4
- 5. Zoning: Urban Single-Family Residential (R-3)
- 6. Future Land Use: Urban Low Intensity (ULI)
- 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	Single-Family Residence
East:	R-3	Urban Low Intensity	Single-Family Residence
South:	R-3	Urban Low Intensity	Single-Family Residence
West:	Halifax River	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 Sunset Boulevard, in the Ormond Beach area. The parcel is developed with a 7,155-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 exceeds these requirements at 17,650 square feet and 119 feet wide. 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 applicant purchased the property in December 2020. He recently applied for a fence permit for a four-foot high fence with gates that are six feet high at the highest point for an existing double driveway. Section 72-282(2) of the Zoning Ordinance requires that a fence cannot be more than four feet high within a required front yard and does not differentiate between fences and gates when applying the standard. Several properties in the area appear to have similar gates higher than four feet. Some of these properties received fence permits but did not provide a height measurement for the gates. The applicant believes the gates are necessary for privacy and security to keep people off of the property. The applicant also feels that the proposed gates add to the aesthetic quality of the property and adds character to the neighborhood. As such, the applicant requests a variance to allow the six-foot high gates.

During review of the variance application, it was discovered that the existing residence was built in the incorrect location in 2001. The approved building permit shows an eight-foot side yard setback along the north property line. However, the residence was constructed 7.6 feet from the north property line. As this does not meet the minimum setback requirements on the west side, the residence is considered nonconforming. Therefore, in order to legitimize the location of the existing house and allow the applicants to rebuild if damaged, the applicant requests a variance to the side yard setback for the existing residence.

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.

Variance 1: The property is subject to the standard interpretation of the maximum fence height. Although other properties in the neighborhood have similar gates, and the request is to increase only the height of a portion of the gates, there are no special conditions associated with this variance request.

Staff finds that this criterion is not met.

Variance 2: The existing residence was constructed with building permits in 2001. However, the building was placed approximately six inches north of the location shown on the approved plans. This can be considered a special circumstance as this is the result of a likely surveying or construction error that occurred approximately 20 years ago.

Staff finds that this criterion is met.

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

Variance 1: There are no special circumstances associated with this variance request.

Staff finds that this criterion is not met.

Variance 2: The applicant is not responsible for the likely surveying or construction error that caused the residence to be placed incorrectly.

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.

Variance 1: Literal interpretation of this ordinance would require the applicant to either use no gates, construct four-foot high gates, or have the gates set back at least 30 feet from the front property line. This would not deprive the applicant of commonly enjoyed rights, but may be considered an unnecessary hardship as only a small portion of the center of the gates exceeds the four-foot height requirement. The overriding majority of the fence meets the height requirement.

Staff finds that this criterion is met.

Variance 2: Literal interpretation of this ordinance would prevent the applicant from legitimizing the existing location of the residence. It would be an unnecessary and undue hardship to not legitimize this structure's placement after more than 20 years.

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.

Variance 1: The applicant explained that he believes taller gates are necessary for safety and visual appeal. However, a gated driveway is not necessary to make reasonable use of the land.

Staff finds that this criterion is not met.

Variance 2: This is the minimum variance that will allow the owners the ability to reconstruct the existing residence in its current location if damaged or destroyed.

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.

Variance 1: 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 applicant has received a permit to construct a four-foot fence around the front of the property in compliance with the Zoning Ordinance. The proposed gates exceed the maximum fence height for only a small portion of their width and are similar in height and design to several others along John Anderson Drive. It is unlikely that the gates will have any impact on visibility. It is unlikely that the grant of this variance would be injurious to the area.

Staff finds that this criterion is met.

Variance 2: The residence has been in place since 2001 and was incorrectly constructed due to a likely surveyor or construction error. There have been no complaints regarding the placement of the residence, and the error was not discovered until the survey was examined during review of this variance request. The continued existence of the residence is not injurious to the area.

Staff finds that this criterion is met.

V. STAFF RECOMMENDATION

Deny variance 1, case number V-21-127, as this variance fails to meet three of the five criteria for granting said variance.

Approve variance 2, case number V-21-127, as this variance meets all 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 condition is provided for consideration:

1. Variance 1 is limited to gates as shown over the existing driveway on the variance site plan.

VI. ATTACHMENTS

- Variance Site Plan
- Written Petition
- Elevation Plan
- Survey
- Environmental Comments
- 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.



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?

WE HAVE HAD NUMEROUS PEOPLE ENTER OUR PROPERTY WITHOUT PERMISSION. HAVING A FIVE YEAR OLD DAUGHTER I NEED TO PUT UP A FENCE AND GATE. FOR ADDED SECURITY. ALSO NEED TO FORMALIZE THE 7FT 6IN SETBACK ON THE NORTH SIDE THESE CIRCUMSTANCES WERE NOT CAUSED BY ME

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?

I NEED THE ADDED SECURITY OF A 6 FEET HIGH GATE. SOME OF OUR NEIGHBOURS HAVE ADDED GATES AND FENCES TO PREVENT SOLICITORS ALSO IN THE EVENT THE PROPERTY NEEDS TO BE REBUILT I WOULD LIKE TO NORMALIZE THE SETBACK ON THE NORTH SIDE OF THE PROPERTY

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.

THE APPROVED 4 FEET GATE CAN ALLOW PEOPLE TO JUMP OVER EASILY THE FENCE HAS SPIKES BUT THE GATE DOES NOT. I AM ONLY REQUESTING THE VARIANCE FOR THE GATE. THE SETBACK VARIANCE WILL AVOID ANY ISSUES TO REBUILD IN THE FUTURE

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?

