



**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-22-016

SUBJECT: Variances to the maximum fence height on Urban Single-Family Residential (R-4) zoned property

LOCATION: 1205 20th Street, Orange City

APPLICANT(S): Justin Gonzalez and Kathryn Lucas

OWNER(S): Same as above

I. SUMMARY OF REQUEST

The applicants seek two variances for a fence. The variance requests are as follows:

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

Variance 2: A variance to increase the maximum fence height in the east front yard from four feet to six feet.

Staff Recommendation:

Deny variances 1 and 2, case number V-22-016, as the variances fail to meet one of the five criteria for granting said variances.

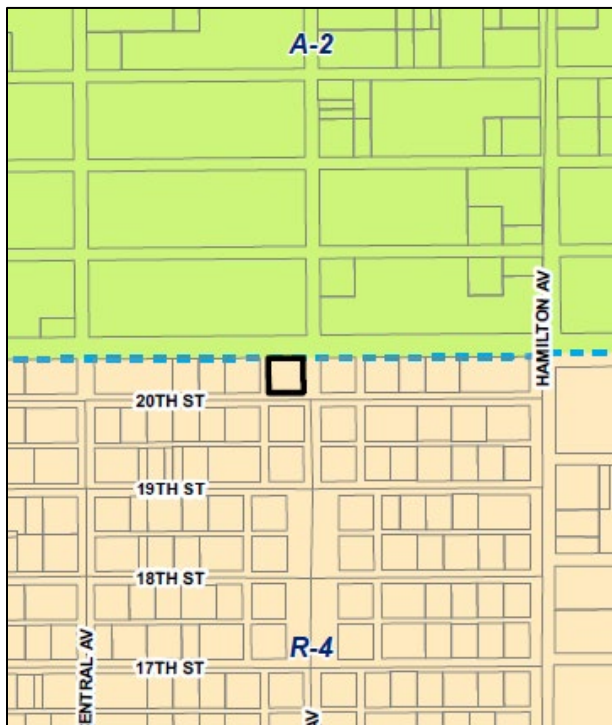
II. SITE INFORMATION

- 1. Location: On the north side of 20th Street, approximately 740 feet east of the intersection of 20th Street and Hamilton Avenue, Orange City
- 2. Parcel Number(s): 8004-01-40-0200
- 3. Property Size: 10,000 square feet
- 4. Council District: 1
- 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:

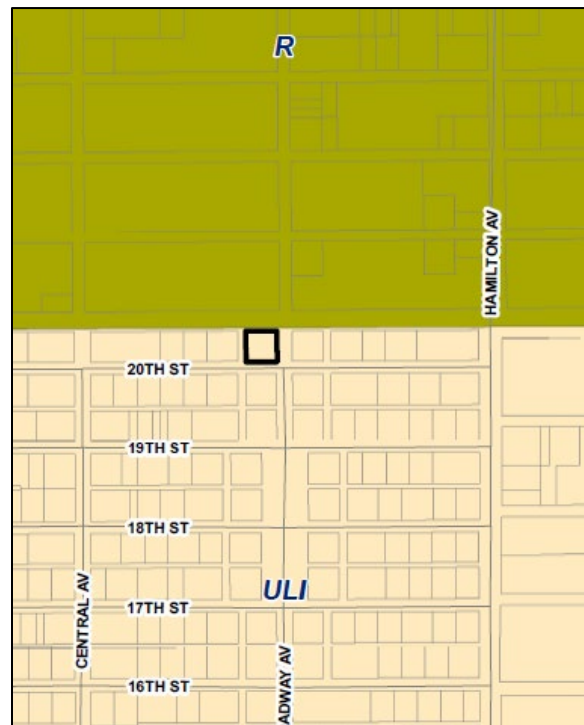
DIRECTION	ZONING	FUTURE LAND USE	EXISTING USE
North:	A-2	Rural	Vacant / forested
East:	R-4	Urban Low Intensity	Vacant single-family residential lot
South:	R-4	Urban Low Intensity	Vacant single-family residential lot
West:	R-4	Urban Low Intensity	Single-family residential

