



**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-22-019

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

LOCATION: 1743 Oak Street, DeLand

APPLICANT(S): Tim and Rhonda Schell

OWNER(S): Timothy Wayne Schell

I. SUMMARY OF REQUEST

The applicants are seeking variances to legitimize the placement of existing accessory structures. The requested variances are as follows:

Variance 1: A variance to the minimum north side yard from the required five feet to 1.7 feet for an existing 240-square-foot carport.

Variance 2: A variance to the minimum rear yard from the required five feet to 4.7 feet for an existing 140-square-foot shed.

Variance 3: A variance to the minimum rear yard from the required five feet to 0.8 feet for an existing 45-square-foot shed.

Staff Recommendation:

Variance 1: Deny variance 1, case number V-22-019, as the variance fails to meet three of the five criteria for granting said variance.

Variance 2: Deny variance 2, case number V-22-019, as the variance fails to meet two of the five criteria for granting said variance.

Variance 3: Approve variance 3, case number V-22-019, as the variance meets all of the five criteria for granting said variance.

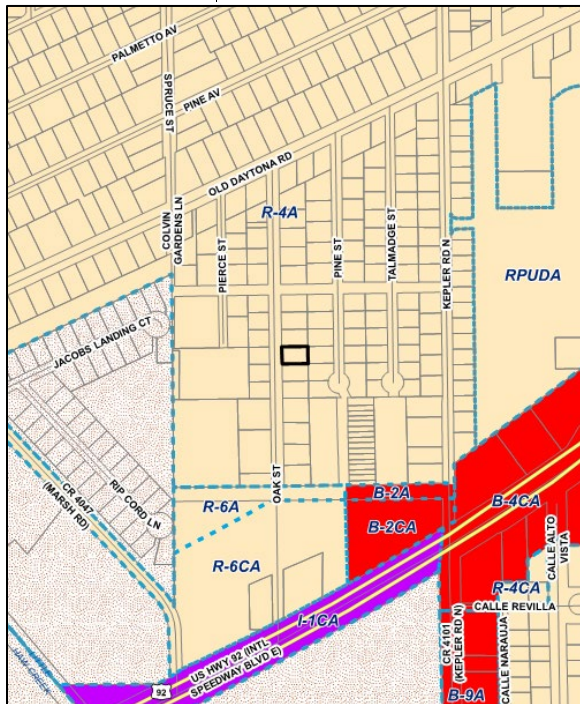
II. SITE INFORMATION

- 1. Location: East side of Oak Street, approximately 850 feet south of its intersection with Old Daytona Road, in the DeLand area.
- 2. Parcel Number(s): 6035-02-08-0140
- 3. Property Size: +/- 10,375 square feet
- 4. Council District: 4
- 5. Zoning: Urban Single-Family Residential (R-4)
- 6. Future Land Use: Urban Low Intensity (ULI)
- 7. Overlays: Airport Protection Overlay Zone (A)
- 8. Local Plan Area: N/A
- 9. Adjacent Zoning and Land Use:

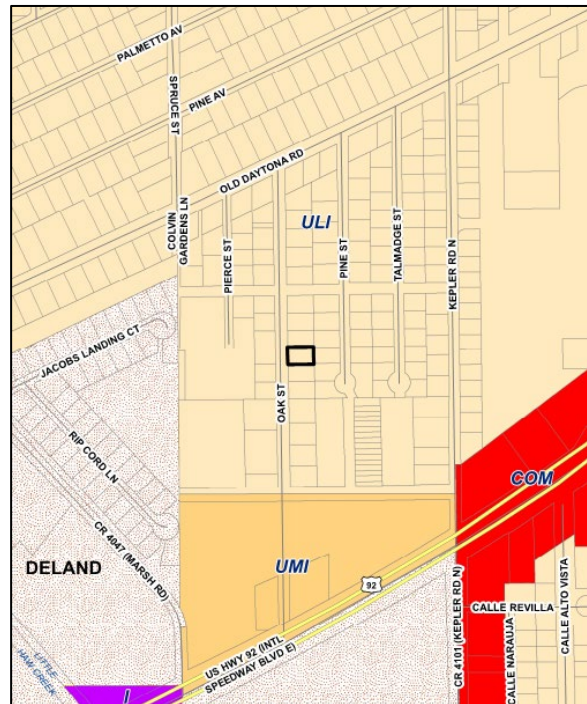
DIRECTION	ZONING	FUTURE LAND USE	EXISTING USE
North:	R-4	Urban Low Intensity	Single-Family Residence
East:	R-4	Urban Low Intensity	Single-Family Residence
South:	R-4	Urban Low Intensity	Single-Family Residence
West:	R-4	Urban Low Intensity	Single-Family Residence

10. Maps:

ZONING MAP



FUTURE LAND USE MAP



III. BACKGROUND AND OVERVIEW

The subject property is located on the east side of Oak Street, approximately 850 feet south of its intersection with Old Daytona Road, in the DeLand area. The parcel is developed with a 2,885-square-foot residence constructed in 1979, two sheds, a pool, and a carport. 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 exceeds these requirements at approximately 10,375 square feet and 83 feet in width. 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.

