



**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-21-129

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

**LOCATION:** 2695 Palm Drive, DeLand

**APPLICANT(S):** Jessica Flowers

**OWNER(S):** Justin Flowers

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## **I. SUMMARY OF REQUEST**

The applicant seeks two variances for a fence and a 1,200-square foot accessory structure. The variance requests are as follows:

Variance 1: A variance to increase the maximum fence height in a front yard from four feet to six feet.

Variance 2: A variance to reduce the side yard from 8 feet to 5 feet for an accessory structure over 500 square feet in size.

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

Deny variance 1, case number V-21-129, as the variance fails to meet one of the five criteria for granting said variances.

Deny variance 2, case number V-21-129, as the variance fails to meet two of the five criteria for granting said variance.

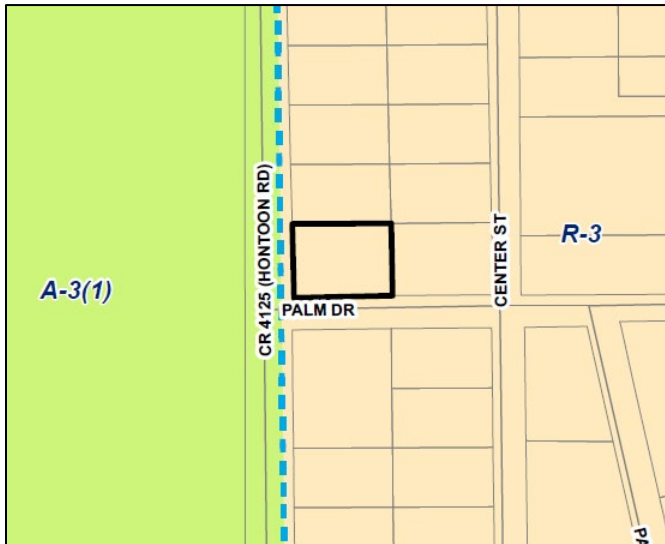
**II. SITE INFORMATION**

- 1. Location: On the northeast corner of the intersection of Hontoon Road and Palm Drive, DeLand
- 2. Parcel Number(s): 7923-03-00-0850
- 3. Property Size: +/- 16,736 square feet
- 4. Council District: 1
- 5. Zoning: Urban Single-Family Residential (R-3)
- 6. Future Land Use: Urban Low Intensity (ULI)
- 7. Overlays: N/A
- 8. Local Plan Area: Hontoon Island Local Plan
- 9. Adjacent Zoning and Land Use:

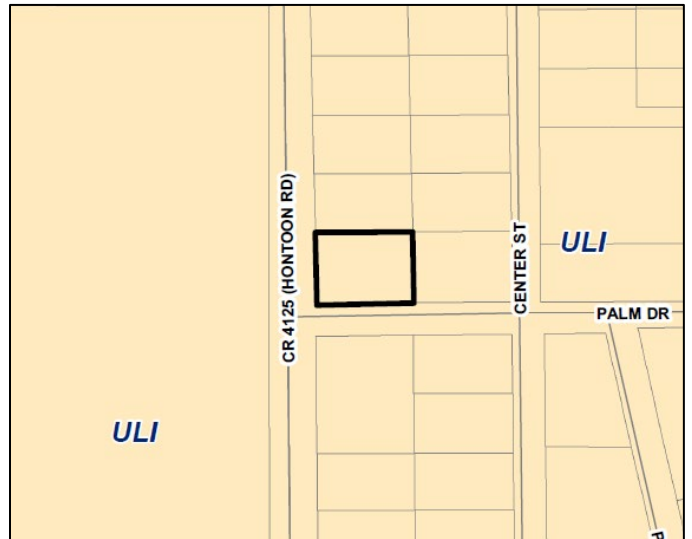
DIRECTION	ZONING	FUTURE LAND USE	EXISTING USE
North:	R-3	Urban Low Intensity	Vacant single-family residential
East:	R-3	Urban Low Intensity	Vacant single-family residential
South:	R-3	Urban Low Intensity	Single-family residential
West:	A-3	Urban Low Intensity	Hontoon Road Agricultural Pastureland

10. Maps:

**ZONING MAP**



**FUTURE LAND USE MAP**



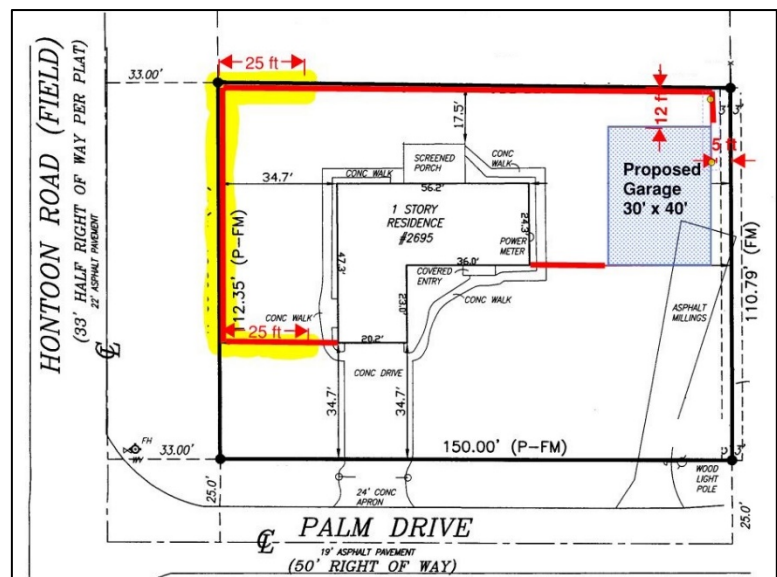
### III. BACKGROUND AND OVERVIEW

The subject property is a corner lot, located on the northeast corner of the intersection of Hontoon Road and Palm Drive. It is zoned R-3, and is approximately 16,736 square feet in size with approximately 150 feet of road frontage on Palm Drive and 112 feet of frontage on Hontoon Road. The R-3 zoning classification requires a minimum lot size of 10,000 square feet, a minimum lot width of 85 feet. The lot exceeds these requirements.