10. Maps:

ZONING MAP



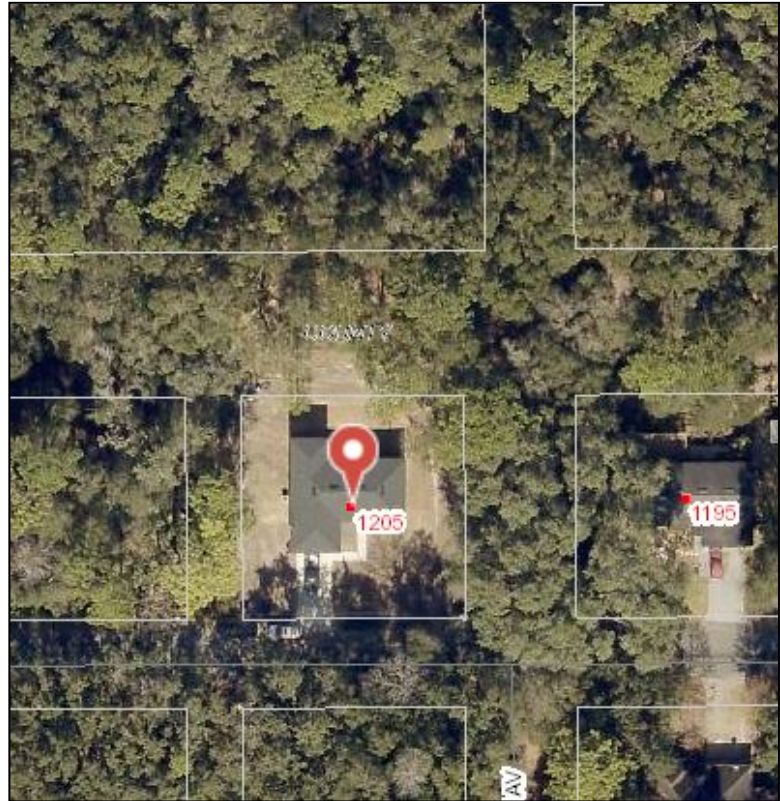
FUTURE LAND USE MAP



III. BACKGROUND AND OVERVIEW

The subject property is zoned R-4, which requires a minimum lot area of 7,500 square feet and a minimum lot width of 75 feet. The lot is 10,000 square feet in area and 100 feet in width.

It is a triple frontage lot. It is adjacent to 20th street on the south, which is a 40-foot wide county maintained right-of-way; Broadway Avenue on the east, which is a 50-foot wide unimproved right-of-way; and a 40-foot wide unnamed and unimproved right-of-way on the north. The west side is adjacent to a 25-foot unimproved alley. The yards adjacent to the rights-of-ways are all considered front yards. The yard adjacent to the alley is considered a side yard.



The applicants desire to erect a six-foot fence along the east, north and west property lines. Because of the adjacent right-of-ways, the north and east sides of the property are considered front yards. Fences in front yards are limited to four feet in height. Therefore, the applicants request variances to allow a six-foot fence in the north front yard and the east front yard. Both of these adjacent right-of-ways are unimproved and heavily wooded.

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 subject property is a triple frontage lot. Where the fence is proposed along the north and east property lines, the adjacent right-of-ways are unimproved and heavily wooded.

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 applicants are not responsible for the conditions of the right-of-way.

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 the zoning requirements would not deprive the applicants of a commonly enjoyed right, but may work an unnecessary hardship. The fence will be located adjacent to unimproved and heavily wooded right-of-ways. The east side fence will be 50 feet from the adjacent developed single-family lot. The property on the north side is vacant and heavily wooded. A six-foot fence will not be visible to adjacent properties.

Staff finds 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: Neither of the variances are necessary to make reasonable use of the land. The property can be reasonably maintained with a four-foot fence or without a fence.

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 the variances to allow a six-foot fence in the front yards adjacent to unimproved right-of-ways will not be injurious to the area. The fence will be shielded from view from the adjacent properties by considerable vegetation and trees.

Staff finds that this criterion is met.

V. STAFF RECOMMENDATION

Deny variances 1 and 2, case number V-22-016, as the variances fail to meet one of the five criteria for granting said variances.

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 applicants have 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 as depicted on the variance site plan. Any change to the location or height of the fence, 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.

VI. ATTACHMENTS

- Variance Site Plan
- Written Petition
- Survey
- Environmental Memo
- Land Development Memo
- Map Exhibits

