



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

**PUBLIC HEARING:** November 18, 2021 – Planning and Land Development Regulation Commission (PLDRC)

**CASE NUMBER:** V-21-128

**SUBJECT:** Variances to the minimum yard requirements on Urban Single-Family Residential (R-4) zoned property

**LOCATION:** 3512 Cardinal Boulevard, Daytona Beach

**APPLICANT(S):** Stacey and Thomas Gray

**OWNER(S):** Thomas Gray

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## **I. SUMMARY OF REQUEST**

The applicants are seeking variances to legitimize the placement of existing accessory structures and a proposed canopy structure. The requested variances are as follows:

Variance 1: A variance to the minimum north side yard from the required five feet to 0 feet for an existing 224-square-foot shed.

Variance 2: A variance to the minimum rear yard from the required five feet to 0 feet for an existing 224-square-foot shed.

Variance 3: A variance to the minimum south side yard from the required five feet to 1.5 feet for an existing 180-square-foot deck.

Variance 4: A variance to the minimum north side yard from the required five feet to 0 feet for an existing 257-square-foot deck.

Variance 5: A variance to the minimum rear yard from the required five feet to 0 feet for a proposed 121-square-foot canopy structure.

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

Variance 1-4: Deny variances 1-4, case number V-21-128, as the variances fail to meet one of the five criteria for granting said variances.

Variance 5: Deny variance 5, case number V-21-128, as the variance fails to meet two of the five criteria for granting said variance.

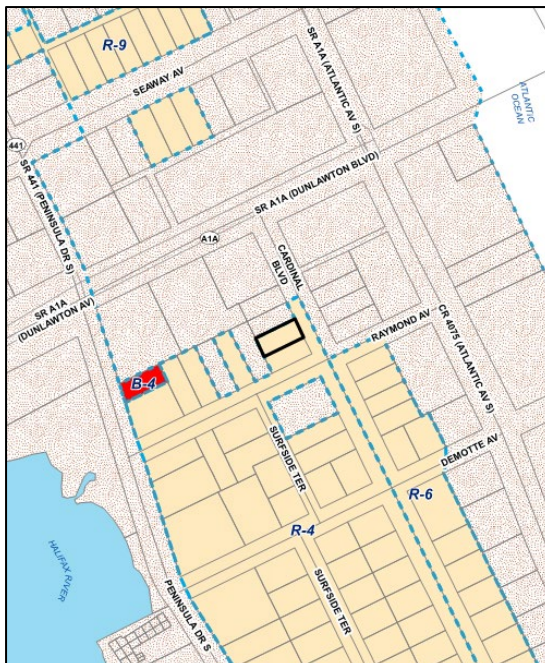
## II. SITE INFORMATION

1. Location: West side of Cardinal Boulevard, approximately 50 feet north of its intersection with Raymond Avenue, in the Daytona Beach Shores area.
2. Parcel Number(s): 6302-01-05-0050
3. Property Size: +/- 5,750 square feet
4. Council District: 2
5. Zoning: Urban Single-Family Residential (R-4)
6. Future Land Use: Urban Low Intensity (ULI)
7. Overlays: N/A
8. Local Plan Area: N/A
9. Adjacent Zoning and Land Use:

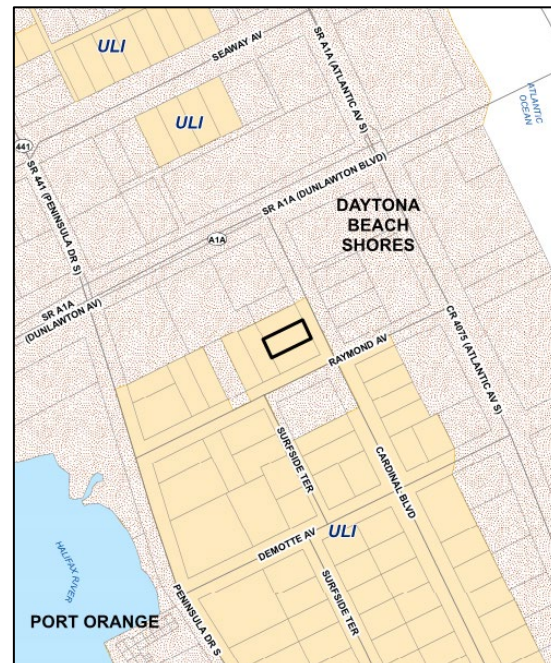
DIRECTION	ZONING	FUTURE LAND USE	EXISTING USE
North:	RSF-2 (Incorporated)	Low Density Residential (Incorporated)	Single-Family Residence
East:	GC-2 (Incorporated)	Retail/Service Commercial (Incorporated)	Single-Family Residence
South:	R-4	Urban Low Intensity	Single-Family Residence
West:	RSF-2 (Incorporated)	Low Density Residential (Incorporated)	Single-Family Residence

10. Maps:

### ZONING MAP



### FUTURE LAND USE MAP



### III. BACKGROUND AND OVERVIEW

The subject property is located on the west side of Cardinal Boulevard, approximately 50 feet north of its intersection with Raymond Avenue, in the Daytona Beach Shores area. The parcel is developed with a 1,194-square-foot residence, a shed, a pool, and decks. The parcel is zoned Urban Single-Family Residential (R-4). The R-4 zoning classification requires a minimum lot size of 7,500



square feet and minimum lot width of 75 feet for a single-family lot. The lot does not meet these requirements at approximately 5,750 square feet and 50 feet in width. However, the applicants have provided a nonconforming lot letter that indicates the lot is a legal nonconforming lot. The applicable minimum yard requirements for a principal structure on this property are as follows: front – 25 feet, side – 20 feet combined with a minimum of eight feet on any one side, and rear – 20 feet.