Being a corner lot, it is required to have two front yards adjacent to Palm Drive and Hontoon Road. The other property boundaries are considered side yards. The applicable minimum yard requirements in the R-3 zoning classification are: front – 30 feet and side – 20 feet combined, with a minimum of eight feet on any one side.

The applicant desires to install a six-foot fence in the front yard adjacent to Hontoon Road to provide additional privacy and safety for their property. The house faces Palm Drive. The fence would connect to the front corner of the house, on southwest corner of the attached garage, and enclose the sides and rear of the house as depicted in the graphic to the right. The area highlighted in yellow is the portion of the fence subject to this variance request. The fence is proposed to be installed one-foot inside of the property line so that trees in the county right-of-way along Hontoon Road will not be impacted by construction of the fence. The fence will be located approximately 34 feet from the traveled way on Hontoon Road and would be shielded from the road by thick vegetation and trees within the right-of-way. It will also be set back approximately 40 feet from the intersection of Hontoon Road and Palm Drive so will not block visibility at the intersection sight triangle.



The fence will be located approximately 34 feet from the traveled way on Hontoon Road and would be shielded from the road by thick vegetation and trees within the right-of-way. It will also be set back approximately 40 feet from the intersection of Hontoon Road and Palm Drive so will not block visibility at the intersection sight triangle.

The applicant also desires to construct a 30-foot by 40-foot detached garage on the west side of the property. As this structure is over 500 square feet in size, it must meet principle structure setbacks. As proposed, the structure will exceed the front 30-foot front setback to Palm Drive and will meet the 12-foot side setback adjacent the north property line, but will encroach three feet into the east side yard.

Therefore, the applicant is requesting to reduce the east side yard from eight feet to five feet. This location is desired because it is a relatively flat area of the yard and in-line with an existing driveway that is currently used to park their boat. Fill material used in construction of the original house created a slope from the house, tapering down to the side yard. Shifting the garage closer to the house would require excavation of additional fill material to create a level foundation. This location also avoids a utility easement on the east side property line and the septic drain-field area in the front of the house.

#### 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 subject property is a corner lot, which requires two front yards adjacent to Palm Drive and Hontoon Road. The house faces Palm Drive. The front adjacent Hontoon Road is a street side yard. The property boundary is approximately 34 feet from the traveled way of the road and this right-of-way is heavily vegetated. The fence would not be visible to the right-of-way. Additionally, the yard slopes from the house down to the property line, creating an elevation difference of approximately two feet. A six-foot fence will provide the equivalent privacy and protection as a fence of four feet due to the elevation difference.

Staff finds that this criterion is met.

Variance 2: The slope of the lot created by the elevated house pad may be considered a special condition. Because of this slope, the most level areas of the lot that may be conducive to placement of the proposed garage are near the property line.

Staff finds that this criterion is met.

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

Variance 1 and 2: The applicant is not responsible for the conditions of the right-of-way or the slope of the lot. The house was constructed by a previous owner.

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 the zoning requirements would not deprive the applicant of commonly enjoyed rights, but may work an unnecessary hardship. The fence will be located approximately 34 feet from the traveled way of Hontoon Road and will be shielded from view by considerable vegetation. It will have no discernable impact on passerby traffic, nor will it impede visibility at the intersection of Palm Drive and Hontoon Road.

Staff finds this criterion is met.

Variance 2: Placing a 1,200 square foot detached garage within the minimum required yard is not a commonly held right. The proposed location of the garage maintains a five-foot setback, rather than an eight-foot setback. Currently, the adjacent lot, which is most affected by this variance, is vacant, heavily treed and vegetated. The garage will not be visible from this side of the property until/unless the adjacent lot develops. Should this occur, it is questionable that the additional three feet would be perceptible to a future owner of the adjacent lot. Never-the-less, the lot can be regraded to accommodate the proposed structure, or the structure can be downsized to fit within the required setbacks.

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.***

Variations 1 and 2: Neither the six-foot fence or the side yard encroachment are the minimum variances that will make it possible to make reasonable use of the land, building or structure. The fence could be lowered or moved back further from the right-of-way, and the proposed garage can be made smaller or moved closer toward the house.

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.***

Variance 1: Granting this variance to allow a six-foot fence in the front yard adjacent to Hontoon Road will not be injurious to the area. The fence will be approximately 34 feet from the traveled way. It will be shielded from view from the right-of-way and it will not affect the sight line triangle at the intersection.

Staff finds that this criterion is met.

Variance 2: Granting this variance to allow a three-foot encroachment into the side yard will not be injurious to the area. The proposed location of the garage meets or exceeds all setbacks except the east side yard. The garage will allow the applicant to store their boat and equipment inside an enclosed building where it is not visible to the neighborhood and passerby traffic. The applicant intends to maintain the trees and vegetation within the setback to the greatest extent possible to shield the structure from future neighbors should the adjacent lot be developed.

Staff finds that this criterion is met.

## **V. STAFF RECOMMENDATION**

Deny variance 1, case number V-21-129, as the variance fails to meet one of the five criteria for granting said variances.

Deny variance 2, case number V-21-129, as the variance fails to meet two 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 is limited to the six-foot fence and the proposed 30-foot by 40-foot garage as depicted on the variance site plan. Any change to the location or size of either structure, unless to more closely meet standard code requirements, shall require approval of a separate variance.
2. The property owners or authorized agent shall obtain and complete all required building permits and inspections for the improvements.
3. The vegetation in the east side yard adjacent to the proposed garage shall be maintained and/or supplemented to provide a landscape screen to the adjacent property.

## **VI. ATTACHMENTS**

- Variance Site Plan
- Written Petition
- Survey
- Environmental Memo
- Site Photographs (applicant provided)
- 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.