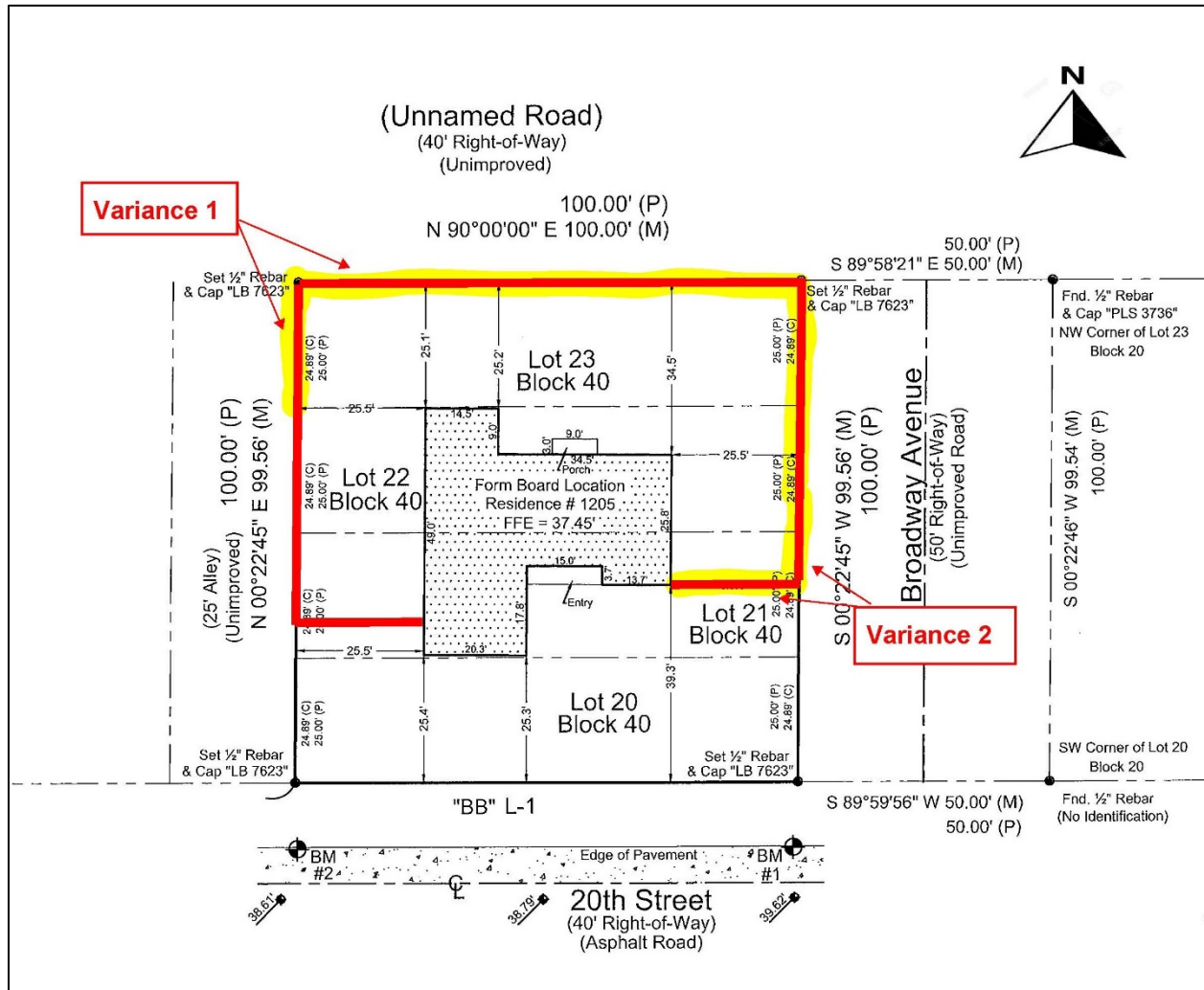
VII. AUTHORITY AND PROCEDURE

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



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

Variance 2: A variance to increase the maximum fence height in the east front yard from four feet to six feet.



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?

Property has three fronts and roadways on all four sides. Three roadways are not developed. We aren't responsible for these conditions.

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?

It would not allow us to have a six foot fence at all.

3. Explain how the variance you are requesting is the minimum variance that will make possible the reasonable use of your land, building, structure, or sign.

This is the minimum because the majority of the backyard couldn't be fenced in.

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?

These roadways are not open to traffic and the placement of a six foot fence doesn't compromise the health and safety of the public.

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

We are surrounded by roadways all around and it doesn't effect anyone else's property.

Vertical Datum-

Benchmark Information-
Florida Department of Transportation Datum

Florida Department of Transportation
Florida Permanent Reference Network (FPRN) District 5
G.P.S. - Geospatial Network Reference Station (GNSS) Station: DLND
Continuously Operating Reference Station (CORS) Station: DLND
(Elevations are based upon North American Vertical Datum 1988)

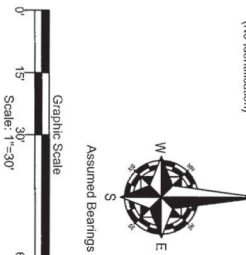
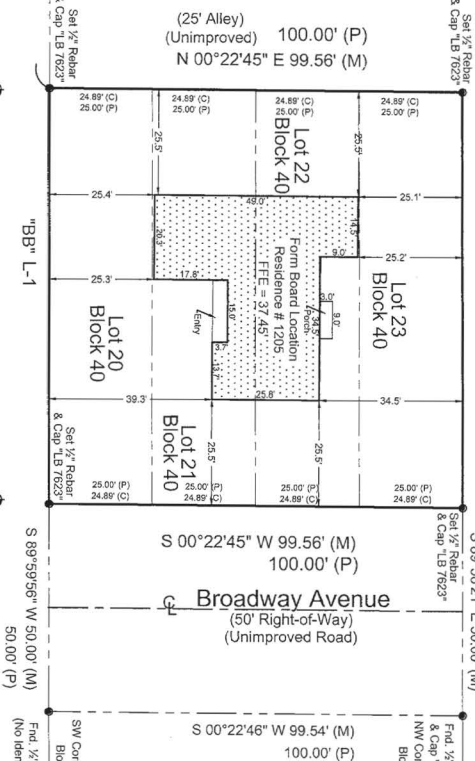
Site Benchmark Information-

BM #1
Set Nail & Disk (LB 7623) in Edge of Pavement
Elevation: 39.32'
BM #2
Set Nail & Disk (LB 7623) in Edge of Pavement
Elevation: 38.08'

SW Corner of Lot 13
Block 40
Fnd 1/2" Rebar
& Cap PLUS 37.95"
N 90°00'00" W 200.23' (M)
200.00' (P)
Line Data
L-1
"BB" 100.00' (P)
N 90°00'00" W 100.00' (M)

(Unnamed Road)
(40' Right-of-Way)
(Unimproved)

100.00' (P)
N 90°00'00" E 100.00' (M)



FOUNDATIONS SURVEY.