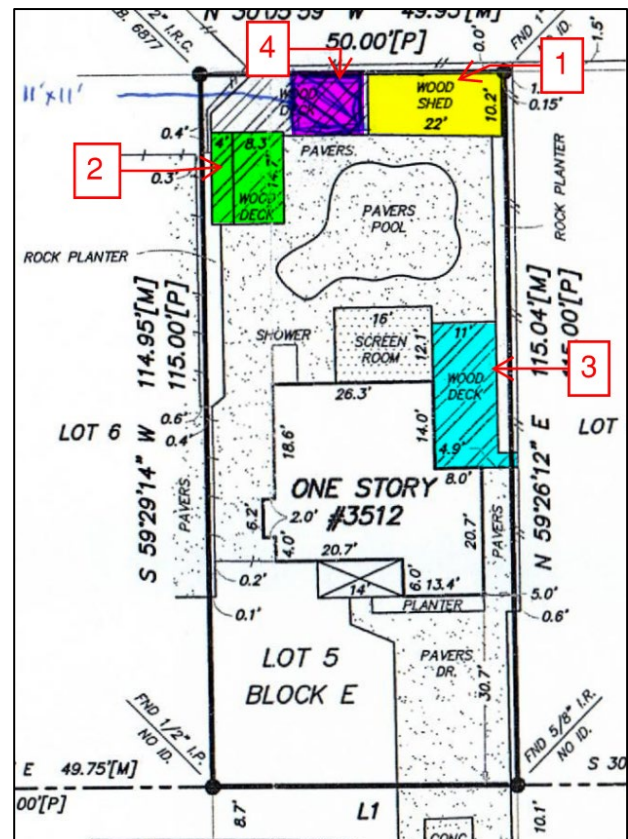
The applicants purchased the property in 2013. In March 2020, a code enforcement complaint was received for a shed without permits. While the applicants attempted to obtain permits for the shed, additional structures were found that do not meet the required setbacks. The applicants are removing a deck in the southwest corner of the property in order to reduce the necessary variances and have applied for variances to legitimize the placement of structures that were built without the benefit of a building permit. A description of the structures is as follows and shown on the survey to the right:

Structure 1: An existing 224-square-foot shed

Structure 2: An existing 180-square-foot deck.

Structure 3: An existing 257-square-foot deck.

Structure 4: A proposed 121-square-foot canopy over an existing deck.





Structure 1 (Variances 1 and 2): This structure is an existing 224-square-foot shed. Based on aerial photographs, it was built in 2017 or 2018 and enlarged by January 2019. This shed replaced a previous shed after Hurricane Irma. It is unclear when the previous shed was built, but it is visible on aerial photographs since at least 2003. The previous shed appears to have been placed along the rear property line as well without permits and without complying with setbacks. The replacement is further north, in the northwest corner of the property. While it appears the previous shed was nonconforming to setbacks, any replacement of a nonconforming structure must comply with current zoning standards. As such, the applicants request variances to the minimum rear and north side yards from five feet to 0 feet for the existing shed.

Structure 2 (Variance 3): This structure is an existing 180-square-foot wooden deck that lies approximately 1.5 feet from the southern side property line. A covered canopy structure is placed over an approximately 122-square-foot portion of the deck. It is unclear when the deck was built. However, the canopy structure over the deck appears in aerial photos from 2008, prior to the applicants' purchase of the property. The covered canopy meets the required five-foot side yard setback, however, the deck encroaches into the required yard. As such, the applicants request a variance to the minimum south side yard from five feet to 1.5 feet for the existing deck.

Structure 3 (Variance 4): This structure is an existing 257-square-foot wooden deck. The deck was recently built by the applicants. The deck does not meet the required five-foot side yard setback and encroaches onto the neighboring property to the north by approximately one-foot. The deck must be modified to eliminate the encroachment. As such, the applicants request a variance to the minimum north side yard from the required five feet to 0 feet for the existing deck.

Structure 4 (Variance 5): This structure is a proposed 121-square-foot covered canopy structure over an existing deck. The applicants currently use a temporary tent in this location and would like to place a permanent structure in order to increase the aesthetics of the property and have a more stable structure. The applicants wish to place the structure in line with the existing shed, which is placed on the northern property line. As such, the applicants request a variance to the rear side yard from the required five feet to 0 feet for the proposed canopy structure.

#### **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.***

Variances 1-5 (Structures 1-4): The lot is smaller than the minimum required by the R-4 zoning classification by 1,750 square feet in area and 25 feet in lot width. This provides less room than typical for structures to meet the required setbacks.

Staff finds that this criterion is met.

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

Variances 1-5 (Structures 1-4): The applicants are not responsible for the size of the lot.

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.***

Variances 1-4 (Structures 1-3): Literal interpretation of this ordinance would require that the structures be modified to meet the required five-foot side yard setback. The ability to build accessory structures within the required five-foot setback is not a right commonly enjoyed by others in the same zoning classification.

