



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-22-009

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

**LOCATION:** 1838 Hamilton Avenue, Orange City

**APPLICANT(S):** Yunisleidis Rodriguez

**OWNER(S):** Level Up Construction, LLC

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## **I. SUMMARY OF REQUEST**

***This variance case was continued from the October 21, 2021, PLDRC hearing.***

The applicant is seeking variances to the minimum yard requirements in order to develop the lot with a single-family residence. The variance requests are as follows:

Variance 1: A variance to reduce the front yard from 40 feet to 26 feet for a proposed single-family residence.

Variance 2: A variance to reduce the side yard from 25 feet to 20 feet for a proposed single-family residence.

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

Deny variance requests 1 and 2, case number V-22-009, as the variances fail to meet one of the five criteria for granting said variances.

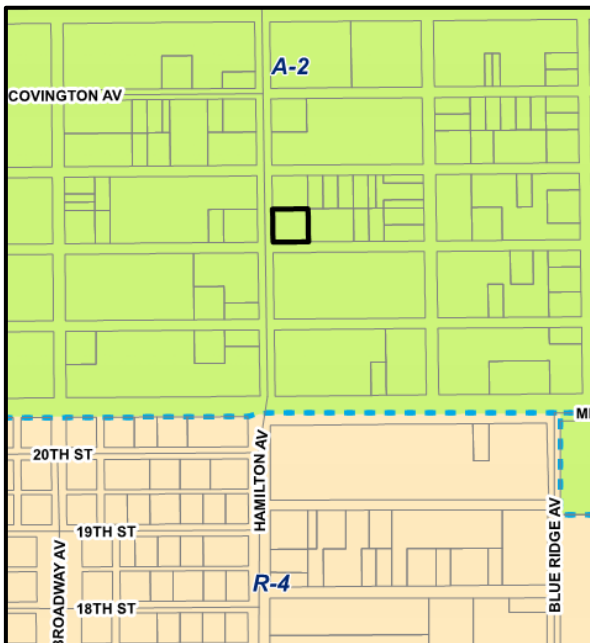
## II. SITE INFORMATION

1. Location: East side of Hamilton Avenue, approximately 390 feet south of its intersection with Covington Avenue, in the Orange City area.
2. Parcel Number: 7032-02-07-0050
3. Property Size: +/- 13,088 square feet
4. Council District: 1
5. Zoning: Rural Agriculture (A-2)
6. Future Land Use: Rural (R)
7. Overlays: Not Applicable
8. Local Plan Area: Not Applicable
9. Adjacent Zoning and Land Use:

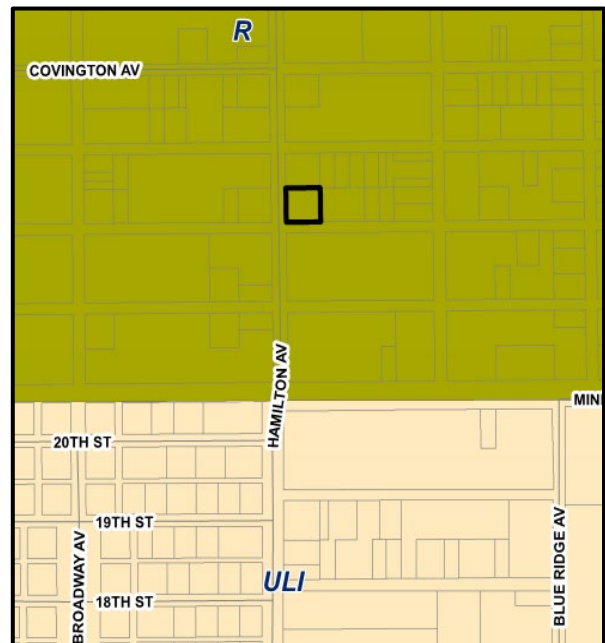
DIRECTION	ZONING	FUTURE LAND USE	EXISTING USE
North:	A-2	Rural	Vacant Residential
East:	A-2	Rural	Vacant Residential
South:	A-2	Rural	Right-of-Way / Single-Family Residence
West:	A-2	Rural	Right-of-Way / Vacant Residential