Legal Description:
LOTS 20 THROUGH 23 BLOCK 40, PLAT NO. 12) TWO OF WEST HIGHLANDS, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, PAGES 173 THROUGH 178, OF THE PUBLIC RECORDS OF VOLUISIA COUNTY, FLORIDA.

Flood Information:
PLAT WITH THE LOCAL GOVERNING AUTHORITY OR WWW.FEMA.GOV. THE PROPERTY APPEARS TO BE LOCATED IN ZONE X. THIS PROPERTY WAS FOUND IN VOLUISIA COUNTY COMMUNITY NUMBER 12155. DATED 2/19/2014.
CERTIFIED TO:
TEK CONTRACTING



1205. 20TH ST. ORANGE CITY, FLORIDA 32713

Field	Date	Completed
DRAWN BY: C.W.	10/05/2020	10/06/2020
FILE NUMBER: 15-7162 FO		

Legend	
C	- Calculated
CB	- Concrete Block
CM	- Concrete Monument
Cont.	- Contour
DE	- Drainage Elevation
FE	- Elevation
F.F.E.	- Flood Elevation
FM	- Foundation Monument
FPL	- Found. Plan Elevation
IP	- Iron Pipe
M	- Monument
M.L.D.	- Mean Low Tide
N.R.	- Non-Record
ORB	- Official Record Book
P.B.	- Plat Book
W.P.	- Wood Fence
-	- Chain Link Fence
PC	- Point of Curvature
P.C.	- Point of Intersection
P.O.B.	- Point on Beginning
P.O.L.	- Point on Line
P.M.	- Permanent Monument
PT	- Point
R.L.	- Rebar
R.C.	- Recovered
S	- Survey
S.E.T.	- Set 1/2" Rebar & Cap
TYPE	- Type
U.L.E.	- Utility Elevation
V.M.	- Dallas (Central Angle)
A	- Chain Link Fence

Revision: Foundation Survey - 10/06/20 - TCK
Revision: Revised FFE - 10/02/20 - MKS
Revision: Plot Plan - 08/22/20 - BMU
Revision: Plot Plan - 03/28/20 - BMU

NOTES:
- Survey is based upon the Legal Description supplied by Client.
- Subject to the usual caveats and restrictions of record.
- Existing easements and/or restrictions of record.
- The location of monuments, markers, and other items are shown as reported to the Surveyor.
- Flood Elevations (FFE) and/or Flood Insurance Rates (FIR) are NOT shown.
- Flood Elevations (FFE) and/or Flood Insurance Rates (FIR) are shown as reported to the Surveyor.
- The location of monuments, markers, and other items are shown as reported to the Surveyor.
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Points of Interest:

NONE VISIBLE

TEK CONTRACTING, INC.
1111 N. Orange Blvd., Suite 100
Orange, Florida 32703
Phone: 407-678-3369
Fax: 407-320-8165
www.tekcontracting.com

Inter-Office
Memorandum



TO: Susan Jackson, AICP Senior Planning Manager
DATE: October 10, 2021
FROM: Samantha J. West, Environmental Specialist III
SUBJECT: Parcel #: 8004-01-40-0200
Case #: V-22-016

Environmental Permitting (EP) has reviewed the application for a variance to maximum fence height on Urban Single-Family Residential (R-4) 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 request. 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