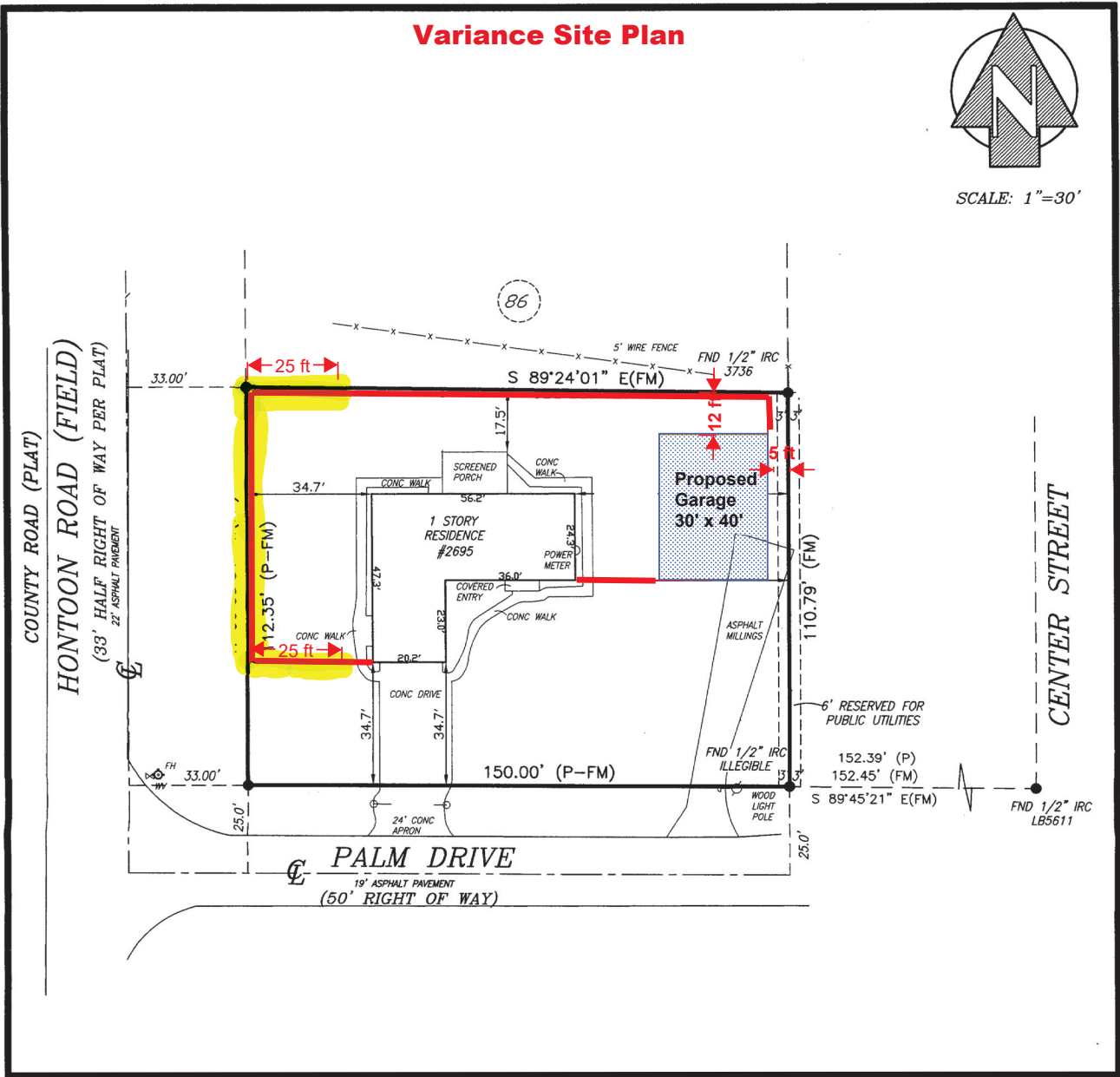
Pursuant to Section 72-412, no variance shall be granted, in whole or in part, unless four members concur. A tie vote shall be grounds for continuance to the next scheduled meeting.

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



SCALE: 1"=30'



- Variance 1: A variance to increase the maximum fence height in a front yard from four feet to six feet.
- Variance 2: A variance to reduce the side yard from 8 feet to 5 feet for an accessory structure over 500 square feet in size.



## 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 building pad for our house was built up really high so our house is essentially on a hill. The spot where we propose to build the garage is the flattest part of our property. No other parcels in the area are built up as high as ours. We purchased the home like this. Because of the location on the property where our house was built, we do not have a lot of backyard space, other homes in the area that are corner lots do not have this issue. We would like to utilize as much of our available yard space as possible and have safety and privacy for our family & dog.

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 restrictions on corner lots in regards to fence height deprives me from utilizing my property to the fullest extent while still having privacy and safety for my child and dog. The interpretation is unnecessary in my case because the county's palm trees are what blocks the view for drivers turning onto Hontoon road. Even if the palm trees were removed, the fence would still be far enough back that it would not affect the viewshed for drivers turning onto Hontoon Road.

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.

If we had to move the garage out of the setback, we would have to either cut into the hill and build a stem wall to shore up the foundation, or bring in a lot of fill dirt to build the pad and driveway up to it which would affect stormwater runoff onto the other parcels. Both of these options would also put us too close to the drainfield. (See photos). With the increased development coming to the area, this fence will be utilized to secure our property and keep our family and dog safe.

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 fence will protect the health, safety and welfare of our family so that when we are playing in the yard, we will not have to worry about our dog or child running into oncoming traffic. The proposed garage will help us to protect the aesthetic qualities of Volusia County by allowing us to secure our boats and lawn equipment without having them in our driveway or strewn about the yard.