WE ARE USING DAVE'S FENCE - A REPUTABLE FENCE CONTRACTOR IN VOLUSIA COUNTY. THE FENCE/GATE IS NOT ASTHETICALLY BAD AND WILL ACTUALLY ADD TO THE BEAUTY OF OUR PROPERTY WHILE PROVIDING SECURITY

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

THE GATE AND FENCE WILL NOT BE INJURIOUS AND WILL ADD TO THE BEAUTY OF JOHN ANDERSON DR. ADDING 6 INCHES OF VARIANCE TO THE NORTH SIDE WILL NOT BE INJURIOUS TO MY NEIGHBOUR.



1794 State Avenue
Holly Hill, FL 32117
(386) 672-4340
eastcoastornamentalwelding.com

Date: August 2, 2021

Revisions:

Drawn by: Melissa Adjemian

Contractor Name:

Customer Name: Arun Reddy

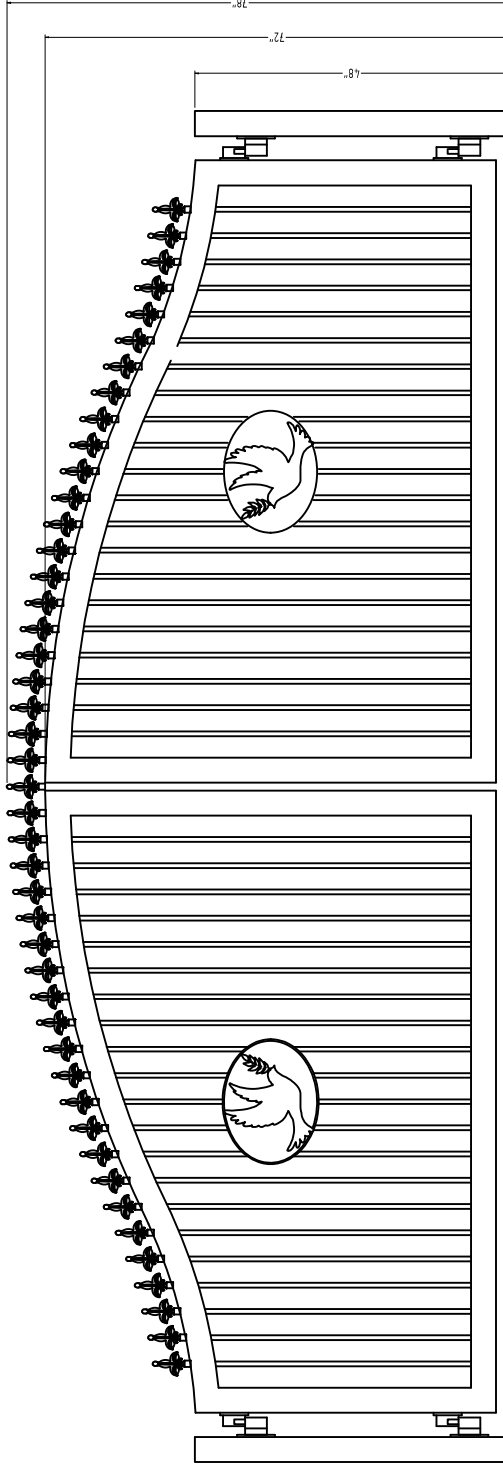
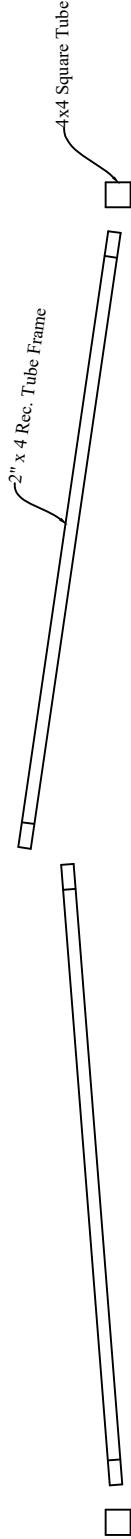
Job Site Address:

2124 John Anderson Dr.
Ormond Beach, FL 32176

Description:

Proposed Driveway Gates

Sht. No. 1



Boundary Survey

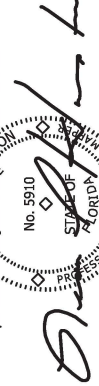
LEGAL DESCRIPTION: A PORTION OF LOTS 2 & 3, COLONIAL REALTY COMPANY'S REPLAT, AS RECORDED IN MAP BOOK 6, PAGE 18, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, DESCRIBED AS FOLLOWS, BEGINNING AT AN INTERSECTION OF THE CENTER LINE OF SUNSET BOULEVARD AS SHOWN ON MAP RECORDED IN MAP BOOK 19, PAGE 129, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, WITH THE WESTERLY LINE OF JOHN ANDERSON HIGHWAY AS NOW OCCUPIED AND USED; THENCE N 18°51'30" W ALONG THE WESTERLY LINE OF SAID JOHN ANDERSON HIGHWAY A DISTANCE OF 129.38 FEET; THENCE S 83°00'30" W A DISTANCE OF 141 FEET TO THE EASTERLY SHORE LINE OF THE HALIFAX RIVER; THENCE SOUTHEASTERLY ALONG SAID EASTERLY SHORE LINE OF SAID HALIFAX RIVER TO A POINT WHICH IS A WESTERLY LINE OF SAID SUNSET BOULEVARD; THENCE N 88°36'30" E ALONG SAID CENTER LINE EXTENDED A DISTANCE OF ABOUT 128.8 FEET TO THE PLACE OF BEGINNING, EXCEPTING THEREFROM THE SOUTHERLY 10 FEET AS MEASURED AT RIGHT ANGLES TO THE CENTER LINE OF SAID SUNSET BOULEVARD, WHICH IS RESERVED FOR PASSAGE TO RIVER.