To: Susan Jackson, AICP
Planning Manager **Date:** October 10, 2021

From: Direne Ostrander
Land Development Assistant II

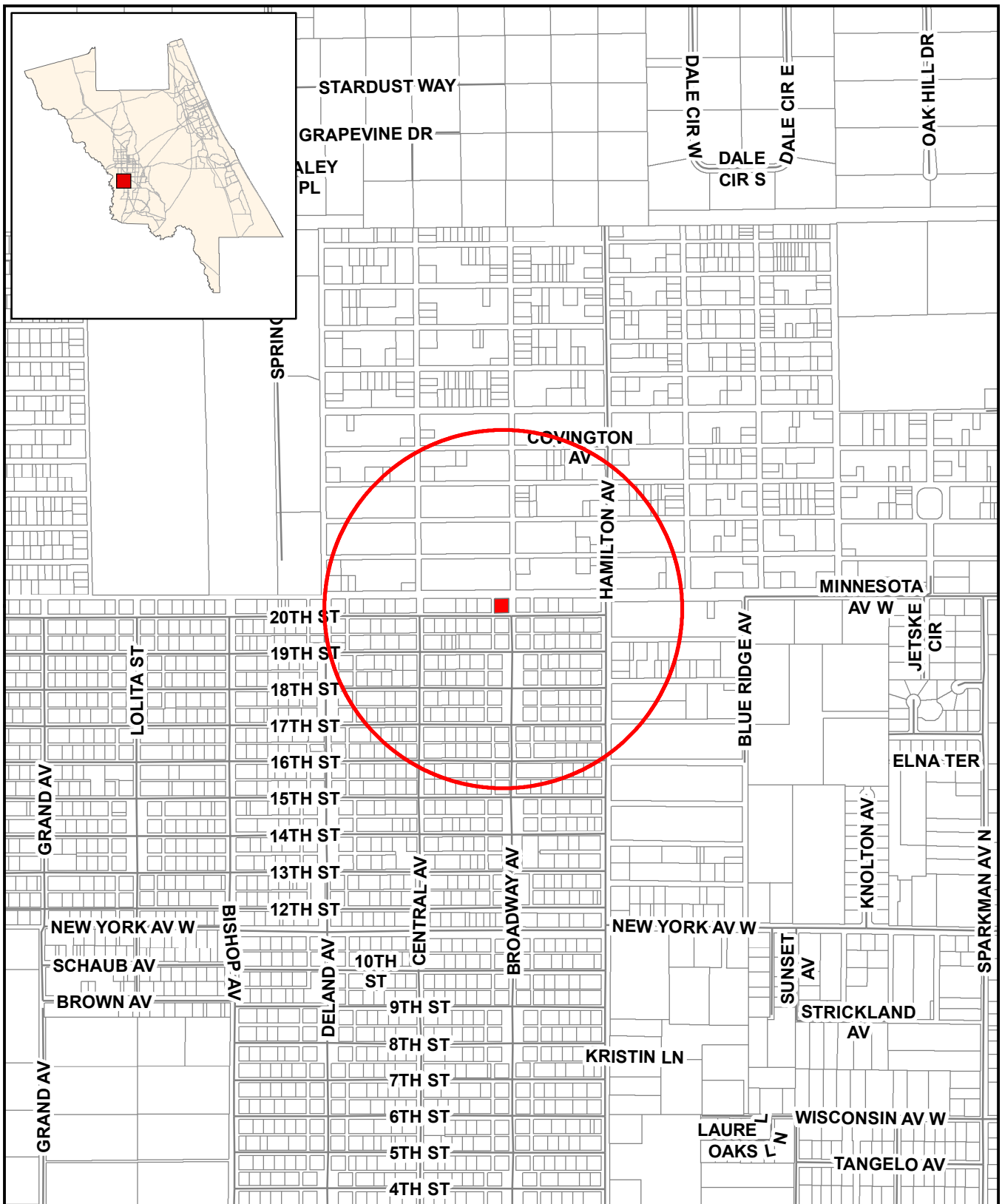
Subject: V-22-016
Parcel #: 8004-01-40-0200

Land Development has reviewed the parcel involved in the subject variance to maximum fence height requirements and provides the following determination:

The subject parcel was previously approved by Elite Unrecorded (2021-S-EXM-0289) and complies with the exempt provisions of the county's subdivision regulations.