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

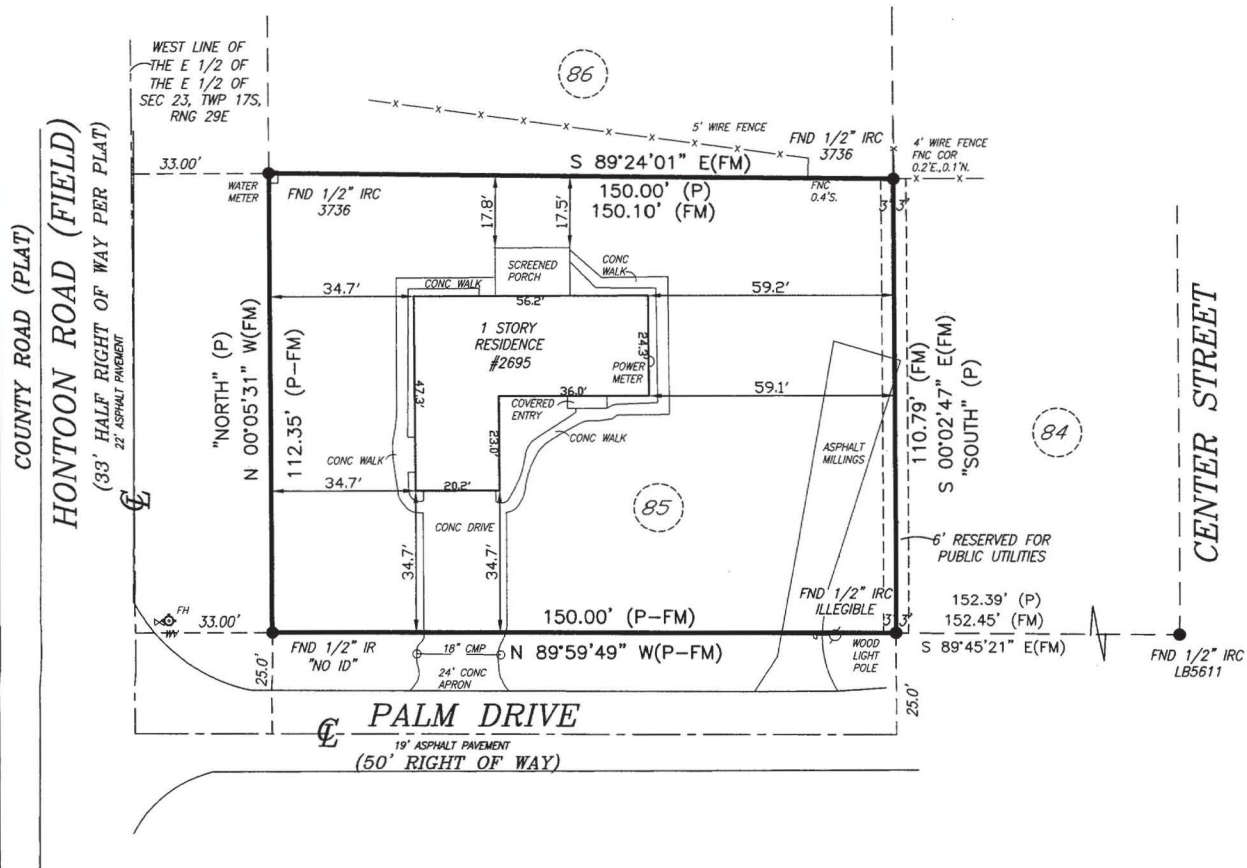
By granting this variance, we will not have to bring in fill dirt and potentially affect the drainage in the surrounding area. There are several properties in the surrounding neighborhood that also have buildings like the one we are proposing where the owners are able to secure their belongings. The fence will allow us to provide a structural barrier between our property and Hontoon Road that will provide safety and privacy. Both will only add value to the area.

LEGAL DESCRIPTION: (OR 6783 PG 1897)

LOT 85, 1ST ADDITION TO LAKE BERESFORD TERRACE, ACCORDING TO THE MAP OR PLAT THEREOF, AS RECORDED IN MAP BOOK 23, PAGES 121 AND 122, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, TOGETHER WITH AN EASEMENT, BUT NOT EXCLUSIVE, FOR RIGHT OF INGRESS OR EGRESS ACROSS LOT 73 OF LAKE BERESFORD TERRACE, ACCORDING TO THE PLAT THEREOF AS RECORDED IN MAP BOOK 23, PAGE 18 AND 19, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.



SCALE: 1"=30'



NOTES:

BEARINGS SHOWN HEREON ARE BASED ON THE NORTH RIGHT-OF-WAY LINE OF PALM DRIVE AS BEING A BEARING OF N 89°59'49" W (PLAT).

THE FLOODPLAIN BOUNDARY, IF SHOWN HEREON, WAS SCALED FROM A LARGE SCALE FEMA FLOOD INSURANCE MAP AND AS SUCH HAS AN INHERENT ERROR OF 10% OF THE FEMA MAP SCALE.

UNDERGROUND UTILITIES AND FOUNDATION MAY EXIST AND HAVE NOT BEEN LOCATED, EXCEPT AS SHOWN.

I HEREBY CERTIFY THAT THE SURVEY SHOWN HEREON WAS MADE UNDER MY RESPONSIBLE CHARGE AND THAT IT HAS BEEN PREPARED IN ACCORDANCE WITH THE STANDARDS OF PRACTICE (MINIMUM TECHNICAL STANDARDS) AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J-17, OF THE FLORIDA ADMINISTRATIVE CODE, SECTION 472.027, FLORIDA STATUTES.

FLOOD CERTIFICATION:

(Per map dated February 19, 2014)  
This is to certify that I have consulted the Federal Insurance Flood Hazard Boundary Map and found the ABOVE named Property IS NOT located in a special flood hazard area, according to Community Panel Map No. 12127C-0465-H Map Panel 465 of 930, Zone "X".