- A/C - AIR CONDITIONER
- A.E. - ALLEY EASEMENT
- B.C. - BLOCK CORNER
- CLB - CONCRETE BLOCK
- CLC - CONCRETE BLOCK STRUCTURE
- C.B.S. - CONCRETE BLOCK MONUMENT
- C.M. - CONCRETE
- CONG. - CONCRETE
- D.E. - DRAINAGE EASEMENT
- E.P. - EDGE OF PAVEMENT
- F.C.C. - FOUND CROSS CUT
- F.F.E. - FINISHED FLOOR ELEVATION
- F.I. - FOUNDATION
- I.D. - IDENTIFICATION
- I.P. - IRON PIPE
- I.R. - IRON ROD
- I.R.C. - IRON ROD & CAP
- L.B. - LAND SURVEYING BUSINESS
- L.S. - LAND SURVEYOR
- L.E. - LANDSCAPE EASEMENT
- M. - MEASURED
- M.E. - MEASURED EASEMENT
- M.S. - MAIL AND DISK
- P. - PLAT
- P.E. - PEDESTRIAN EASEMENT
- P.C. - POINT OF COMMENCEMENT
- P.C.C. - POINT OF CURVATURE
- P.C.P. - POINT OF CURVATURE
- P.C.P. - PERMANENT CONTROL POINT
- P.L. - PROPERTY LINE
- P.O.B. - POINT OF BEGINNING
- P.O.C. - POINT OF COMMENCEMENT
- P.O.L. - POINT OF BEGINNING
- P.R.C. - POINT OF REVERSE CURVE
- P.R.M. - PERMANENT REFERENCE MONUMENT
- P.D.A.E. - PRIVATE DRAINAGE AND ALLEY EASEMENT
- P.F. - PUBLIC
- P.T. - POINT OF TANGENT
- R/W - RIGHT OF WAY
- S/W - SIDEWALK
- U.E. - UTILITY EASEMENT
- W.F.S. - WOOD FRAME STRUCTURE
- - RIGHT-OF-WAY LINE
- - CENTERLINE
- - BARG WIRE FENCE
- - WOOD FENCE
- - CHAIN LINK FENCE
- - PLASTIC FENCE

BEARINGS SHOWN HEREON ARE BASED UPON THE WESTERLY LINE OF JOHN ANDERSON DRIVE BEING N 18°51'30" W PER DEED

- NOTES:
- 1) This survey is based on the legal description as provided by the Client.
 - 2) This Surveyor has not abstracted the land shown hereon for easements, rights of way or restrictions of record which may affect the title or use of the land.
 - 3) Do not reconstruct property lines from building ties.
 - 4) No footing or overhangs have been located except as shown.
 - 5) No improvements or utilities have been located except as shown.
 - 6) Not valid without a signature and the authorized electronic seal or the original raised seal of a Florida licensed Surveyor and Mapper.

Certification: I certify that this survey was made under my direction and that it meets the minimum technical standards set forth in Chapter 112, Florida Statutes, and the rules and regulations of the Board of Professional Surveyors and Mappers pursuant to Section 112.04, Florida Statutes.



LEON L. HAMPTON, P.S.M. NO. 5910

SEE SHEET 2 FOR SURVEY DETAILS
SHEET 1 OF 2



2124 JOHN ANDERSON DRIVE
ORMOND BEACH, FL.

**SMITH BIGMAN
BROCK, P.A.**



Long Surveying, Inc.
"Specializing in Residential Surveying"
LB No. 7371
1061 S. Sun Dr. Ste. #1113
Lake Mary, FL 32746
Office 407-330-9717
Fax 407-330-9775
www.longsurveying.com

DRAWN BY: KZR MA
CHECKED BY: BRETT

CERTIFIED TO:
ARUN REDDY
SMITH BIGMAN BROCK, P.A.