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

PROPERTY LOCATION V-22-016



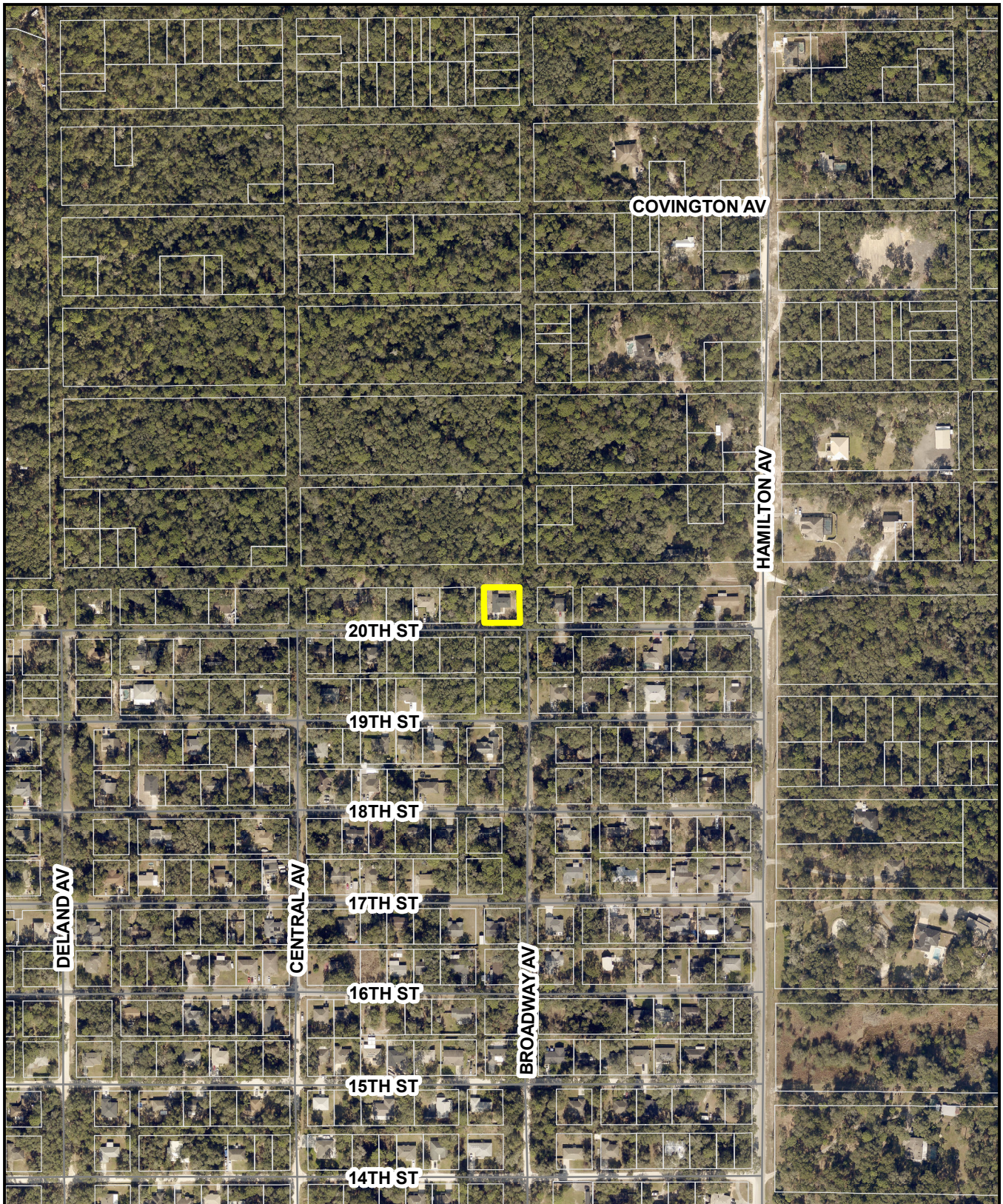
 SUBJECT PROPERTY