Staff finds that this criterion is not met.

Variance 5 (Structure 4): Literal interpretation of this ordinance would not allow the proposed canopy to be constructed. The ability to build such a structure abutting a property line is not a right commonly enjoyed by others.

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.***

Variances 1-4: (Structures 1-3) These are the minimum variances to allow the existing structures to remain as currently located.

Staff finds that this criterion is met.

Variance 5 (Structure 4): The structure could be placed in compliance with the required five-foot setback for accessory structures. Additionally, it does not appear that this structure is necessary to make 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.***

Variances 1 and 2 (Structure 1): Other properties in the area, including the immediate neighbor to the north, have accessory structures at or near property lines. It is unlikely that the grant of these variances would be injurious to the area. Additionally, the applicants have provided letters of support from neighbors.

Staff finds that this criterion is met.

Variances 3 and 4 (Structures 2 and 3): These structures are decks that are not visible over a fence. If the decks were pavers or concrete, they would not be subject to setback requirements. If structure 3 is modified to be entirely on the applicants' property, it is unlikely that the grant of these variances would be injurious to the area. Additionally, the applicants have provided letters of support from neighbors.

Staff finds that this criterion is met.

Variance 5 (Structure 4): Other properties in the area, including the immediate neighbor to the north, have accessory structures at or near property lines. It is unlikely that the grant of this variance would be injurious to the area.

Staff finds that this criterion is met.

## **V. STAFF RECOMMENDATION**

Variance 1-4: Deny variances 1-4, case number V-21-128, as the variances fail to meet one of the five criteria for granting said variances.

Variance 5: Deny variance 5, case number V-21-128, as the variance fails to meet two of the five criteria for granting said variance.

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

1. The variances are limited to the size and location of the structures as shown on the variance site plan attached.
2. If the existing accessory structures are removed or damaged in excess of 75 percent of the assessed value, as assessed by the Property Appraiser, any reconstruction of the structure shall thereafter comply with the applicable requirements of the Zoning Ordinance, or obtain approval for a new variance.
3. The property owners or authorized agent(s) shall obtain and complete all required building permits and inspections for existing structures within 90 days of rendition of the variance determination.

4. Structure number 3 (variance 4) shall be modified to remove the encroachment onto the neighboring property.

## **VI. ATTACHMENTS**

- Variance Site Plan
- Written Petition
- Survey
- Environmental Comments
- Land Development Comments
- Letters of Support
- Photographs
- Map Series

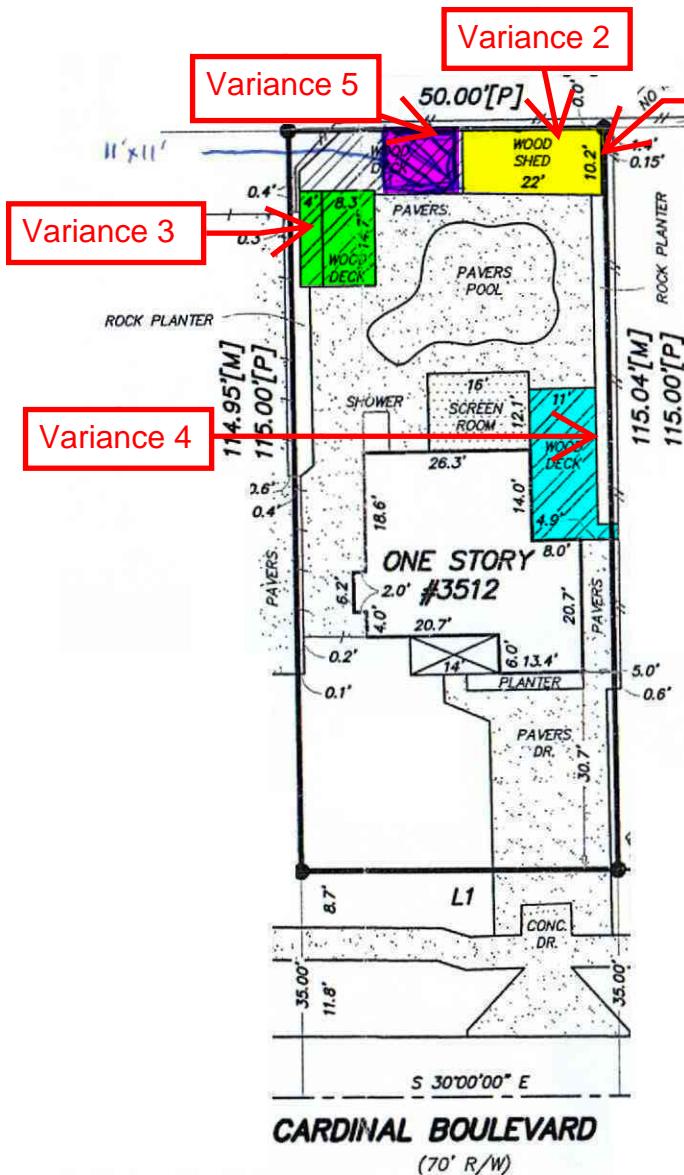
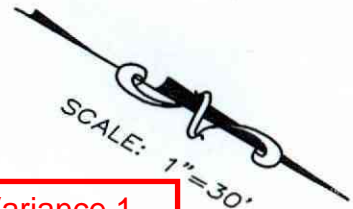
## **VII. AUTHORITY AND PROCEDURE**

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 5:** A variance to the minimum rear yard from the required five feet to 0 feet for a proposed 121-square-foot canopy structure.