LEGEND AND ABBREVIATIONS

A	Arc Length	LB	Land Surveying Business
AC	As-Cast	M.B.	Map Book
BM	Benchmark	MON	Monument
CL	Center Line	MC	Nail & Cap
CALC	Calculated	NO ID	No Identify
CATV	Cable TV Service	O.R.	Official Record Book
CAF	Chainlink Fence	(P)	Plat
CBRR	Chord Bearings	PC	Point of Curve
CHD	Chord Distance	PCC	Point of Compound Curve
CMP	Corroated Metal Pipe	PCP	Permanent Control Point
CON	Concrete	PRC	Point of Reverse Curve
DC	Deed Call	PRM	Permanent Reference Monument
DRW	Drainage Right of Way	PSI	Point of Street Intersection
EL	Elevation	PSM	Professional Surveyor & Mapper
FND	Found	PVC	Poly-Vinyl-Chloride Pipe
FF	Fire Hydrant	R	Radius of Curve or Radial Line
FFE	Finish Floor Elevation	R.P.	Radius Point
FLM	Field Measurement	RLS	Registered Land Surveyor
INV	Invert	T	Tangent
IR	Iron Rod	TBM	Temporary Benchmark
IRC	Iron Rod & Cap	WFF	Wood Privacy Fence
L	Length of Arc	WV	Water Valve

BLACKWELL & ASSOCIATES  
LAND SURVEYORS, INC

995 W. VOLUSIA AVE. • DELAND, FL • PH: (386) 734-8050  
WWW.BLACKWELLSURVEYING.COM

BOUNDARY SURVEY CERTIFIED TO:

JESSICA FLOWERS

NOTE:

This Plat of Survey is certified to and prepared for the sole and exclusive benefit of the entities and or individuals shown hereon, valid on the most current date shown hereon, and shall not be relied upon by any other entity or individual whatsoever.

This Survey / Sketch has been prepared without benefit of abstract or title search unless otherwise noted hereon.  
There may be additional restrictions and/or other matters of record not shown on this Survey / Sketch that may be found in the Public Records of the county or contained within the Title Commitment.

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

BLACKWELL & ASSOCIATES LAND SURVEYORS, INC. (FL 42994)  
By: *Robert R. Evers*  
REGISTERED LAND SURVEYOR  
ROBERT R. EVERS - P.S.M.  
FLORIDA CERTIFICATE No. 5675

DATE : 7/24/21  
W.O. No. 6-413-21  
DRAWN BY : JT  
FIELD BOOK : 745-55  
CADD FILE : 6-413-21

**Inter-Office**  
*Memorandum*



**TO:** Susan Jackson, AICP, Senior Planning Manager  
**DATE:** August 8, 2021  
**FROM:** Samantha J. West, Environmental Specialist III  
**SUBJECT:** Parcel #: 7923-03-00-0850  
Case #: V-21-129

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Environmental Permitting (EP) has reviewed the application for a variances to minimum yard requirements and maximum fence height on Urban Single-Family Residential (R-3) zoned property and provides the following report:

The subject property is located within the St. Johns River 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.

## Fence Variance

Request: A variance to increase the fence height from four to six feet in a front yard.



Looking from the rear of the property towards Palm Drive. Hontoon Road is to the right.



Looking at the side of the house from Hontoon Road.



The backyard area. The red line indicates the property line.



The corner of Palm Drive and Hontoon Road.



Looking at the “side yard” from Palm Drive. Hontoon Road is to the left on the other side of the palm trees.



The proposed fence location off the side of the house.

## Garage Variance

Request: A variance to reduce the side yard from the required eight feet to five feet for a proposed 30-foot by 40-foot garage.



Proposed location of the garage.



Location if the garage were to meet the setbacks, it would be right in the middle of the slope and the driveway would go over the drain field.



View of the area from Palm Drive.



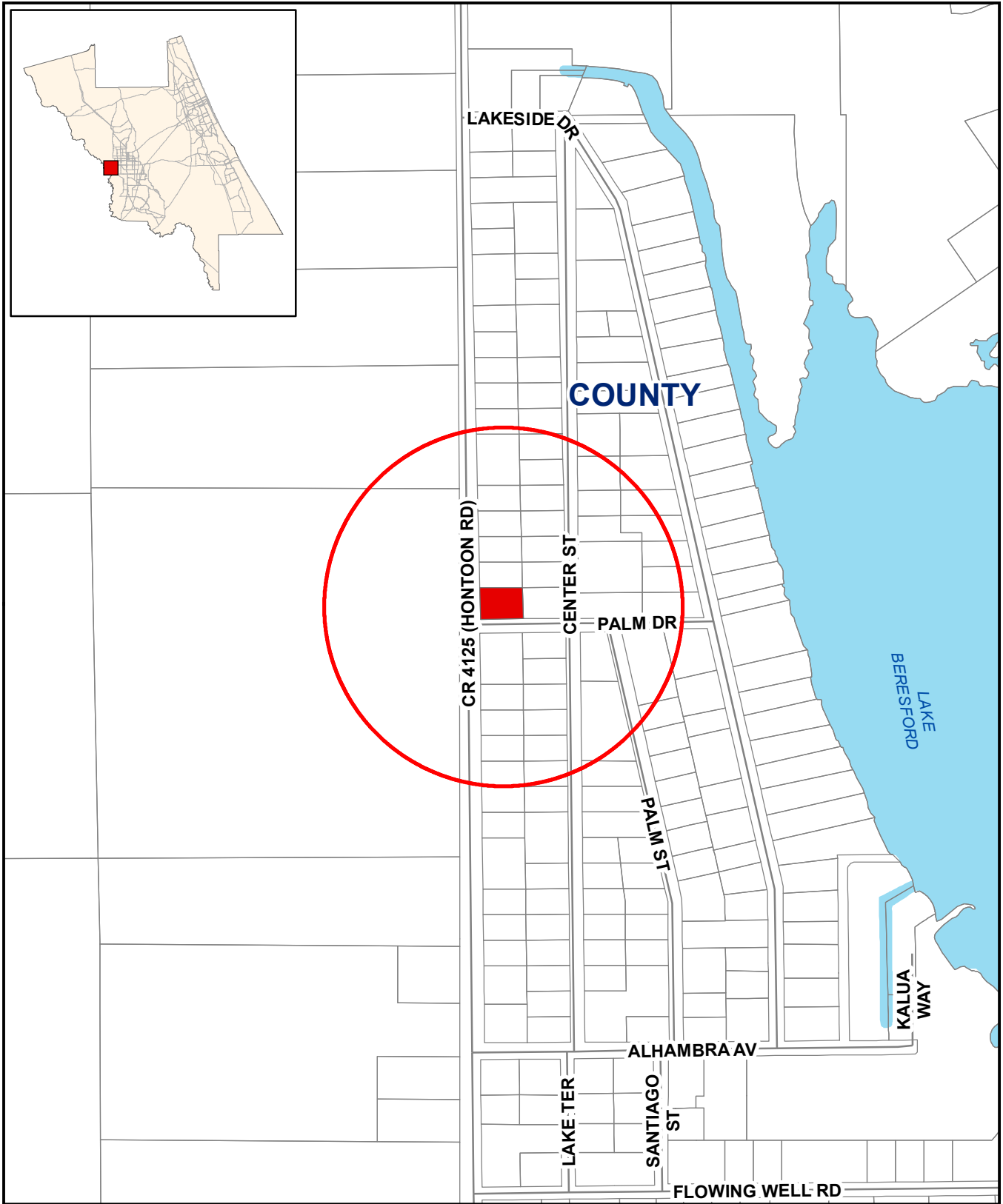
Location of the proposed garage. Some of the trees to the right and behind the boat will be removed.