COMMUNITY NO: 125155
PANEL: 0204
FLOOR ZONE: X/AE
SUFFIX: K
F.I.R.M. DATE: 09/29/17

SURVEY NO: 111795
FIELD DATE: 11/06/20

Boundary Survey

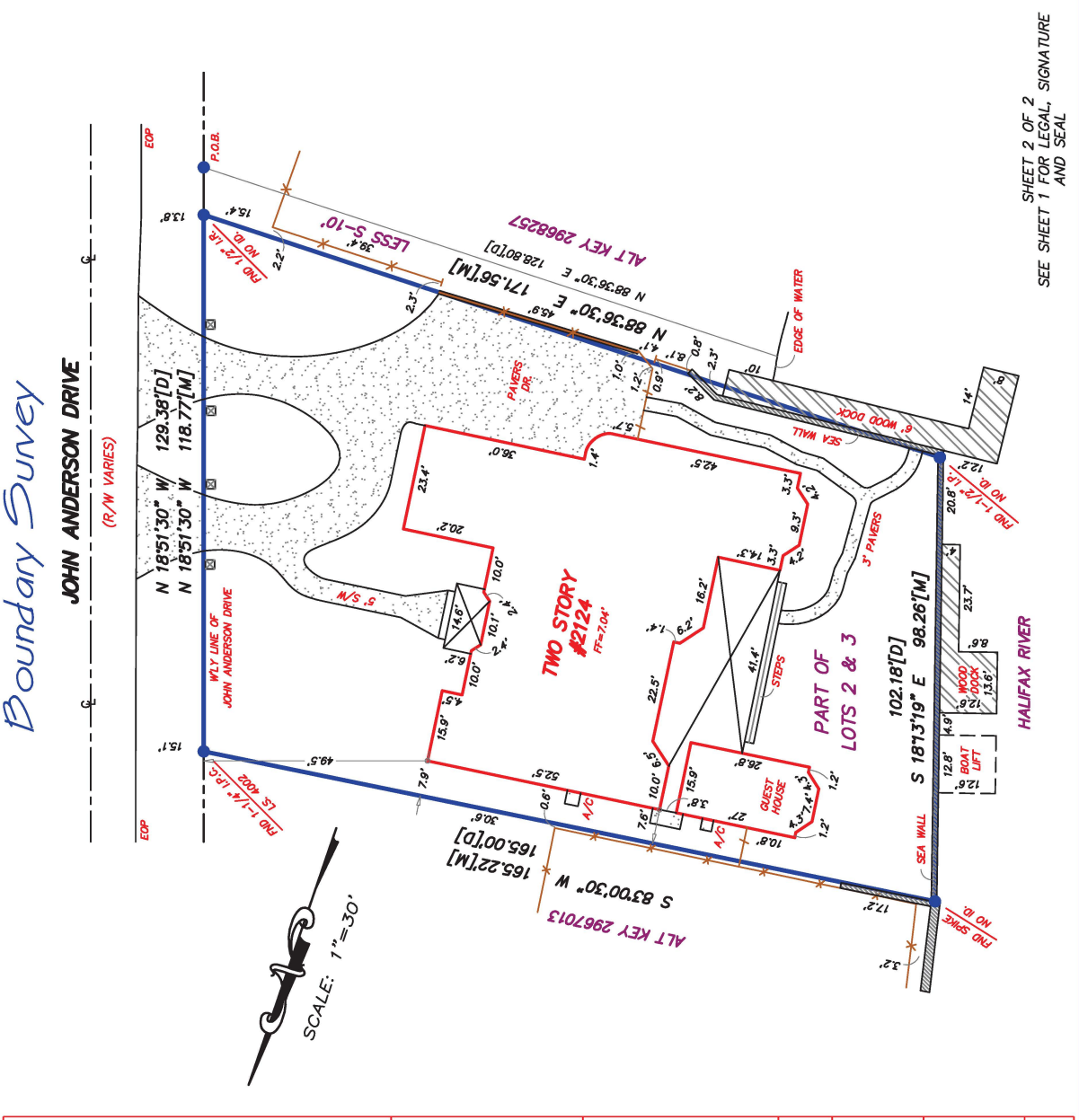
A/C	— AIR CONDITIONER
A/E	— ALLEY EASEMENT
B/C	— BLOCK CORNER
B/S	— BLOCK SURVEY
C.B.	— CONCRETE BLOCK
C.B.S.	— CONCRETE BLOCK STRUCTURE
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FIN.	— FINISH
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I.R.	— IRON ROD
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L.B.	— LAND SURVEYING BUSINESS
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M.	— MEASURED
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P.T.	— POINT OF TANGENT
R/W	— RIGHT OF WAY
S/W	— SIDEWALK
U.E.	— UTILITY EASEMENT
W.F.S.	— WOOD FRAME STRUCTURE
—	— RIGHT-OF-WAY LINE
—	— CENTERLINE
—	— BARB WIRE FENCE
—	— WOOD FENCE
—	— CHAIN LINK FENCE
—	— PLASTIC FENCE

BEARINGS SHOWN HEREON ARE BASED UPON THE WESTERLY LINE OF JOHN ANDERSON DRIVE BEING N 18°51'30" W PER DEED

- NOTES:
- 1) This survey is based on the legal description as provided by the Client.
 - 2) This Surveyor has not abstracted the land shown hereon for easements, rights of way or restrictions of record which may affect the title or use of the land.
 - 3) Do not reconstruct property lines from building ties.
 - 4) No footing or overhangs have been located except as shown.
 - 5) No improvements or utilities have been located except as shown.
 - 6) Not valid without a signature and the authorized electronic seal or the original raised seal of a Florida licensed Surveyor and Mapper.

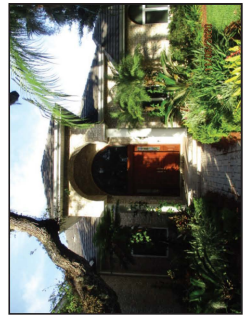
Declaration: I certify that this survey was made under my direction and that it meets the minimum technical standards set forth in Chapter 125, Florida Statutes and the Rules and Regulations of the State Board of Professional Engineers and Geospatial Technicians, Chapter 63-17.002, Florida Statutes, pursuant to Section 472.027, Florida Statutes.