1" = 1,000'

9/20/2021

AERIAL V-22-016



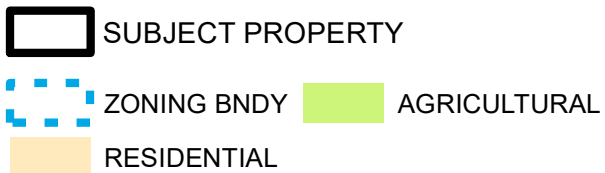
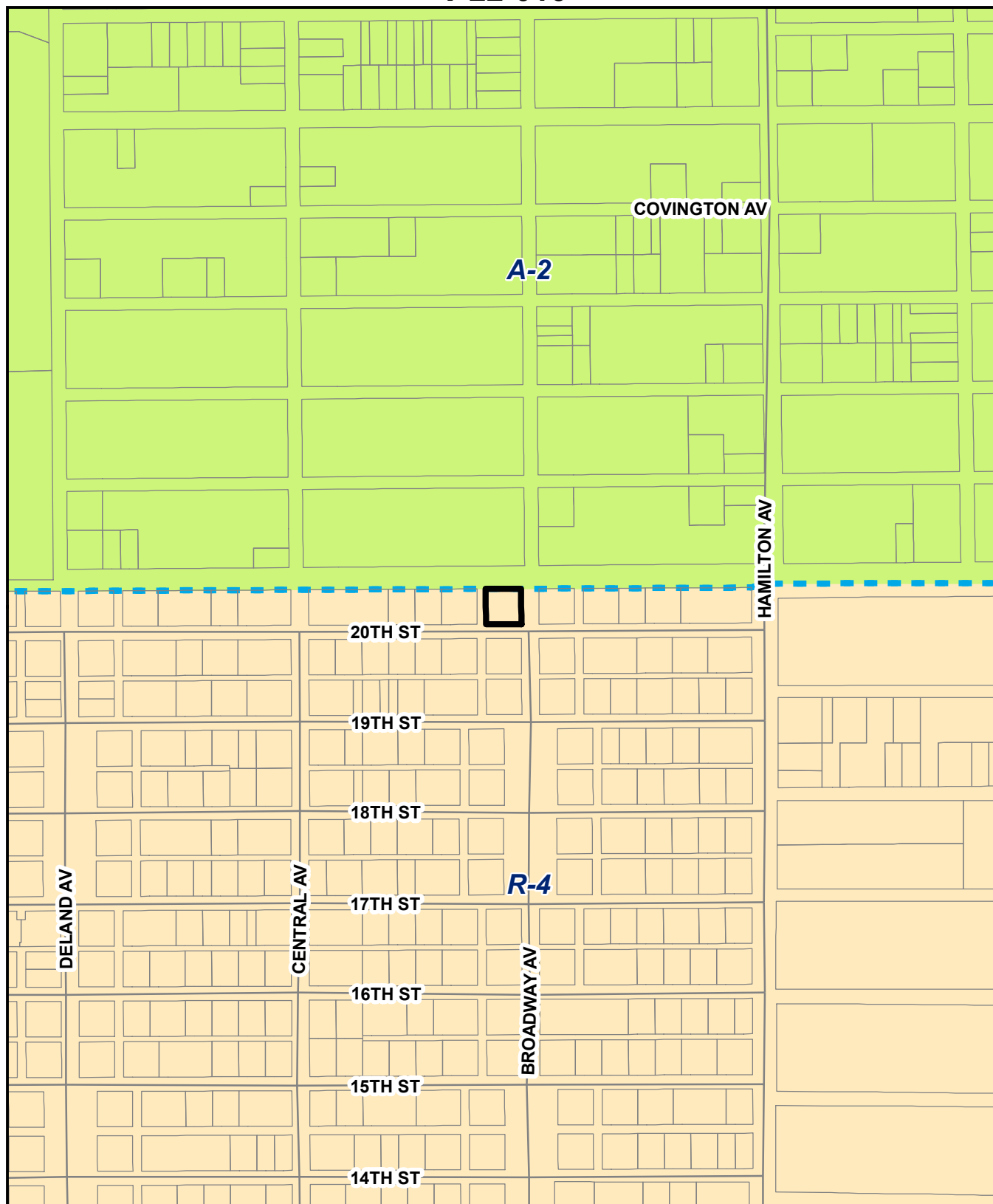
 SUBJECT PROPERTY