### 10. Location Maps:

**ZONING MAP**



**FUTURE LAND USE MAP**



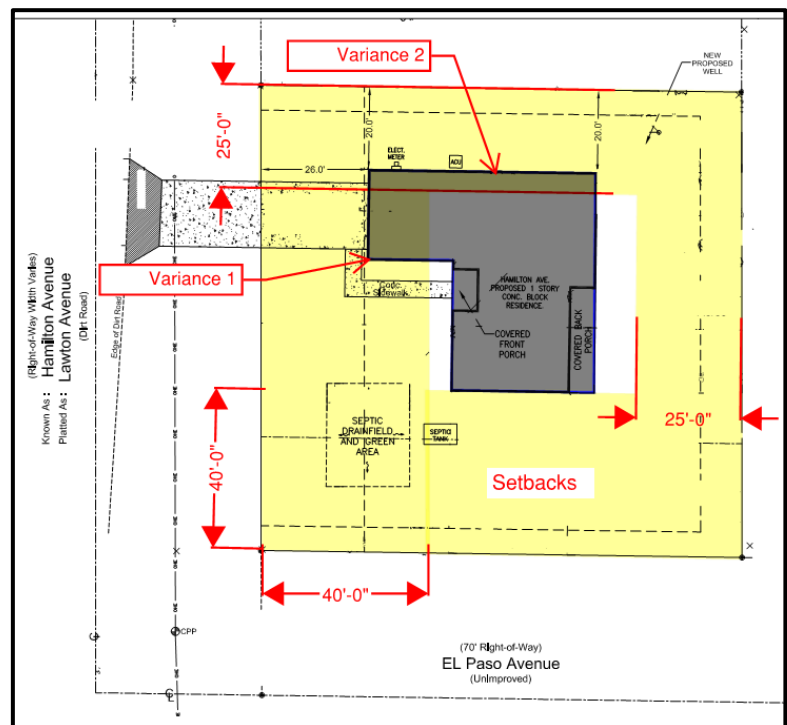
### III. BACKGROUND AND OVERVIEW

The subject property is located on the east side of Hamilton Avenue, approximately 390 feet south of its intersection with Covington Avenue, in the Orange City area. The property is comprised of lots 5 through 8, Block G, of the Orange City Heights Subdivision, platted in 1925. A lot combination was approved for the Level Up Construction unrecorded subdivision in May of 2021. The property is zoned A-2, which requires a lot area of five acres and a lot width of 150 feet. The property is approximately 13,088 square feet in size and 112 feet in width, and is a nonconforming lot. The applicant has provided a good nonconforming lot letter stating this lot is a lawful nonconforming lot. This is a corner lot with frontage on Hamilton Avenue to the west and an unopened 70-foot right-of-way to the south, which was platted as El Paso Avenue. In this case, the applicable setbacks for the principal structure are: front – 50 feet and side – 25 feet. The front yards are adjacent to Hamilton Avenue on the west and the unopened 70-foot right-of-way to the south. The yards adjacent to the west and north property lines are sides.



The applicant is requesting variances to the west front yard adjacent to Hamilton Avenue and the north side yard. The applicant has situated the proposed house so that it meets the south front yard adjacent to undeveloped El Paso Avenue, and the east side yard. However, it encroaches into the west front yard and north side yard by 14 feet and five feet, respectively.

It should also be noted similar variances were granted to the property owners at 2088 Hamilton Avenue which is 775 feet north of the subject property.



#### 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 and 2: The property is 204,712 square feet smaller than the size of a standard A-2 lot. At approximately 13,088 square feet, it is more akin to a lot that is zoned R-2, which requires 12,500 square feet. If the property were zoned R-2, the required setbacks would be: front - 30 feet, sides - 20 feet combined, with a minimum of eight feet on any one side. Were the zoning to more closely match the lot size, the proposed setbacks would exceed the requirements.

Staff finds that this criterion is met.

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

Variances 1 and 2: The applicant is not responsible for creating a lot that does not meet zoning standards.

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 and 2: Literal interpretation of this ordinance would require that the 13,088-square foot property maintain setbacks that are applicable to a five-acre property. Although the house plan could be redesigned to meet the applicable setbacks, this may work an unnecessary hardship.

Staff finds that this criterion is met.

***iv. The variance granted is the minimum variance that will make possible the reasonable use of the land, building, structure, or sign.***

Variances 1 and 2: The proposed house is single-story, 54 feet in length, and 53 feet in width. Although the house is modest in size and design, technically, it could be reconfigured to fit within the buildable area of the lot or shifted within the buildable footprint to reduce the variance requests. Although the property is a corner lot, the proposed design seeks relief from the setback requirements of an opened right-of-way and an adjacent property owner, rather than relief from the unopened right-of-way of El Paso.

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: Granting these variances will not be injurious to the area. There are other similarly sized properties with single-family homes in the general area. Similar variances were granted to a property owner at 2088 Hamilton Avenue. Therefore, the location of the house will not appear out of character for the area.

Staff finds that this criterion is met.

## **V. STAFF RECOMMENDATION**

Deny variance requests 1 and 2, case number V-22-009, as the variances fail to meet one of the five criteria for granting said variances.

## **VI. ATTACHMENTS**

- Variance Site Plan
- Revised Variance Site Plan
- Written Petition
- Survey
- Environmental Comments
- Maps