LEON L. HAMPTON P.S.M. NO. 5910



SEE SHEET 1 FOR LEGAL, SIGNATURE AND SEAL

SHEET 2 OF 2



2124 JOHN ANDERSON DRIVE
ORMOND BEACH, FL.

**SMITH BIGMAN
BROCK, P.A.**



Long Surveying, Inc.
"Specializing in Residential Surveying"
LB No. 7371
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Lake Mary, FL 32746
Office 407-330-9717
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www.longsurveying.com

DRAWN BY: KZR MA
CHECKED BY: BRETT

CERTIFIED TO:
ARUN REDDY
SMITH BIGMAN BROCK, P.A.
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
AMERIS BANK

COMMUNITY NO: 125155
PANEL: 0204
SUFFIX: K
F.L.R.M. DATE: 09/29/17
FLOOD ZONE: X/AE

SURVEY NO: 111795
FIELD DATE: 11/06/20

*Inter-Office
Memorandum*



TO: Trevor Bedford, Planner II **DATE:** August 8, 2021
FROM: Samantha J. West, Environmental Specialist III
SUBJECT: Parcel #: 3227-03-02-0040
Case #: V-21-127

Environmental Permitting (EP) has reviewed the application for a variance to maximum fence height on Urban Single-Family Residential (R-3) 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).

Wetlands

As the property adjoins an OFW, 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.