IMAGE DATE 2021



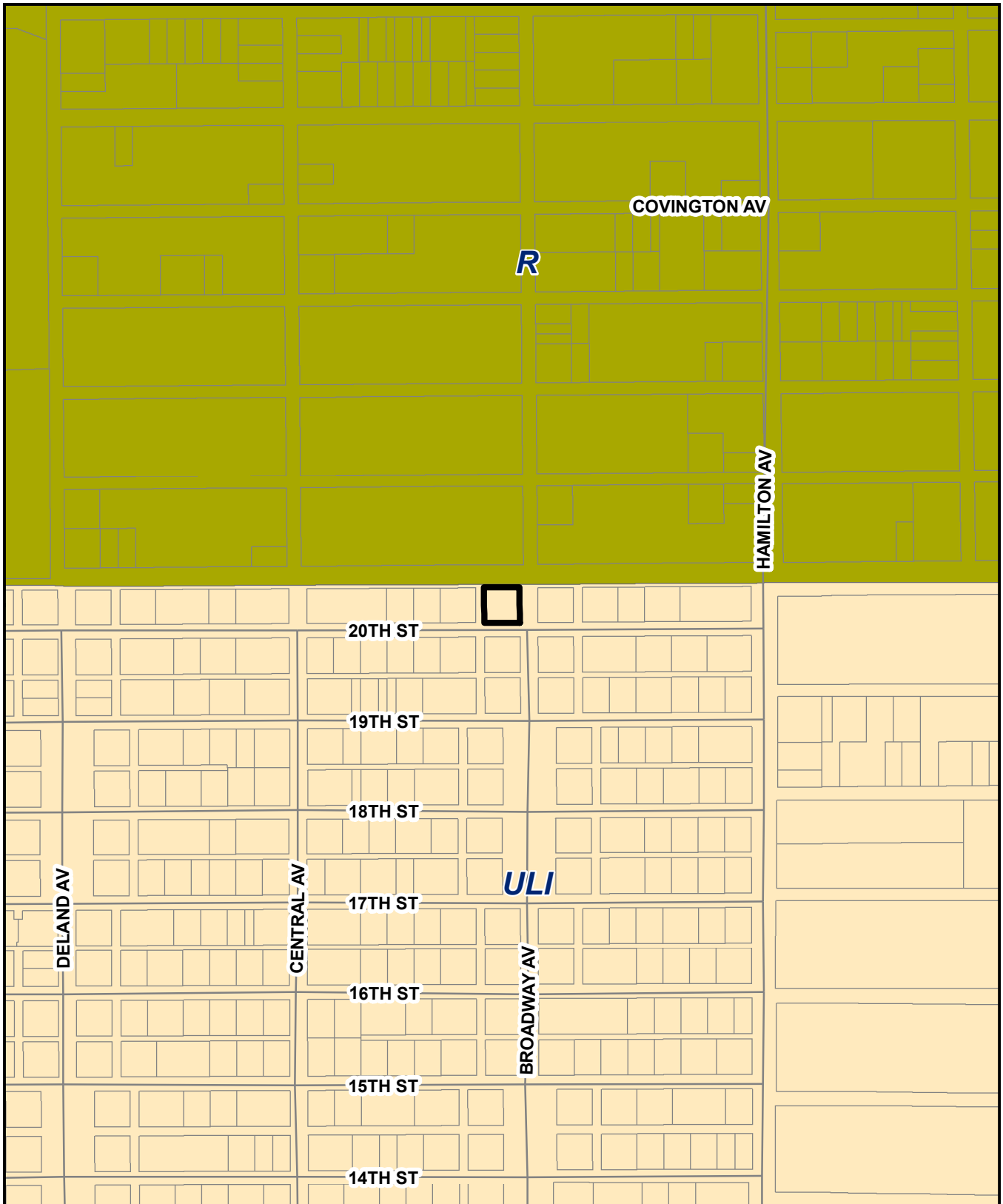
1" = 400'
9/20/2021




ZONING CLASSIFICATION V-22-016




1" = 400'
9/20/2021

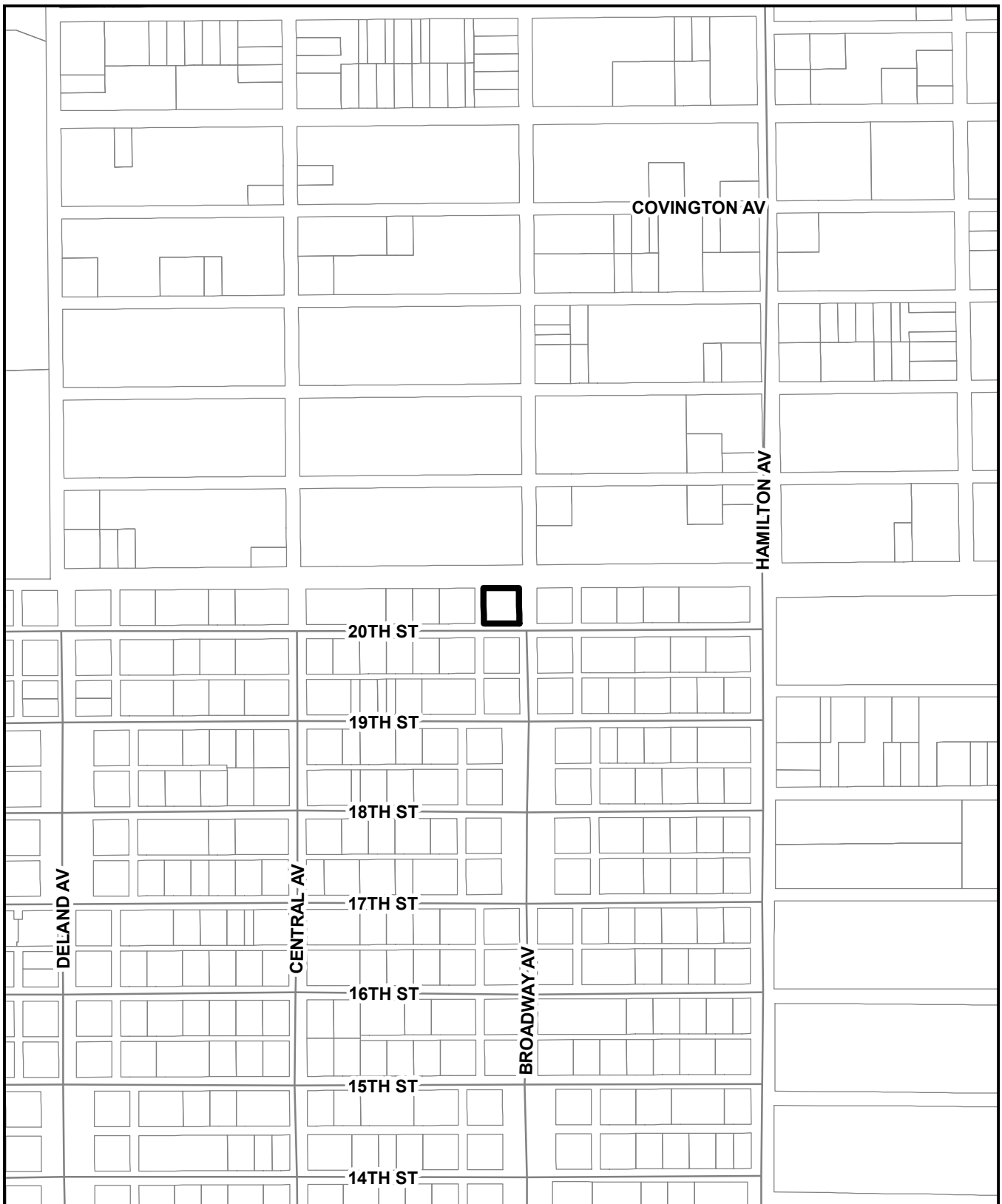
FUTURE LAND USE V-22-016







-  SUBJECT PROPERTY
-  RURAL
-  URBAN LOW INTENSITY

 1" = 400'
9/20/2021

ECO/NRMA OVERLAY V-22-016



-  SUBJECT PROPERTY
-  ECO
-  NRMA

 1" = 400'
9/20/2021