## 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 special conditions are pre existing structures on property. The circumstance is we inherited those pre existing structures from previous owners was not disclosed at time of purchase and is and has been recorded on the appraisers for nearly 20 years, well existing before out purchase in 2013.

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?

Neighbors on my west and south all have similar structures on property line, along with many other nearing neighbors in area. Removal or alterations of any of the said structures would be a great financial burden that we do not have nor the ability to sustain.

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.

A minimum variance is what is required for this property, and appears what has been required of other properties in the area.

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?

The property value and visual appearance has upgraded the community and neighboring homes increasing their value as well with the improvements and repairs that we have made. Not to mention the increasing the safety from the improvements and repairs bringing things up to hurricane standards.

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

All structures are inside of our property line and have not caused or proposed any harm or limitations to neighbors themselves or abutting neighbors property.

LEGAL DESCRIPTION: LOT 5, BLOCK E, HALIFAX ESTATES, ACCORDING TO MAP THEREOF AS RECORDED IN MAP BOOK 6, PAGE 72 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.



3512 CARDINAL BOULEVARD  
DAYTONA BEACH, FL.

# LONG SURVEYING, INC.



**Long Surveying, Inc.**  
"Specializing in Residential Surveying"  
L.B. No. 7371  
1061 S. Sun Dr. Ste. #1113  
Lake Mary, FL 32746  
Office 407-330-9717 or 407-330-9716  
Fax 407-330-9775  
www.longsurveying.com

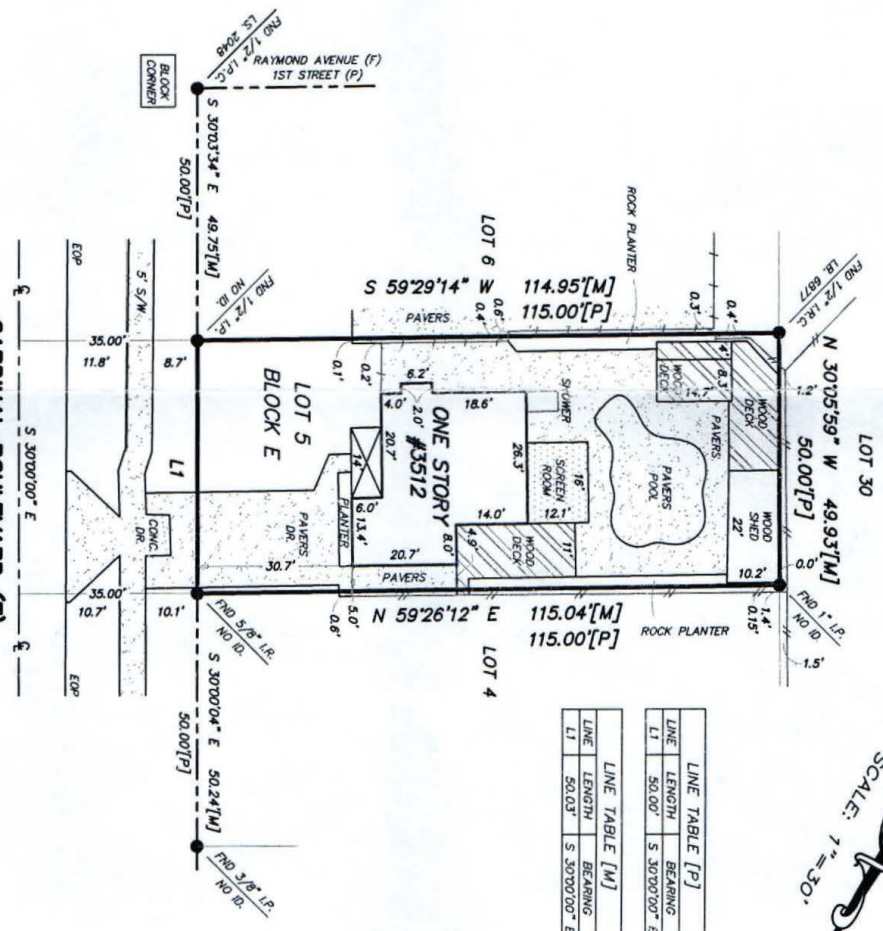
DRAWN BY: KZR AK  
CHECKED BY: BRETT

CERTIFIED TO: THOMAS GRAY

COMMUNITY NO. 125100  
PARCEL 0388  
FLAM DATE: 09/29/17  
FLOOD ZONE: X

SURVEY NO. 116303  
FIELD DATE: 05/10/21

## Boundary Survey



LINE TABLE [P]		
LINE	LENGTH	BEARING
L1	50.00	S 30°00'00" E

LINE TABLE [M]		
LINE	LENGTH	BEARING
L1	50.03	S 30°00'00" E

CARDINAL BOULEVARD (F)  
(70' R/W)  
PENINSULA BOULEVARD (P)