Photographs

Aerial photograph of the area



Aerial photograph of the property



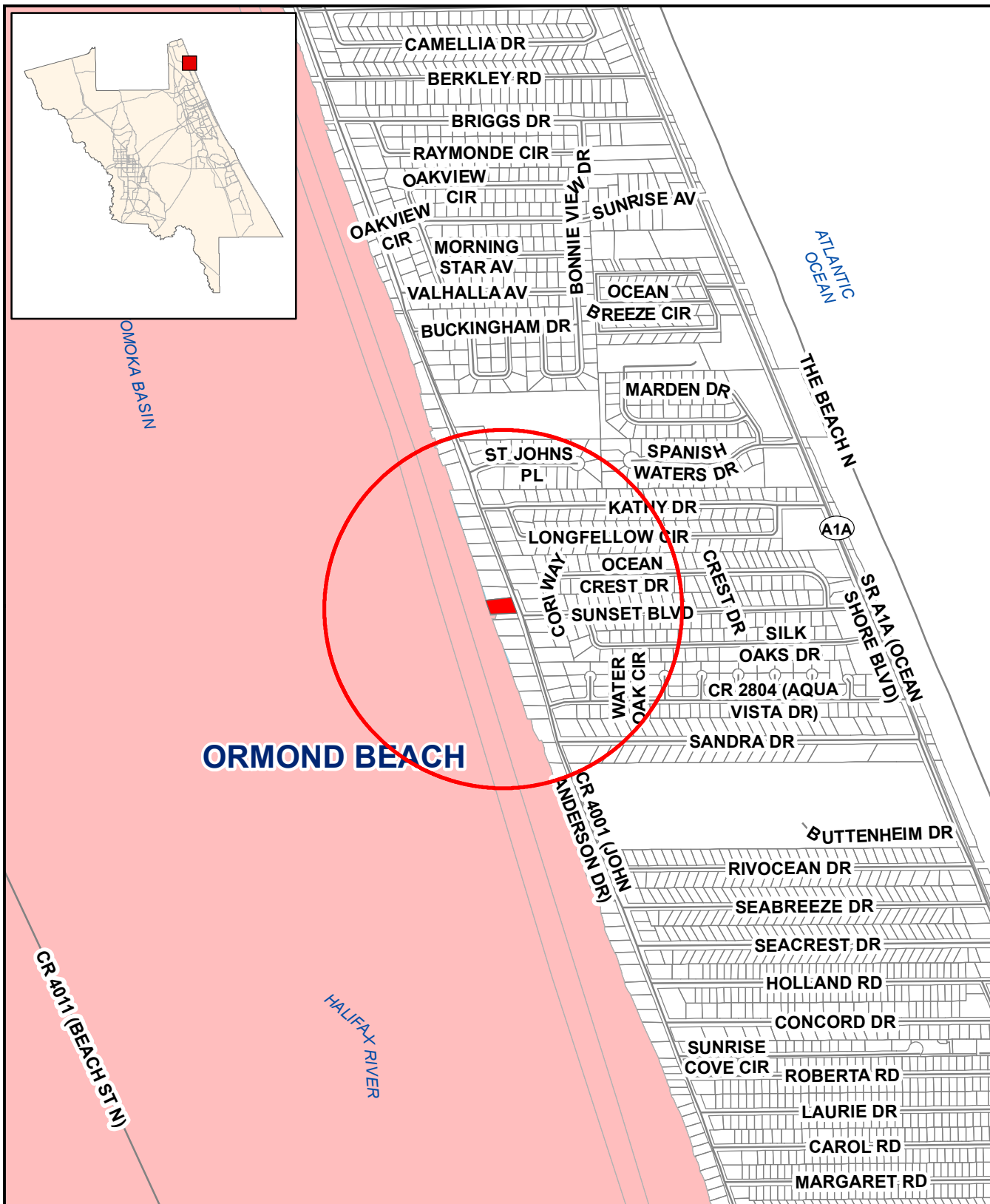
Photograph of driveway



Photograph of driveway



PROPERTY LOCATION V-21-127



ORMOND BEACH

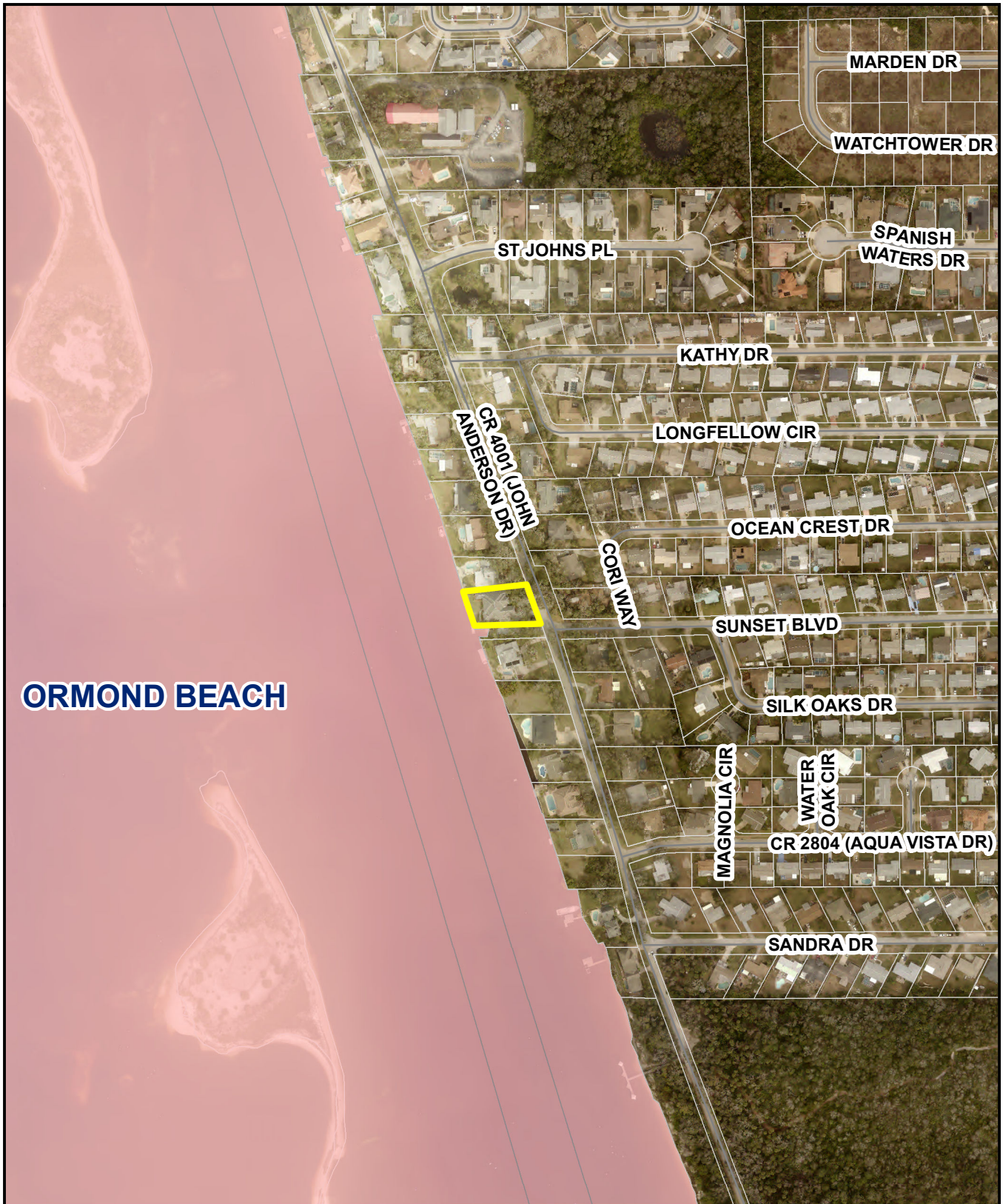
 SUBJECT PROPERTY



1" = 1,000'