The front of the garage is proposed to be in line with the front of the house.

\*It should be noted that the structure will meet the other side yard setback of 12 feet.

# PROPERTY LOCATION V-21-129



COUNTY

CR 4125 (HONTOON RD)

CENTER ST

PALM DR

PALM ST

ALHAMBRA AV

LAKE TER

SANTIAGO ST

FLOWING WELL RD

LAKE  
BERESFORD

KALUA  
WAY

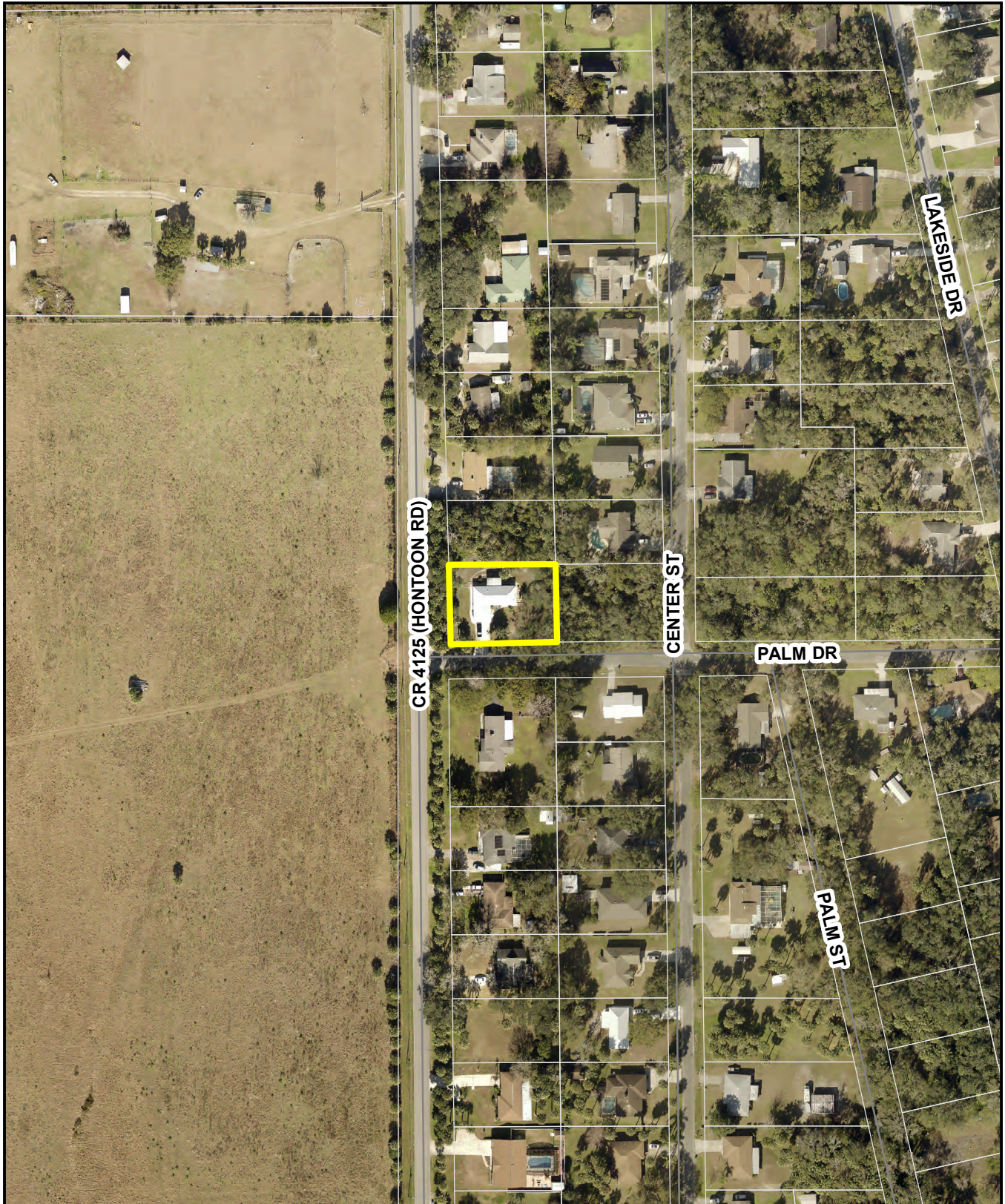
 SUBJECT PROPERTY



1" = 500'