- A/C - AIR CONDITIONER
- A/E - ALLEY EASEMENT
- B/C - BLOCK CORNER
- B/L - BLOCK
- C.B. - CONCRETE BLOCK
- C.B.S. - CONCRETE BLOCK STRUCTURE
- C.M. - CONCRETE MONUMENT
- C.M. - CONCRETE
- D.E. - DRAINAGE EASEMENT
- E.O.P. - EDGE OF PAVEMENT
- F.C.C. - FOUND CROSS CUT
- FND - FOUND
- ID. - IDENTIFICATION
- IR. - IRON PIPE
- IR. - IRON ROD & CAP
- IR.C. - IRON ROD
- L.B. - LAND SURVEYING BUSINESS
- L.S. - LAND SURVEYOR
- L.E. - LANDSCAPE EASEMENT
- M.E. - MEASUREMENT EASEMENT
- M.E. - MEASUREMENT
- M.D. - MAIL AND DISK
- P. - PLAT
- P.E. - PEDESTAL EASEMENT
- P.C. - POINT OF COMMENCEMENT
- P.C.P. - POINT OF CONTROL POINT
- P.L. - PROPERTY LINE
- P.O.B. - POINT OF BEGINNING
- P.O.C. - POINT OF COMMENCEMENT
- P.R.C. - POINT OF REVERSE CURVE
- P.R.M. - PRIVATE DRIVEWAY AND ALLEY EASEMENT
- P.O.A.E. - POINT OF ANGLE
- R/W - RIGHT-OF-WAY
- S/W - SIDEWALK
- U/E - UTILITY EASEMENT
- M.F.S. - WOOD FRAME STRUCTURE
- RIGHT-OF-WAY LINE
- CENTERLINE
- BRICK WHITE FENCE
- WOOD FENCE
- CHAIN LINK FENCE
- PLASTIC FENCE

BEARINGS SHOWN HEREON ARE BASED UPON THE CENTERLINE OF CARDINAL BOULEVARD BEING S 30°00'00" E ASSUMED

NOTES:

- 1) This survey is based on the legal description as provided by the Client.
- 2) This Surveyor has not destroyed 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 toe.
- 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 authenticated electronic seal or the original and a Florida Licensed Surveyor and Mapmaker.

Certification: I, **LEON L. HAMPTON**, being duly sworn, depose and say that the foregoing is a true and correct copy of the original survey as shown to me by the Surveyor and Mapmaker, and that the Surveyor and Mapmaker are duly licensed and qualified to perform the duties of a Surveyor and Mapmaker in the State of Florida.

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



**Inter-Office**  
**Memorandum**



**TO:** Trevor Bedford, Planner II **DATE:** August 8, 2021

**FROM:** Samantha J. West, Environmental Specialist III

**SUBJECT:** Parcel #: 6302-01-05-0050

Case #: V-21-128

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Environmental Permitting (EP) has reviewed the application for a variances to minimum yard requirements and maximum lot coverage on Urban Single-Family Residential (R-4) zoned property and provides the following report:

The subject property is located within the Halifax watershed 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.

Inter-Office  
Memorandum



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**To:** Susan Jackson, AICP  
Planning Manager

**Date:** October 10, 2021

**From:** Direne Ostrander  
Land Development Assistant II

**Subject:** V-21-128  
Parcel #: 6302-01-05-0050

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Land Development has reviewed the parcel involved in the subject variance to minimum yard and maximum lot coverage requirements and provides the following determination:

The subject parcel consists of a whole platted lot in The Halifax Estates Subdivision, MB 22, Page 71 – 73, which fronts on a paved publicly maintained road. The subject parcel complies with the county's subdivision regulations.

Please call the Land Development Office at 386-736-5942 for any questions.

STAPLES

Noel Wint Jr.  
3510 Cardinal Blvd  
Daytona Beach Shores, FL 32118

September 18, 2021

Volusia County Code Compliance  
123 W Indiana Ave # 205  
DeLand, FL 32720

To Whom It May Concern:

I am writing this letter in support of my neighbor, Stacey Brennan, who resides at 3512 Cardinal Blvd, Daytona Beach, FL 32118. This property is adjacent to mine, located just next door on the South side of my property. I am aware that there is a shed in the back yard of my neighbor's property. This shed is well-designed and maintained and poses no harm or damage to my property or its views. I have absolutely no issues or objections to the presence of the shed. Feel free to contact me at 321-276-6573 if you have any questions.

Best Regards,



Noel Wint Jr.  
321276-6573



STAPLES

To Volusia County:

I Larry Lohr at 3514 Cardinal Blvd, neighbor of Thomas Gray at 3512 Cardinal Blvd. We are in favor of Thomas Gray getting a variance. We do not find any structure on his property to cause any harm or be of any inconvenience to myself or my property. We have no issues with Thomas Gray's property.

Thank You.

Larry Lohr  
9/19/21

STAPLES

Sept. 18, 2021

To Whom It May Concern,

We were the owners of 3510 Cardinal Blvd at the time the shed was put in. They approached us before putting the shed in and we were fine with it, as it causes no harm or damage to our property. We had absolutely no complaints about it.