8/4/2021

AERIAL
V-21-127



ORMOND BEACH

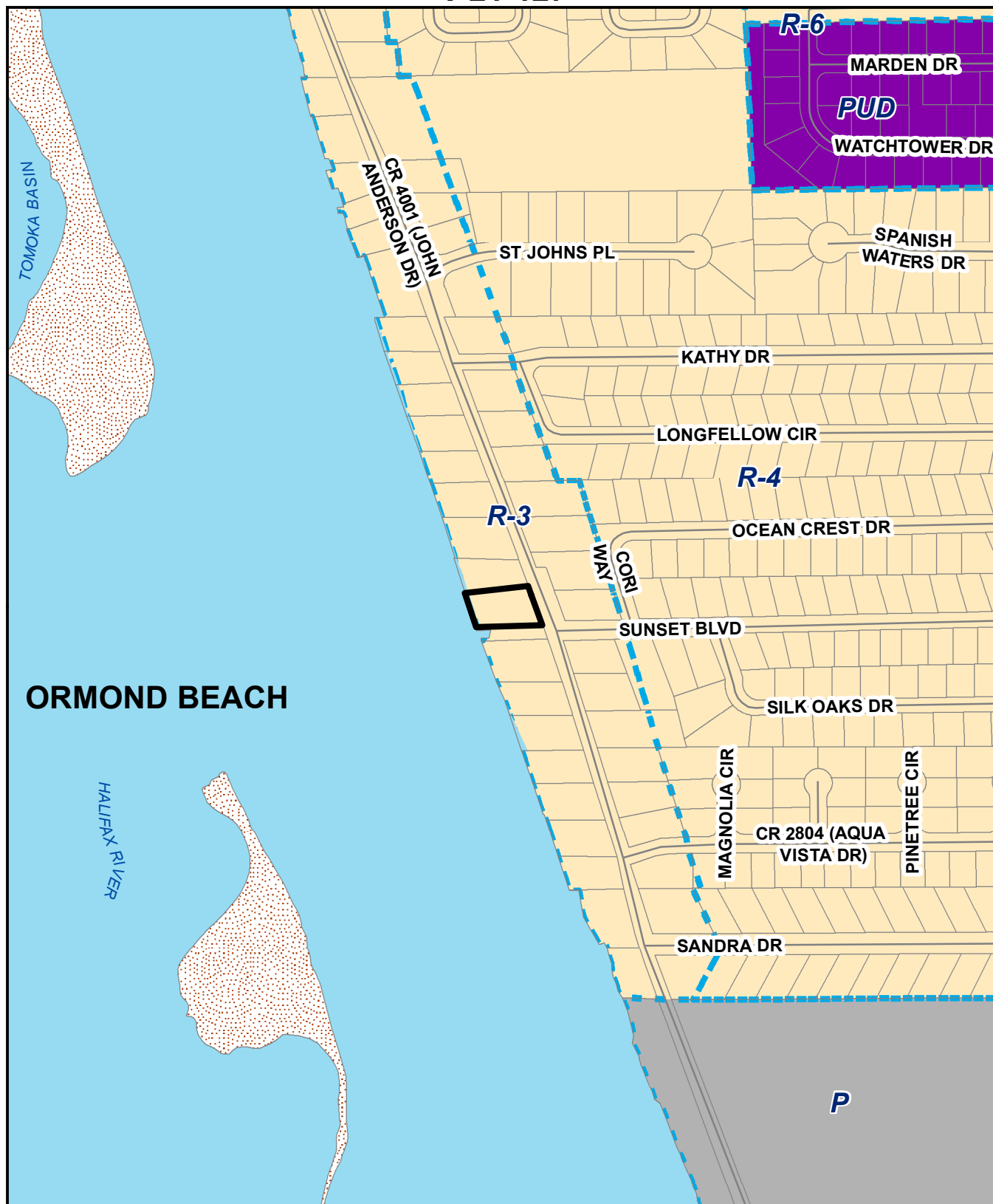
 SUBJECT PROPERTY

IMAGE DATE 2018



1" = 400'
8/4/2021

ZONING CLASSIFICATION V-21-127



 SUBJECT PROPERTY



1" = 400'