8/12/2021

# AERIAL V-21-129



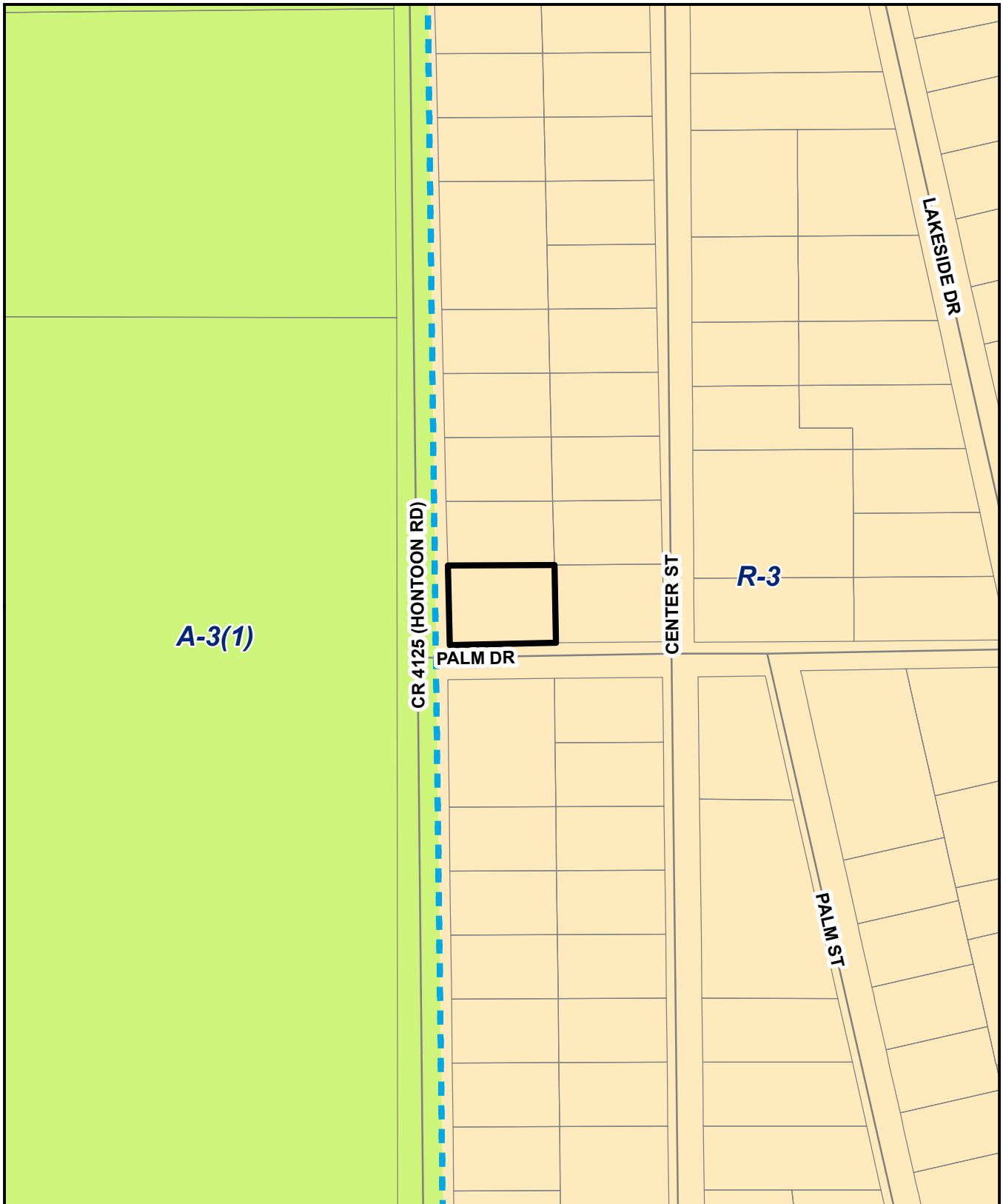
 SUBJECT PROPERTY





IMAGE DATE 2018




1" = 200'  
8/12/2021

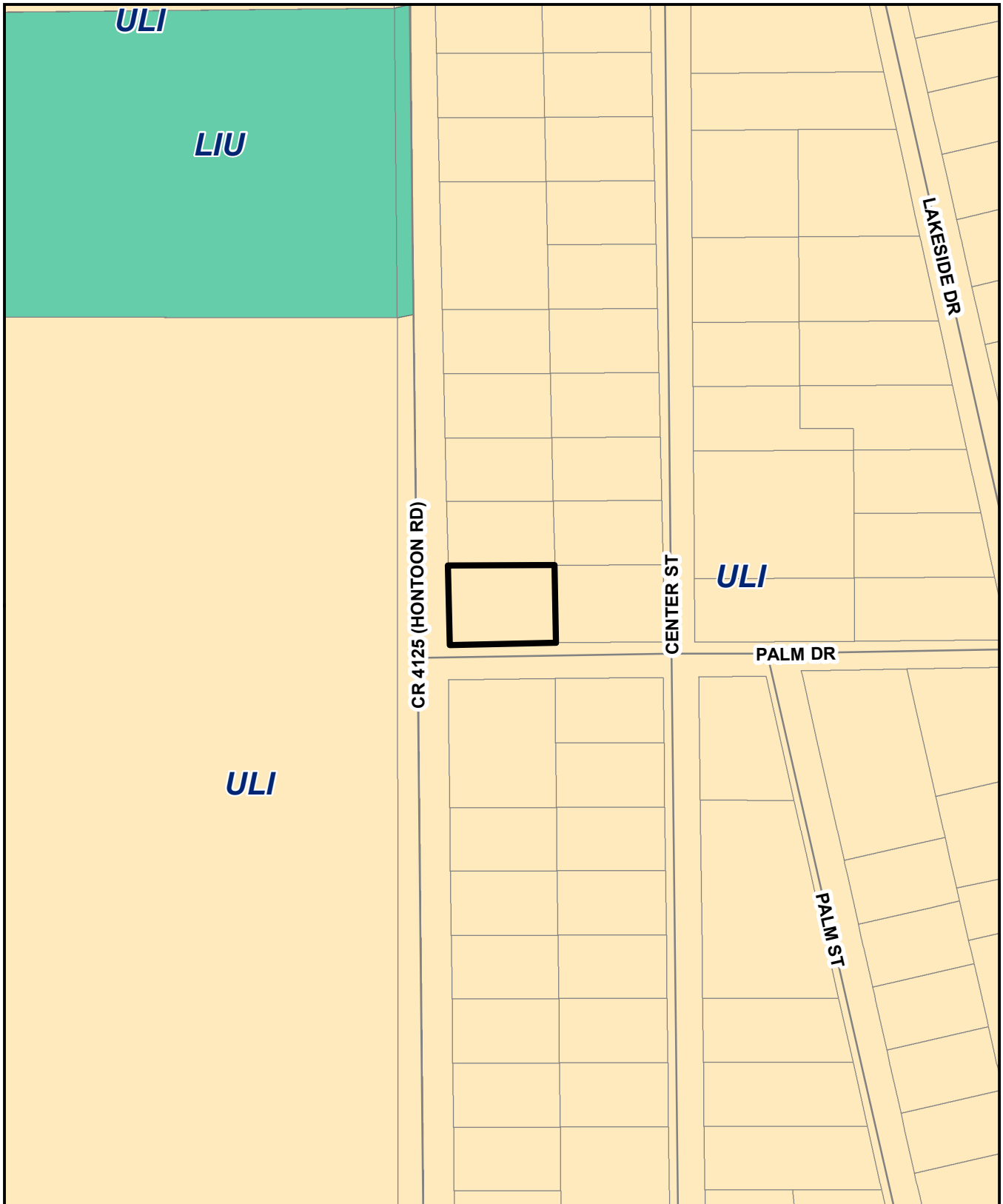
# ZONING CLASSIFICATION V-21-129







-  SUBJECT PROPERTY
-  ZONING BNDY
-  AGRICULTURAL
-  RESIDENTIAL