Previous owner - Lou Ann Kuehn  
Alan Kuehn



## Photographs

Aerial photograph of the area



Aerial photograph of the property



The following photographs were provided by the applicant:







































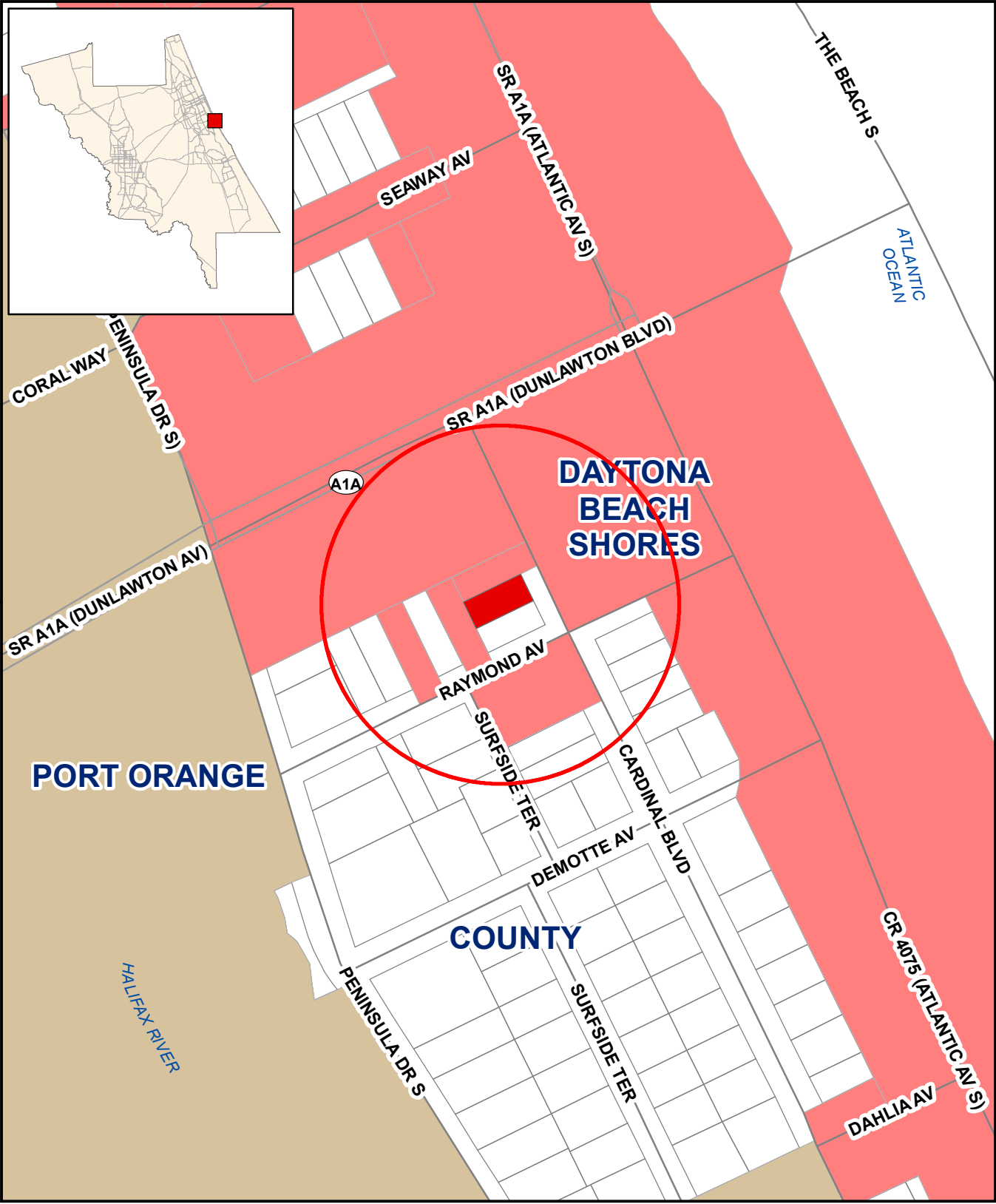








PROPERTY LOCATION  
V-21-128