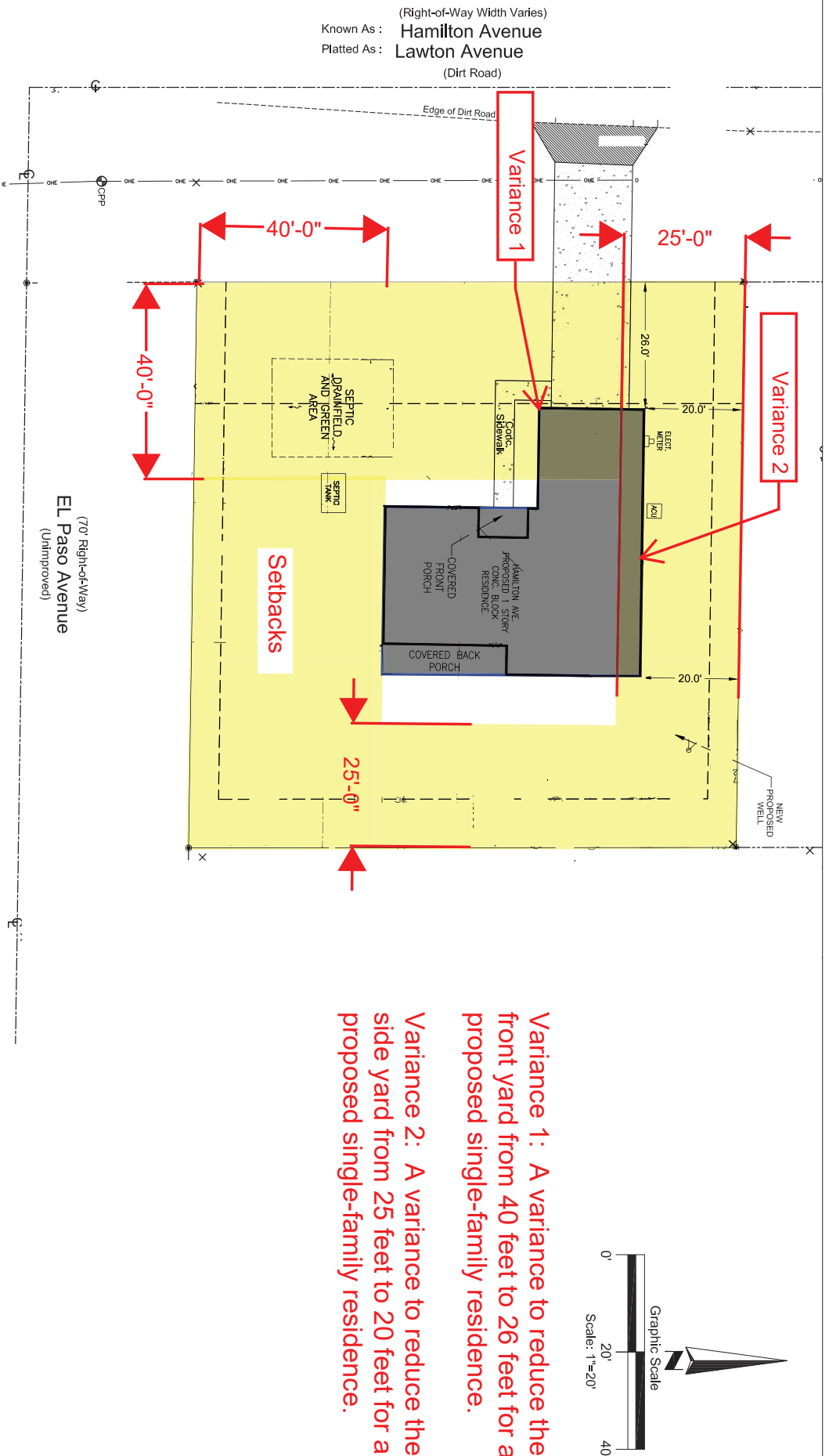
## **VII. AUTHORITY AND PROCEDURE**

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

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

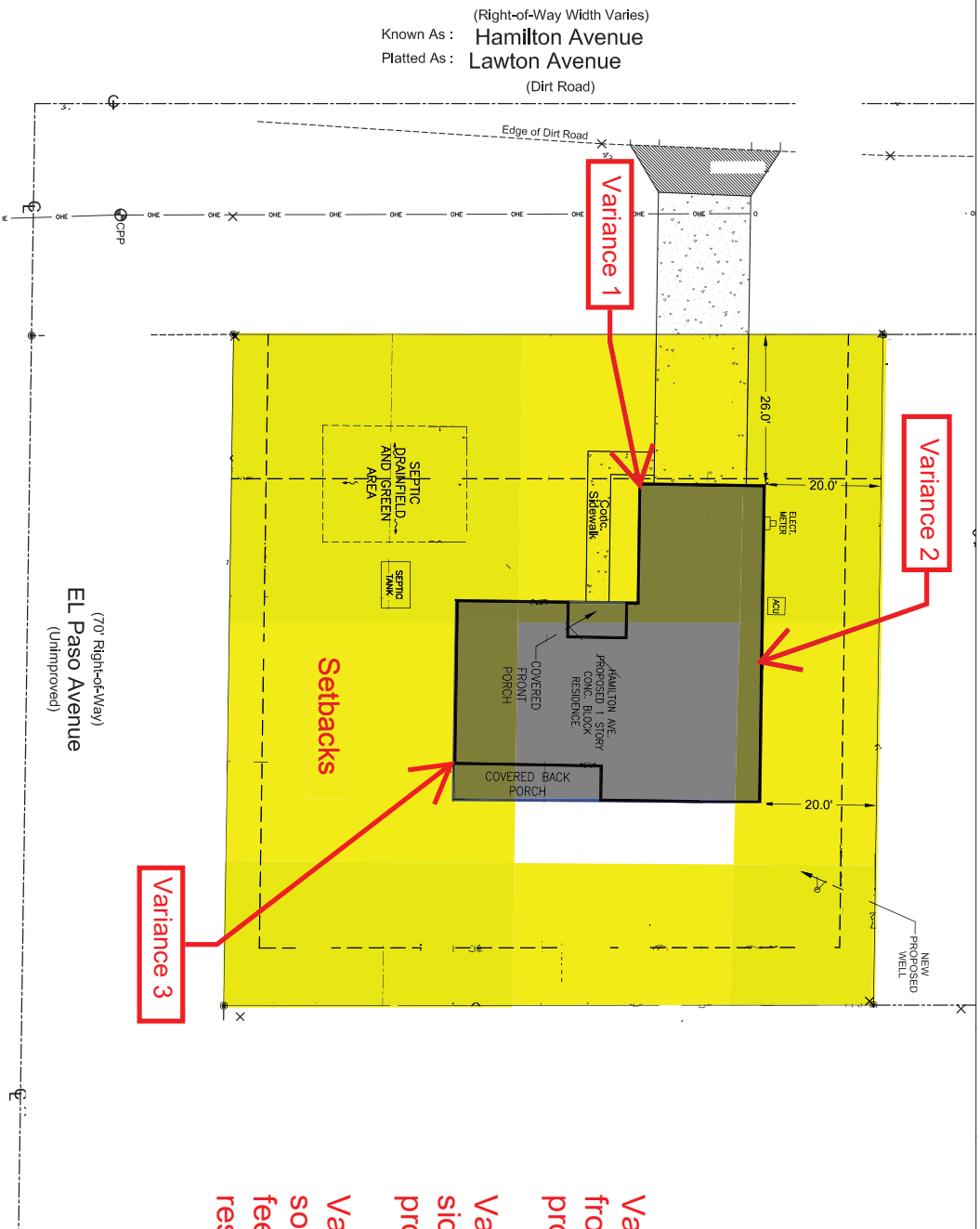
Any new information to be presented at the Planning and Land Development Regulation Commission meeting for any application will be grounds to continue an application to the next Planning and Land Development Regulation Commission meeting. Applicants shall inform and provide staff with the new information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

# V-22-009 Variance Site Plan



# V-22-009 Variance Site Plan

Revised 10/20/2021



Variance 1: A variance to reduce the front yard from 40 feet to 26 feet for a proposed single-family residence.

Variance 2: A variance to reduce the side yard from 25 feet to 20 feet for a proposed single-family residence.

Variance 3: A variance to reduce the south front yard from 50 feet to 39.2 feet for a proposed single-family residence.





## 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?

Lot has been devided and consist of 0.38 Acres in an A2 zoning area. This is less then the 5 acres per current zoning.