 1" = 200'  
8/12/2021

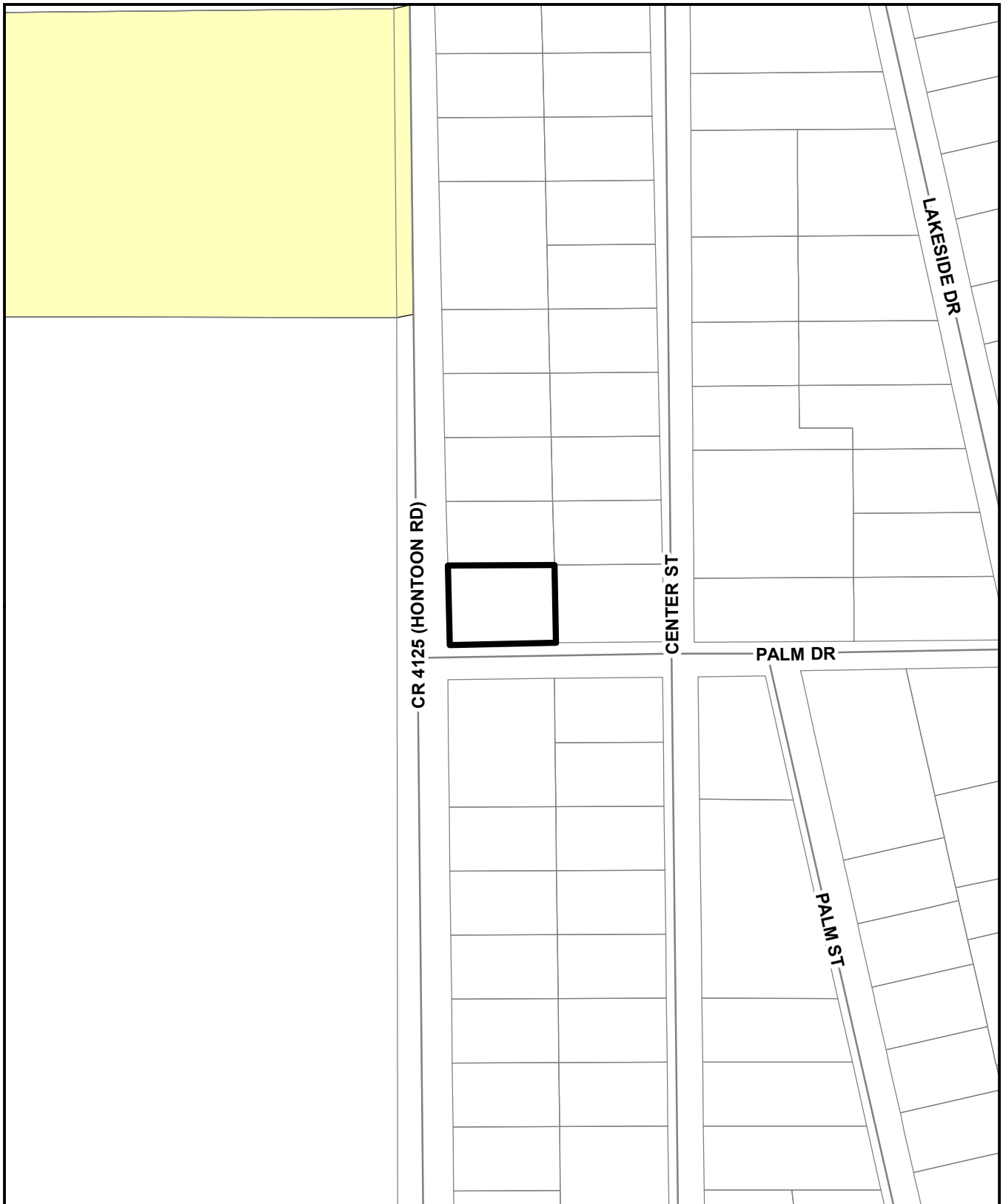
# FUTURE LAND USE V-21-129






-  SUBJECT PROPERTY
-  LOW IMPACT URBAN
-  URBAN LOW INTENSITY

 1" = 200'  
8/12/2021

# ECO/NRMA OVERLAY V-21-129



-  SUBJECT PROPERTY
-  ECO
-  NRMA



1" = 200'  
8/12/2021