 SUBJECT PROPERTY



1" = 250'  
8/12/2021



AERIAL  
V-21-128



 SUBJECT PROPERTY

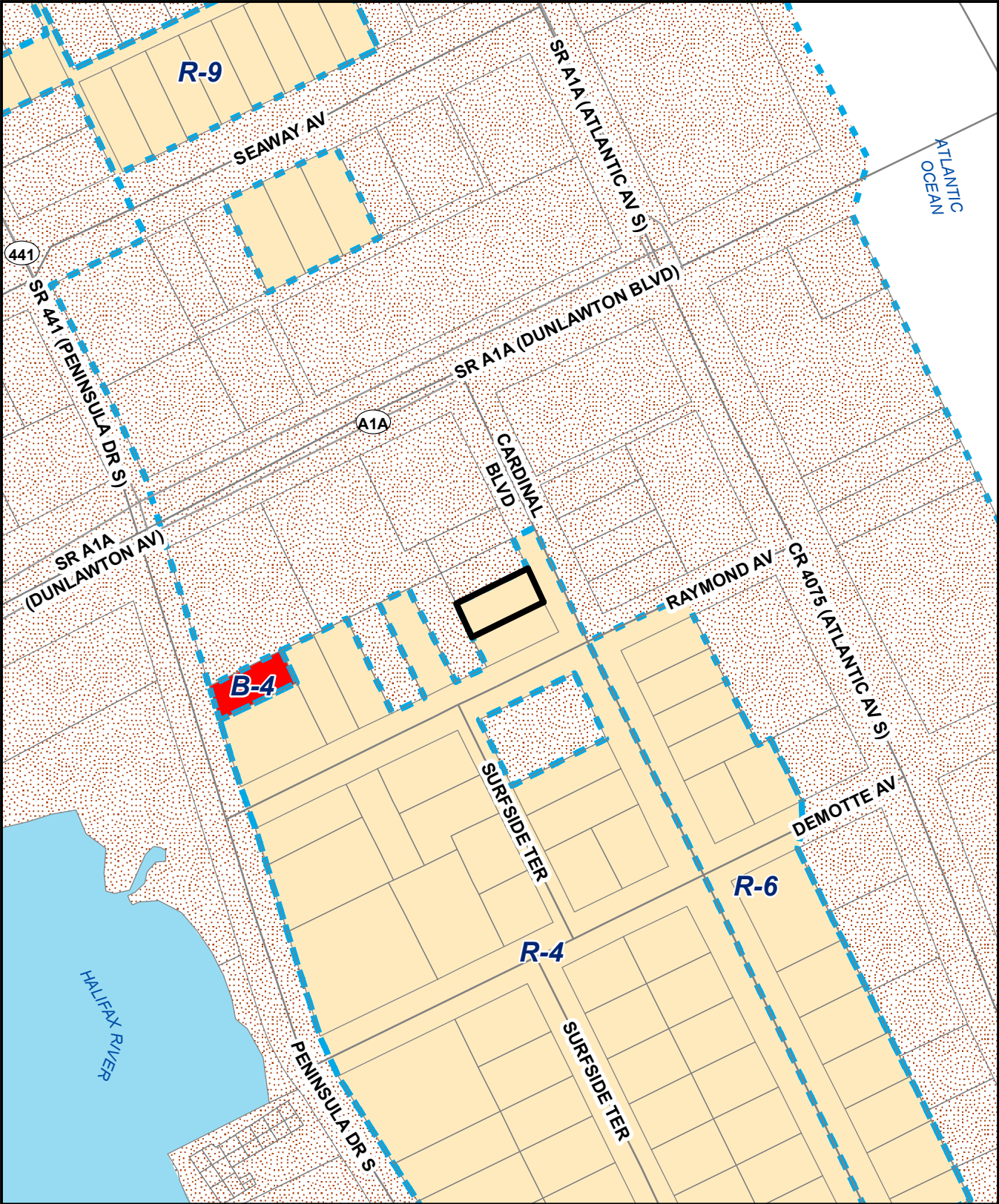
IMAGE DATE 2018





1" = 200'  
8/12/2021





# ZONING CLASSIFICATION V-21-128



 SUBJECT PROPERTY

 ZONING BNDY

 COMMERCIAL

 RESIDENTIAL

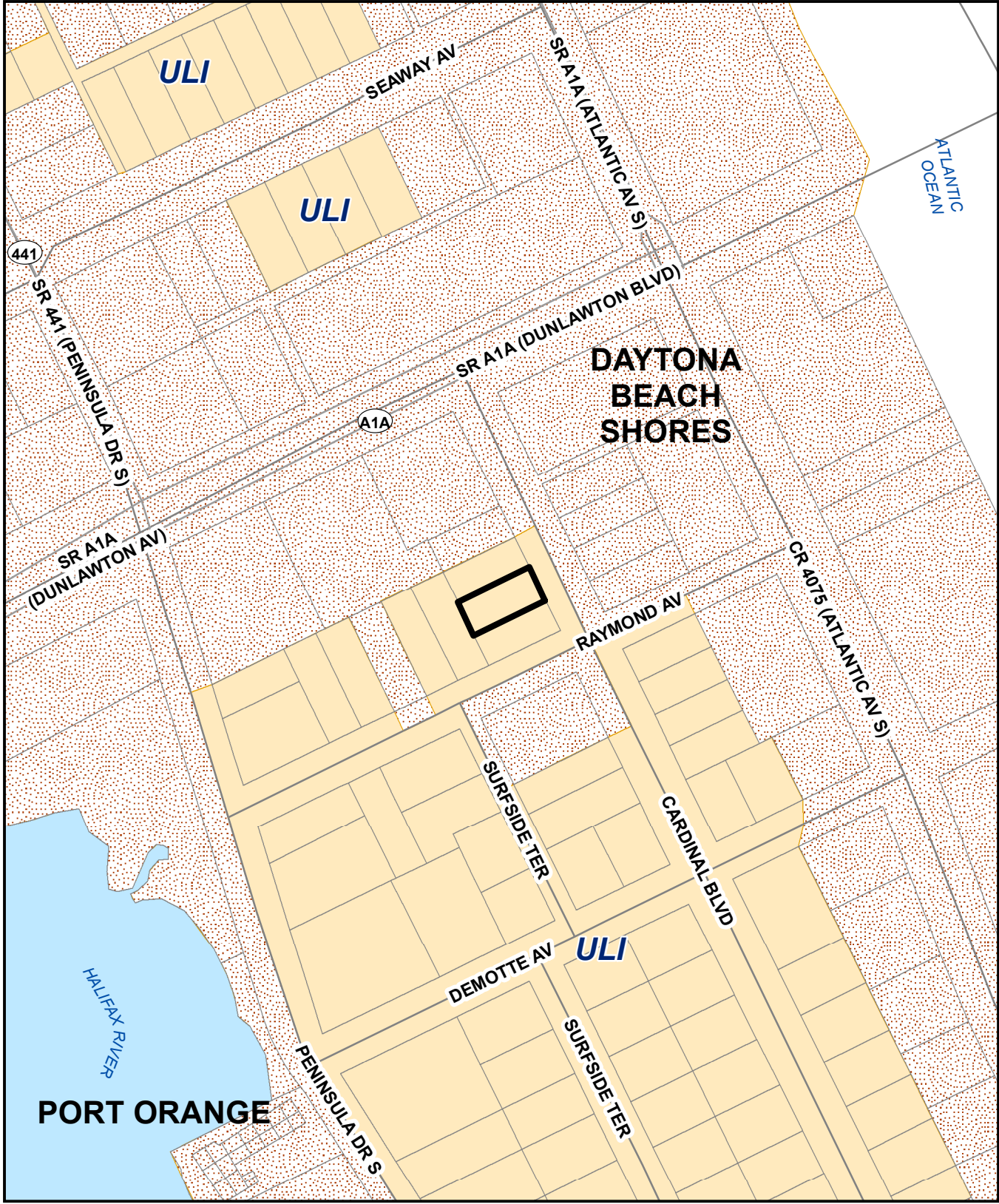