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?

A literal interpretaion would not allow a single family home to be constructed. Currently the property at 1925 Hamilton Av built in 2004 is a 3 bedroom 2 bath 1834 SqFt. home on the same lot size as the lot requesting a variance.

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 variance, as requested, would allow a single-family home with adequate square footing to be built. Thus, utilizing the property to its fullest, as divided, without intruding on neighboring properties.

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?

A variance would bring a newer, more efficient home and provided housing in a market short on housing.

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

A variance would not disturb the surrounding area once completed. It would also meet with the current zoning classification ... to preserve and protect rural areas of the county...



# Boundary Survey

## Legal Description:

LOTS 5 THROUGH 8,, BLOCK G, ORANGE CITY HEIGHTS, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 22, PAGE 194, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

### FLOOD DISCLAIMER:

BY PERFORMING A SEARCH WITH THE LOCAL GOVERNING MUNICIPALITY OR WWW.FEMA.GOV, THE PROPERTY APPEARS TO BE LOCATED IN ZONE X. THIS PROPERTY WAS FOUND IN VOLUSIA COUNTY, COMMUNITY NUMBER 125155, DATED 2/19/2014.

### CERTIFIED TO:

STEP UP CONSTRUCTION



Assumed Bearings

Graphic Scale

0' 15' 30' 60'

### -Benchmark Information-

Florida Department of Transportation Datum

(Elevations are based upon North American Vertical Datum 1988)

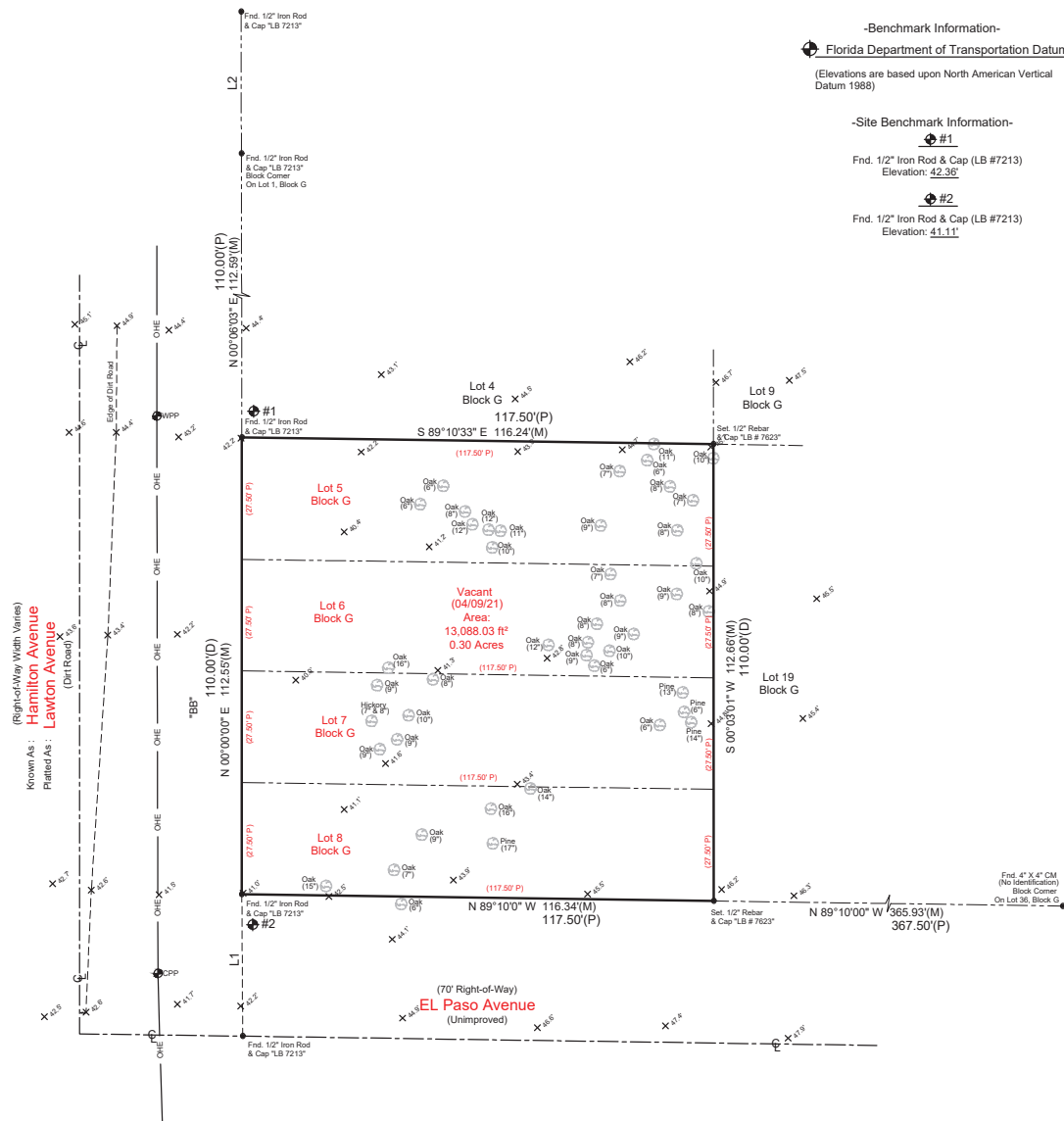
### -Site Benchmark Information-

#1

Fnd. 1/2" Iron Rod & Cap (LB #7213)  
Elevation: 42.36'

#2

Fnd. 1/2" Iron Rod & Cap (LB #7213)  
Elevation: 41.11'



### -Surveyor's Note-

- > Platted Dimensions do Not Match Found Monumentation.
- > Survey is Based Upon Found Monumentation.