8/4/2021



ZONING BNDY



INCORPORATED



PLANNED UNIT DEVELOPMENT

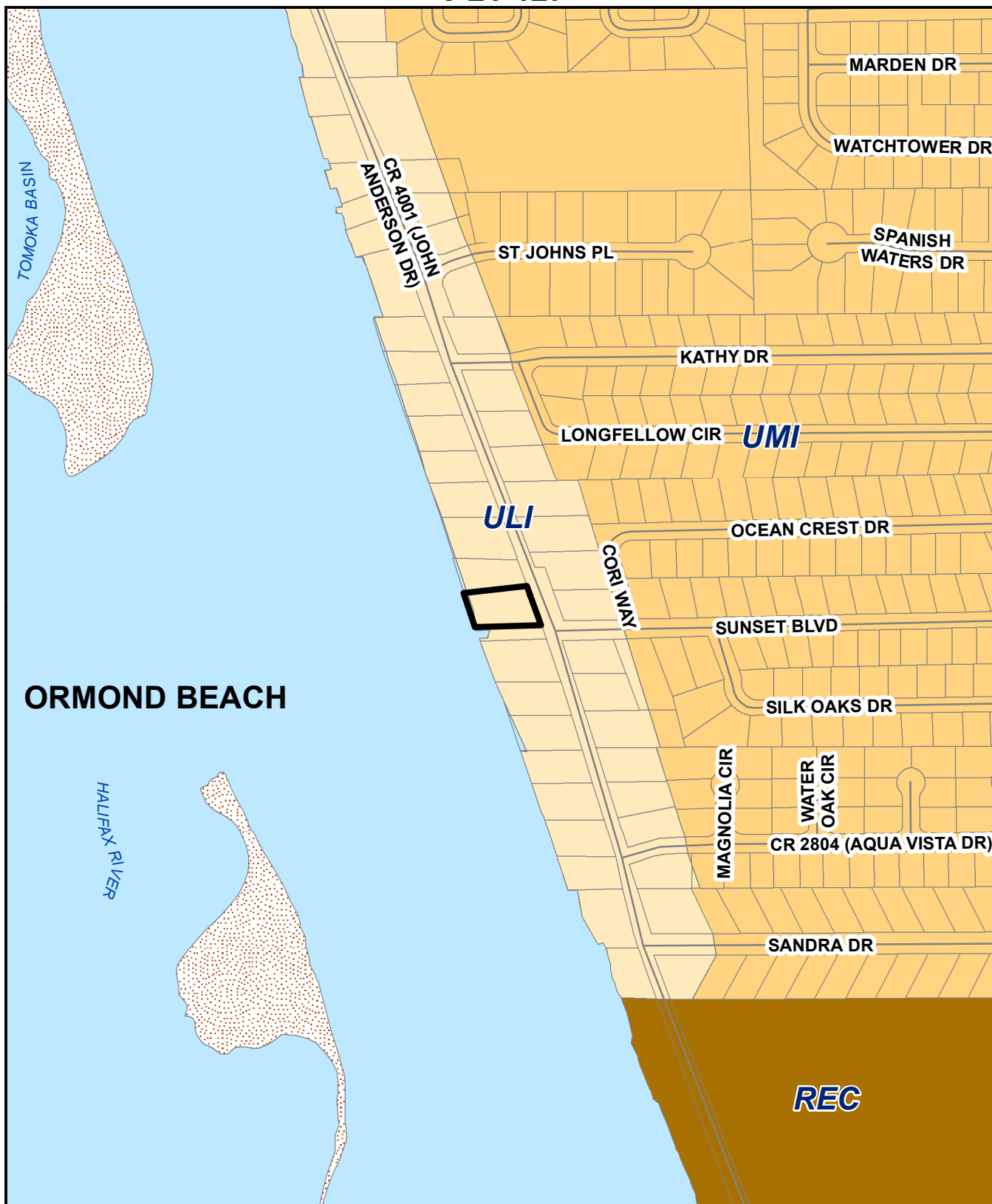


RESIDENTIAL



PUBLIC

FUTURE LAND USE V-21-127



 SUBJECT PROPERTY

 INCORPORATED

 RECREATION

 URBAN LOW INTENSITY

 URBAN MEDIUM INTENSITY

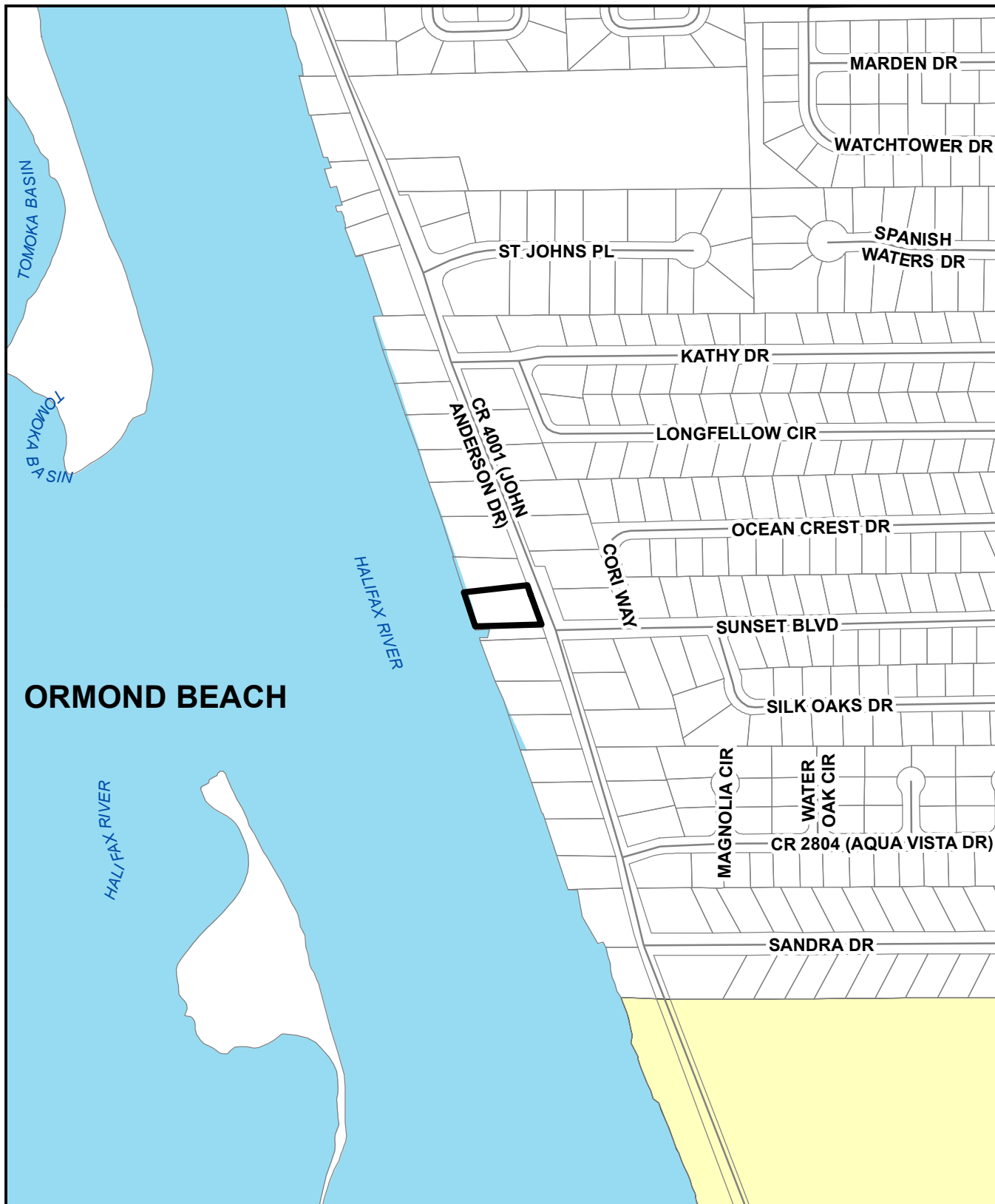
 WATER







1" = 400'

8/4/2021

ECO/NRMA OVERLAY V-21-127



-  SUBJECT PROPERTY
-  ECO
-  NRMA

 1" = 400'
8/4/2021