 INCORPORATED



1 " = 200 '  
8/12/2021



FUTURE LAND USE  
V-21-128



 SUBJECT PROPERTY

 INCORPORATED

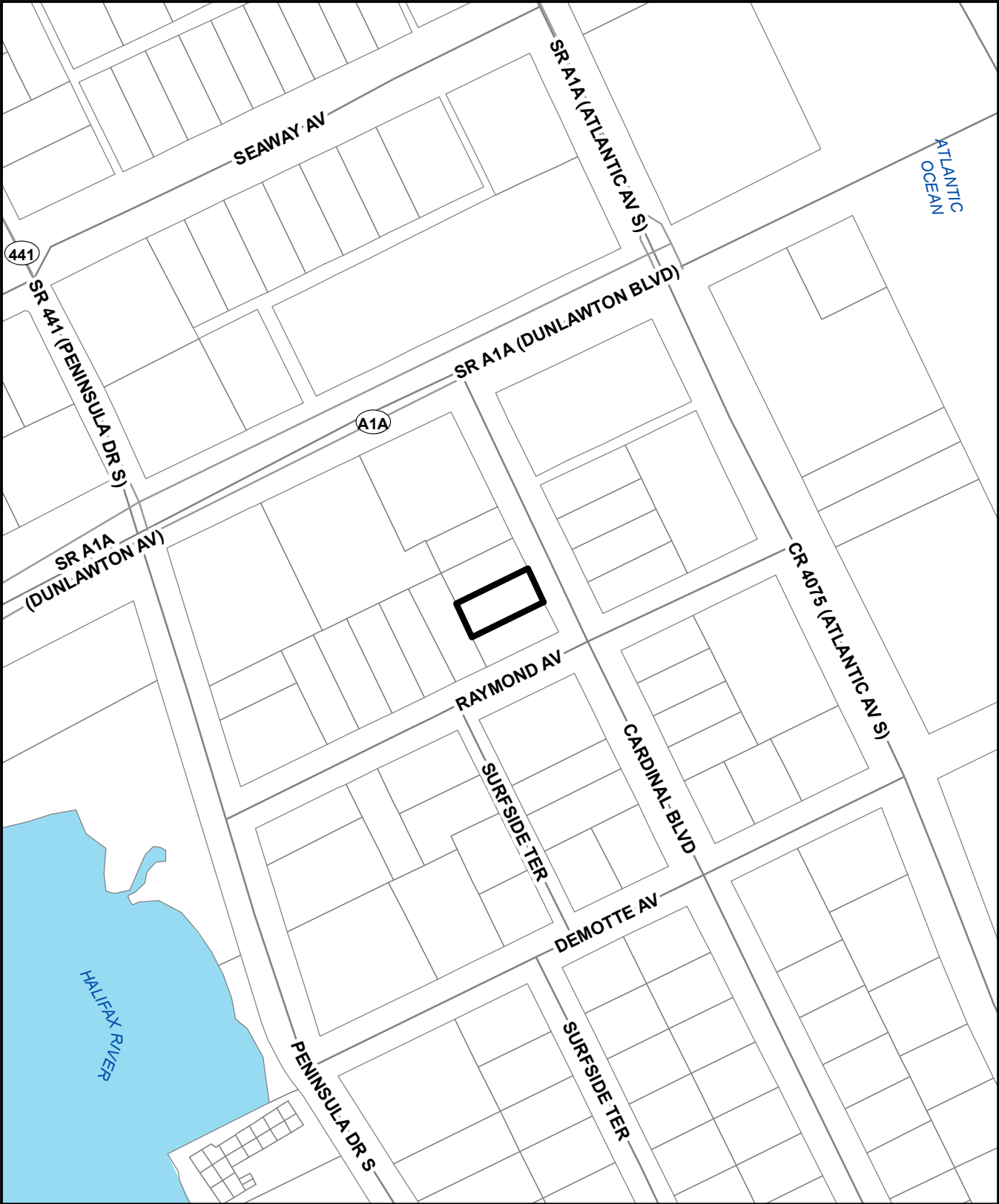
 WATER




 URBAN LOW INTENSITY



1" = 200'  
8/12/2021

ECO/NRMA OVERLAY  
V-21-128



-  SUBJECT PROPERTY
-  ECO
-  NRMA



1" = 200'  
8/12/2021