L1  
N 00°19'57" E 35.00'(P)  
35.02'(M)

L2  
N 00°08'00" E 34.96'(M)

CPP - Concrete Utility Pole  
WPP - Wooden Utility Pole

Field Date: 04/09/21 Date Completed: 04/10/21

Drawn By: SMT

File Number: IS-85885

### -Legend-

C	- Calculated	PC	- Point of Curvature
CB	- Centerline	Pg	- Page
CB	- Concrete Block	PI	- Point of Intersection
CM	- Concrete Monument	P.O.B.	- Point of Beginning
Conc.	- Concrete	P.O.L.	- Point on Line
D	- Description	PP	- Power Pole
DE	- Drainage Easement	PRM	- Permanent Reference Monument
Easmt.	- Easement	PT	- Point of Tangency
F.E.M.A.	- Federal Emergency Management Agency	R	- Radius
FFE	- Finished Floor Elevation	Rad	- Radial
IP	- Iron Pipe	R&C	- Rebar & Cap
L	- Length (ft)	Rec.	- Recovered
M	- Measured	Rld	- Road
M&D	- Nail & Disk	Set	- Set 1/2" Rebar & Cap
N.R.	- Non-Radial	Typ.	- Typical
ORB	- Official Records Book	UE	- Utility Easement
P	- Plat	WM	- Water Meter
P.B.	- Plat Book	Δ	- Delta (Central Angle)
PF	- Wood Fence	-D-	- Chain Link Fence

### -Notes-

- > Survey is Based upon the Legal Description Supplied by Client.
- > Abutting Properties Deeds have NOT been Researched for Gaps, Overlaps and/or Hiatus.
- > Subject to any Easements and/or Restrictions of Record.
- > Bearing Basis shown hereon, is Assumed and Based upon the Line Denoted with a "BB".
- > Building Ties are NOT to be used to reconstruct Property Lines.
- > Fence Ownership is NOT determined.
- > Roof Overhangs, Underground Utilities and/or Footers have NOT been located UNLESS otherwise noted.
- > Septic Tanks and/or Drainedfield locations are approximate and MUST be verified by appropriate Utility Location Companies.
- > Use of this Survey for Purposes other than Intended, Without Written Verification, Will be at the User's Sole Risk and Without Liability to the Surveyor. Nothing Hereon shall be Constructed to give ANY Rights or Benefits to Anyone Other than those Certified.
- > Flood Zone Determination Shown Hereon is Given as a Courtesy, and is Subject to Final Approval by F.E.M.A. This Determination may be affected by Flood Factors and/or other information NEITHER known by NOR given to this Surveying Company at the time of this Endeavor.
- Ireland & Associates Surveying Inc. and the signing surveyor assume NO Liability for the Accuracy of this Determination.

I hereby Certify that this Boundary Survey of the above Described Property is True and Correct to the Best of my Knowledge and Belief as recently Surveyed under my Direction on the Date Shown. Based on Information furnished to me as Noted and Conforms to the Standard of Practice for Land Surveying in the State of Florida in accordance with Chapter 5-17.002 Florida Administrative Codes, Pursuant to Section 417.007 Florida Statutes.

Patrick K. Ireland, P.S. 6637, L.B. 7623  
This Survey is Intended for the use of Said Certified Parties.  
This Survey NOT VALID UNLESS Signed and Embossed with Surveyor's Seal.

Ireland & Associates Surveying, Inc.

800 Currency Circle, II Suite 1020  
Lake Mary, Florida 32746  
www.Irelandsurveying.com  
Office-407.678.3366 Fax-407.320.8165

Patrick K. Ireland  
Ireland  
Date: 2021.08.30  
13:12:05  
-0400'

**Inter-Office  
Memorandum**



**TO:** Darren Ebersole, Planner II **DATE:** September 3, 2021  
**FROM:** Samantha J. West, Environmental Specialist III  
**SUBJECT:** Parcel Number: 7032-02-07-0050  
Case Number: V-22-009

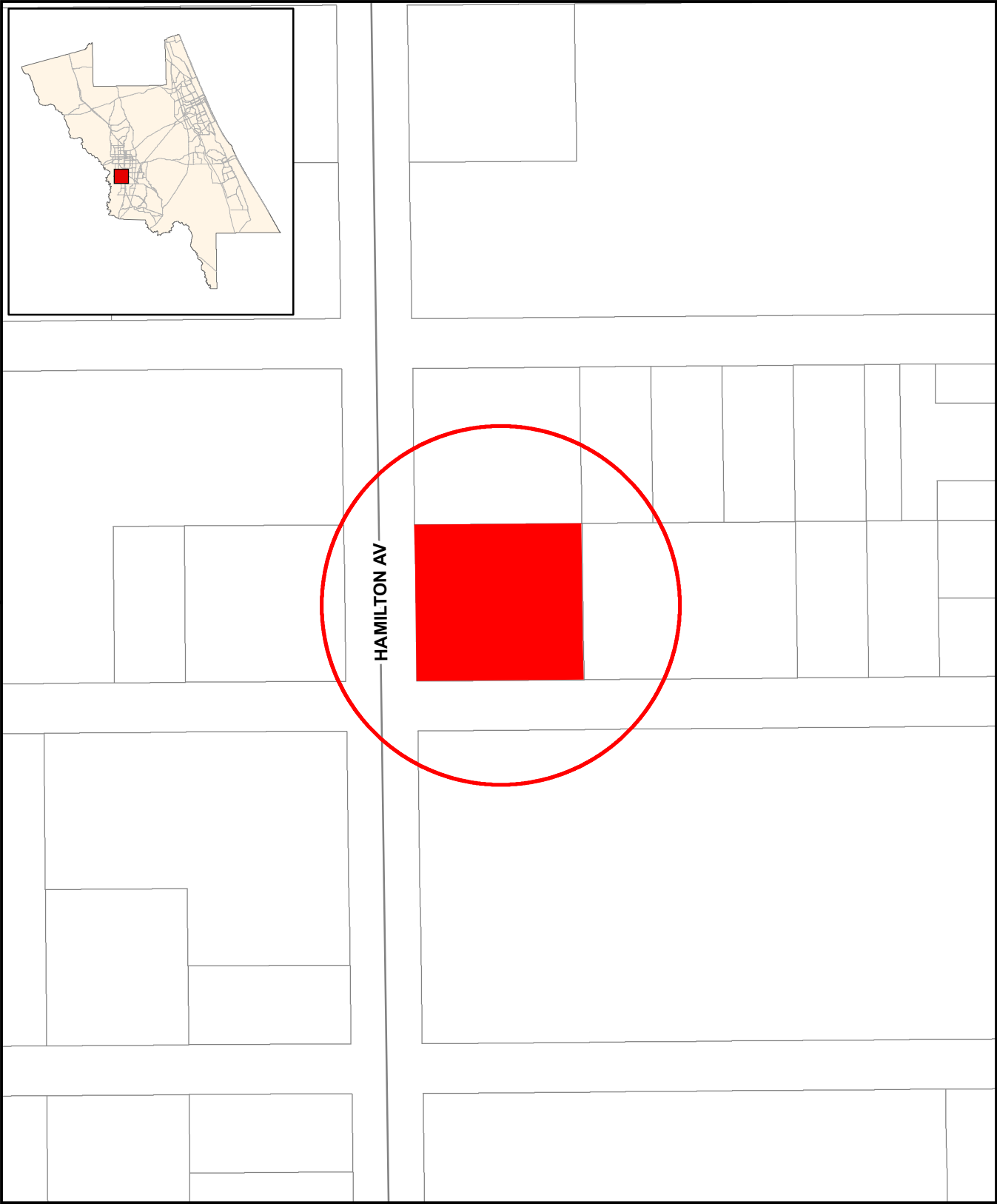
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Environmental Permitting (EP) has reviewed the application for a variances to minimum yard requirements on Rural Agriculture (A-2) zoned property and provides the following report:

The subject property is located within the DeLand Ridge 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.

PROPERTY LOCATION  
V-22-009



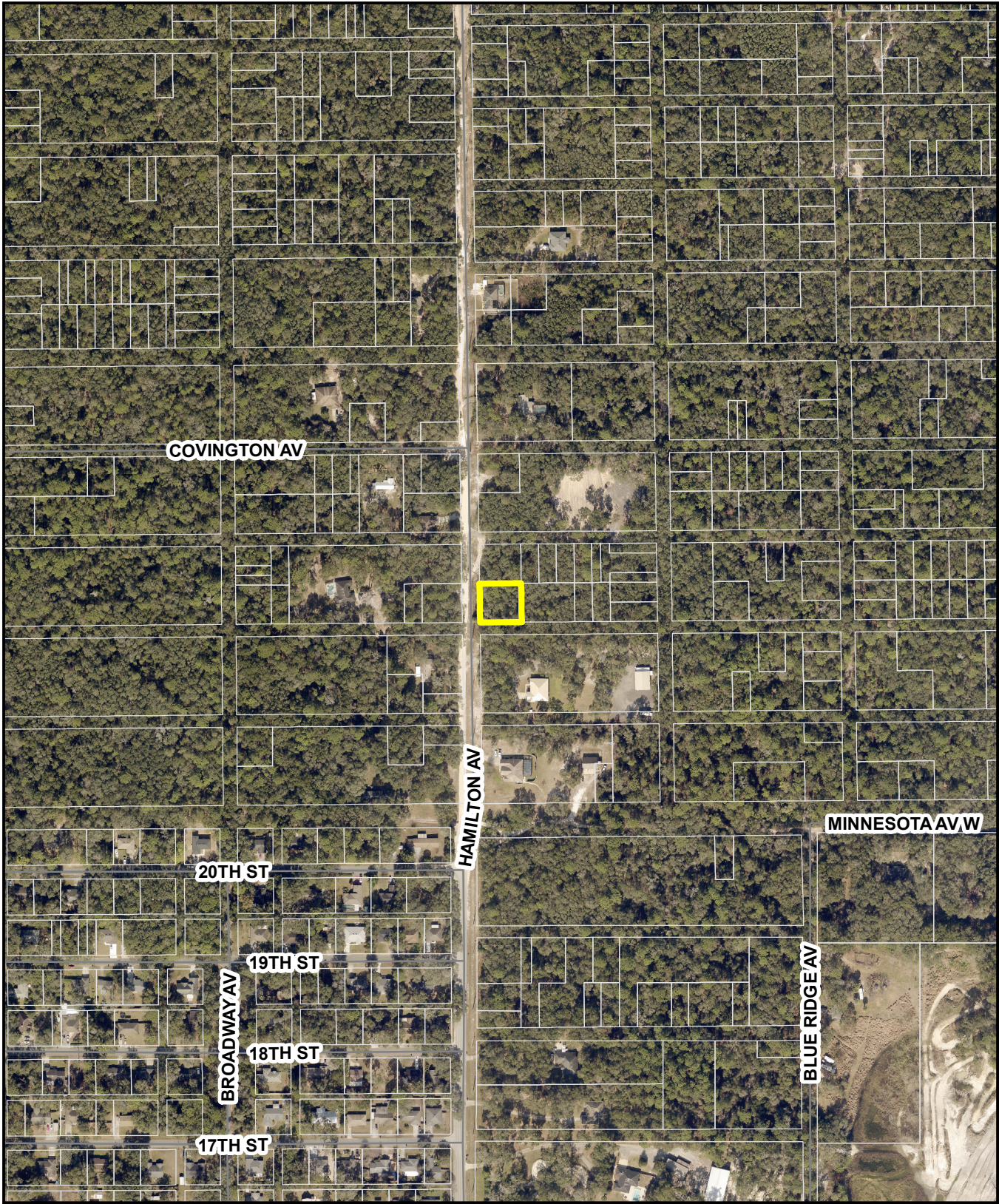
 SUBJECT PROPERTY



1 " = 100 '  
8/30/2021



AERIAL  
V-22-009



 SUBJECT PROPERTY

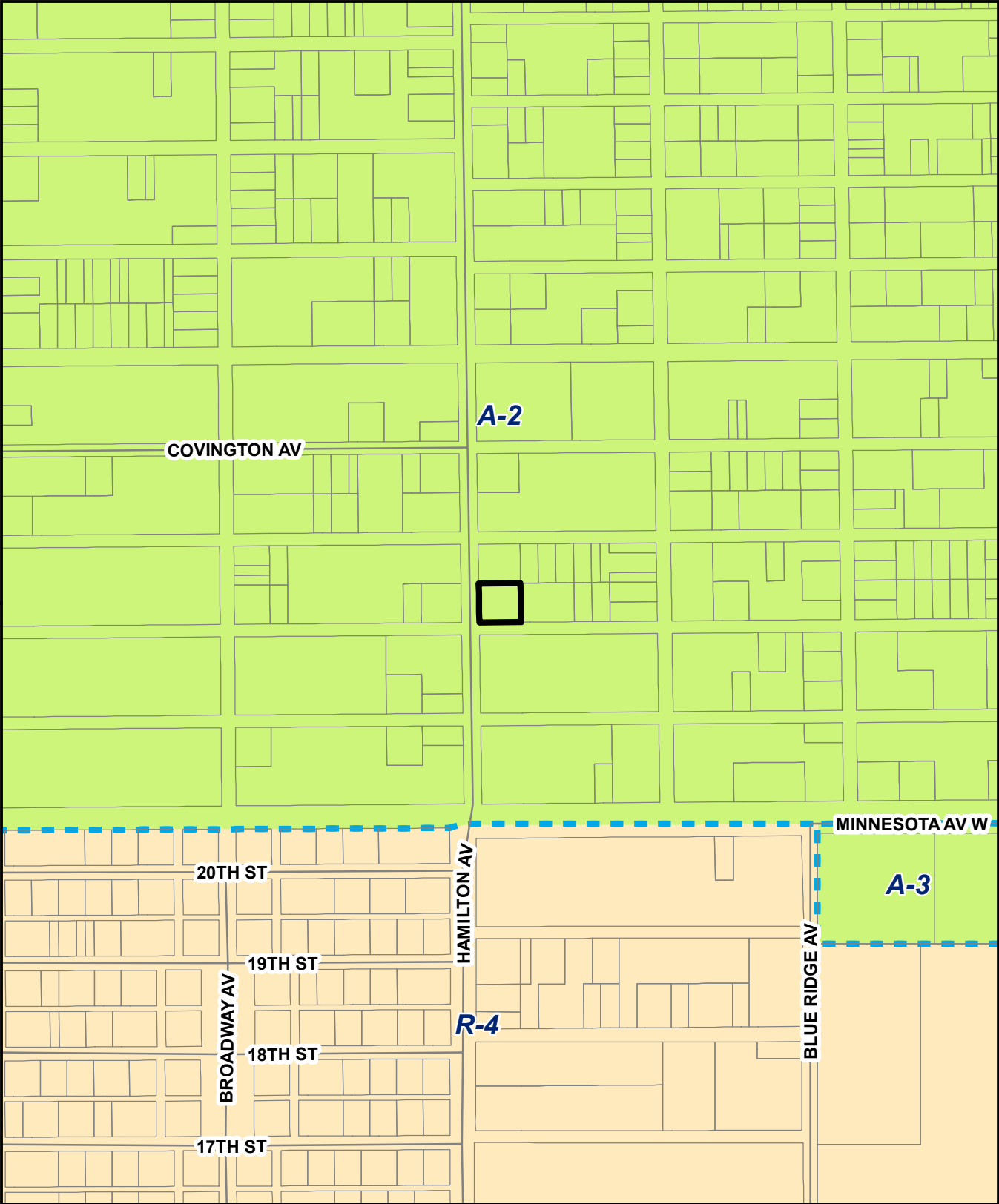
IMAGE DATE 2021




1 " = 400 '  
8/30/2021





ZONING CLASSIFICATION  
V-22-009



 SUBJECT PROPERTY

 ZONING BNDY

 AGRICULTURAL

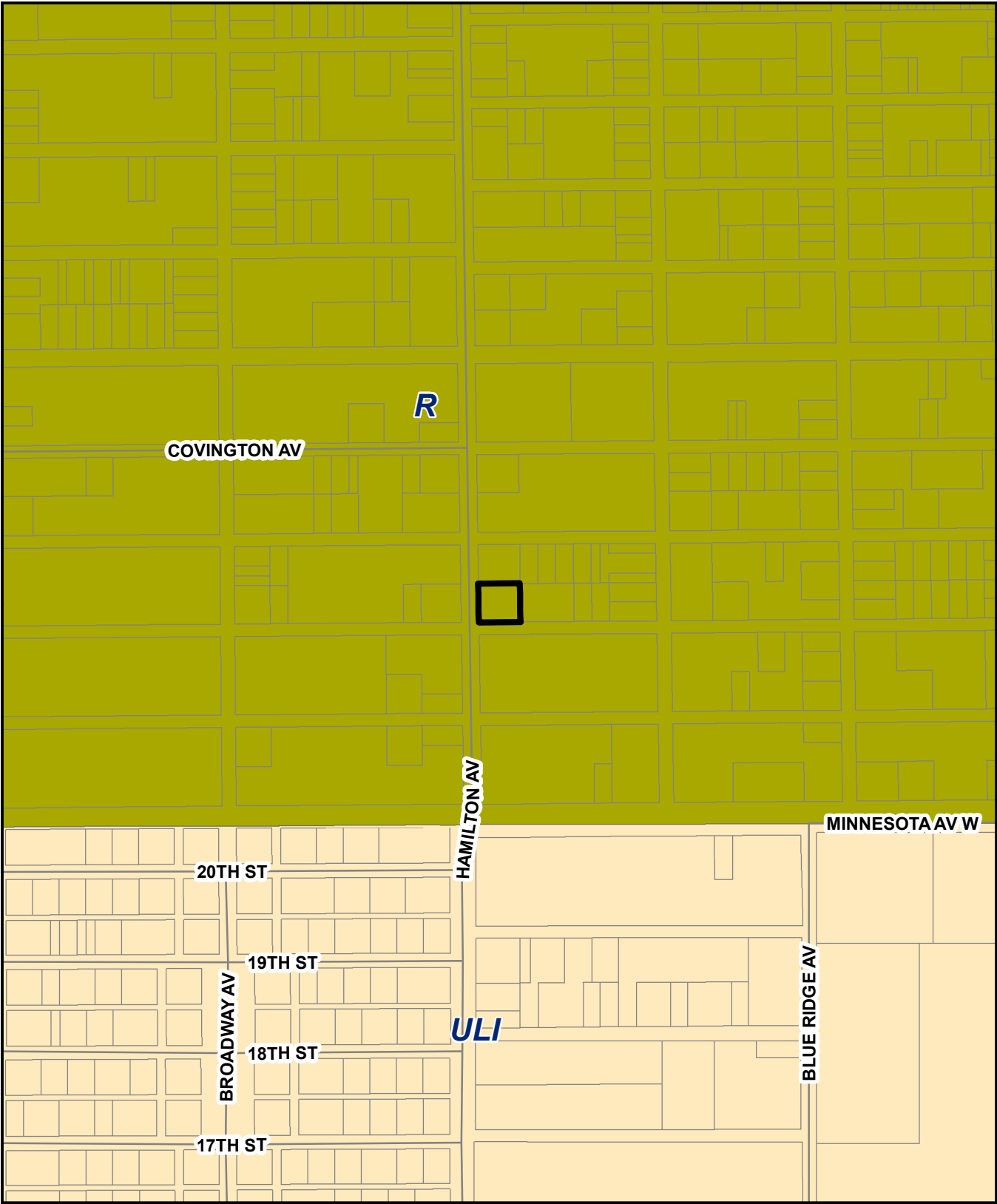
 RESIDENTIAL






1 " = 400 '  
8/30/2021



FUTURE LAND USE  
V-22-009

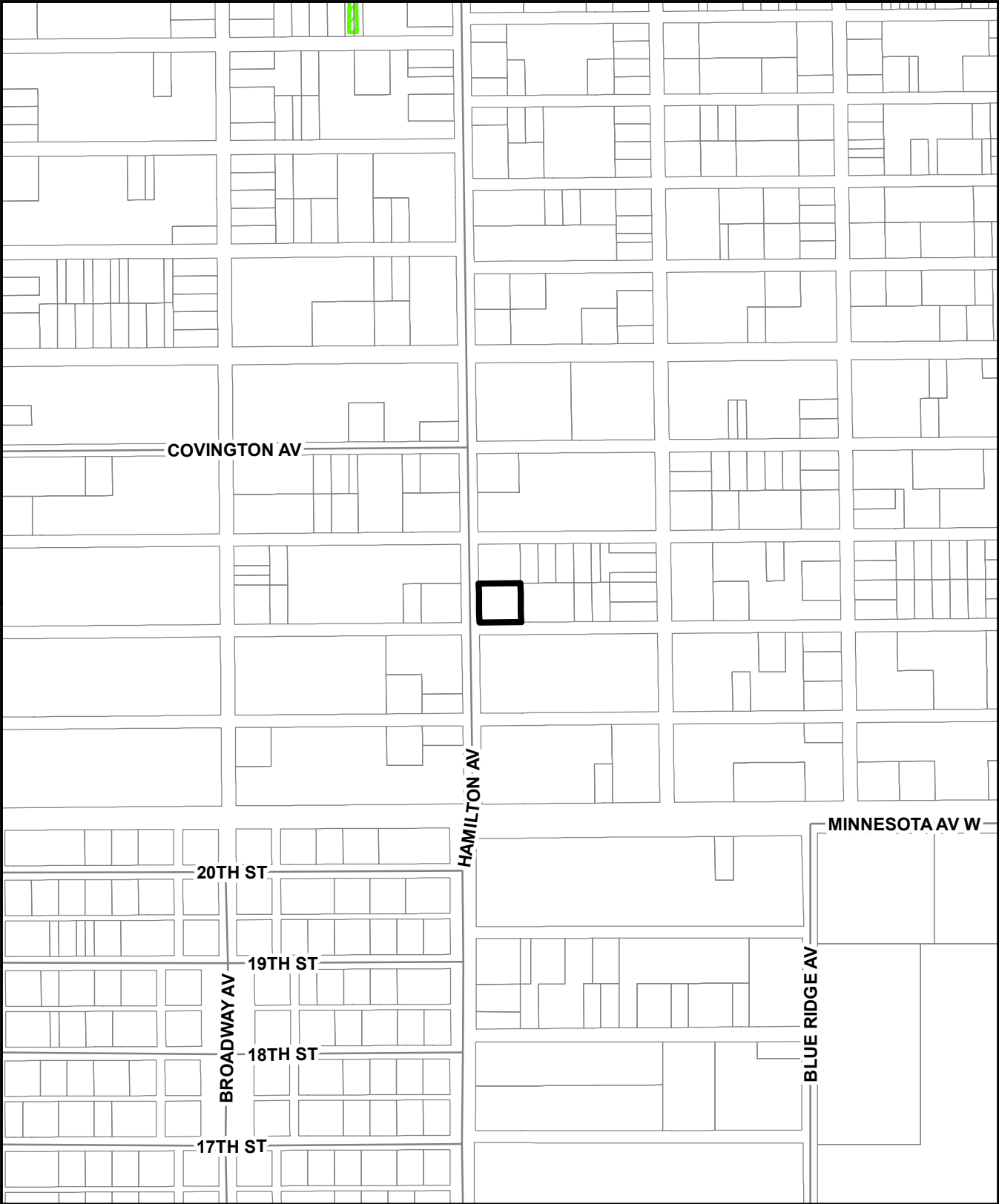





-  SUBJECT PROPERTY
-  RURAL
-  URBAN LOW INTENSITY



1 " = 400 '  
8/30/2021

ECO/NRMA OVERLAY  
V-22-009



-  SUBJECT PROPERTY
-  ECO
-  NRMA



1 " = 400 '  
8/30/2021