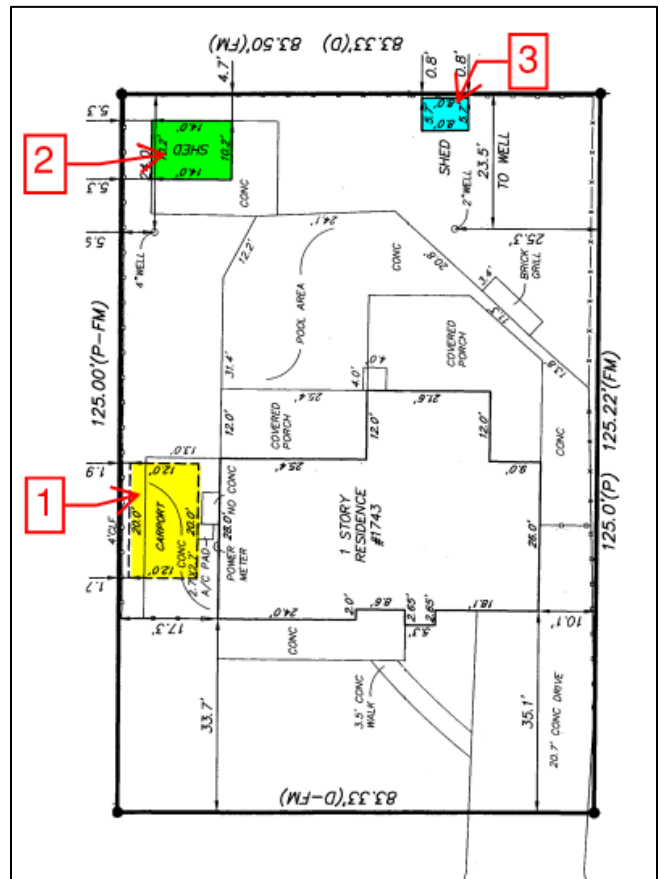


The applicants purchased the property in 2006. In January 2020, a code enforcement complaint was created during the zoning review for a covered porch addition. The review found two sheds and a carport encroaching into the required setbacks with no record of permits for any of the three structures. In order to rectify the violation, the applicants have applied for variances to legitimize the placement of the structures. A description of the structures is as follows and shown to the right on the survey:

Structure 1: An existing 240-square-foot carport

Structure 2: An existing 140-square-foot shed.

Structure 3: An existing 45-square-foot shed.



Structure 1 (Variance 1): This structure is an existing 240-square-foot carport. It was built in the north side yard in 2012 to store the applicants' boat. The current placement was chosen to avoid the air conditioning unit between the carport and the residence. The carport is approximately 1.7 feet from the north side property line. As such, the applicants request a variance to the north side yard from five feet to 1.7 feet for the existing carport.

Structure 2 (Variance 2): This structure is an existing 140-square-foot shed that lies approximately 4.7 feet from the rear property line. The applicants explained that this location had a lean-to structure with a water softener underneath when they purchased the property. They replaced the structure with a shed to provide more protection to the equipment. The shed encroaches approximately four inches into the required rear setback. As such, the applicants request a variance to the rear yard from five feet to 4.7 feet for the existing shed.

Structure 3 (Variance 3): This structure is an existing 45-square-foot shed that lies 0.8 feet from the rear property line. Based on the Property Appraiser's records, the shed has been in place since 1982, approximately 24 years prior to the applicants purchase of the property. While there is no record of a building permit for this shed, county permit records may not be complete prior to 1985. Therefore, in an abundance of caution, the applicants request a variance to the minimum rear yard from the required five feet to 0.8 feet to legitimize the placement of the existing shed.

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 applicants explain that the location of the carport was chosen as there is limited space to store their boat. However, as the lot is larger than the minimum required for the R-4 zoning classification, there are no special conditions associated with this variance request.

Staff finds that this criterion is not met.

Variance 2: The applicants explain that the shed is in its current location to protect equipment, including a water softener, that is difficult to relocate. However, as the lot is larger than the minimum required for the R-4 zoning classification, there are no special conditions associated with this variance request.

Staff finds that this criterion is not met.

Variance 3: The shed has been in place since 1982 based on records from the Property Appraiser. The shed has been so located for nearly 40 years, 24 years prior to the applicants' purchase of the property.

Staff finds that this criterion is met.

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

Variations 1 and 2: There are no special conditions relating to these variance requests.

Staff finds that this criterion is not met.

Variance 3: The placement of the shed is a result of previous owners.

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 that the applicants move the carport to a location that complies with setback requirements. While it cannot be moved closer to the residence due to an air conditioning unit, it could be moved in front of or behind the unit and comply with the required setbacks. A carport encroaching into a required yard is not a right commonly enjoyed by others.

Staff finds that this criterion is not met.

Variance 2: Literal interpretation of this ordinance would require that the shed be moved approximately four inches to the west to meet the required five-foot side yard setback. It may be considered a hardship to require the shed to be moved, as the difference in placement would not be noticeable without a survey.

Staff finds that this criterion is met.

Variance 3: Literal interpretation of this ordinance would require removal of the shed. It may be considered a hardship to remove a structure that has been in the same location for nearly 40 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.

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

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.

Variances 1 and 2: Based on aerial photographs of the area, neither of these structures appear out of character. Both of these structures have been in place for several years without any complaints from the neighborhood. It is unlikely to be injurious to allow them to remain in place.

Staff finds that this criterion is met.

Variance 3: The shed has been in place for nearly 40 years. As such, it is a part of the development pattern of the area and is unlikely to be injurious to allow it to remain in place.

Staff finds that this criterion is met.

V. STAFF RECOMMENDATION

Variance 1: Deny variance 1, case number V-22-019, as the variance fails to meet three of the five criteria for granting said variance.

Variance 2: Deny variance 2, case number V-22-019, as the variance fails to meet two of the five criteria for granting said variance.

Variance 3: Approve variance 3, case number V-22-019, as the 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 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 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 owner 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.

VI. ATTACHMENTS

- Variance Site Plan
- Written Petition
- Survey
- Environmental Comments
- Land Development 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.

Variance Site Plan V-22-019

Variance 2

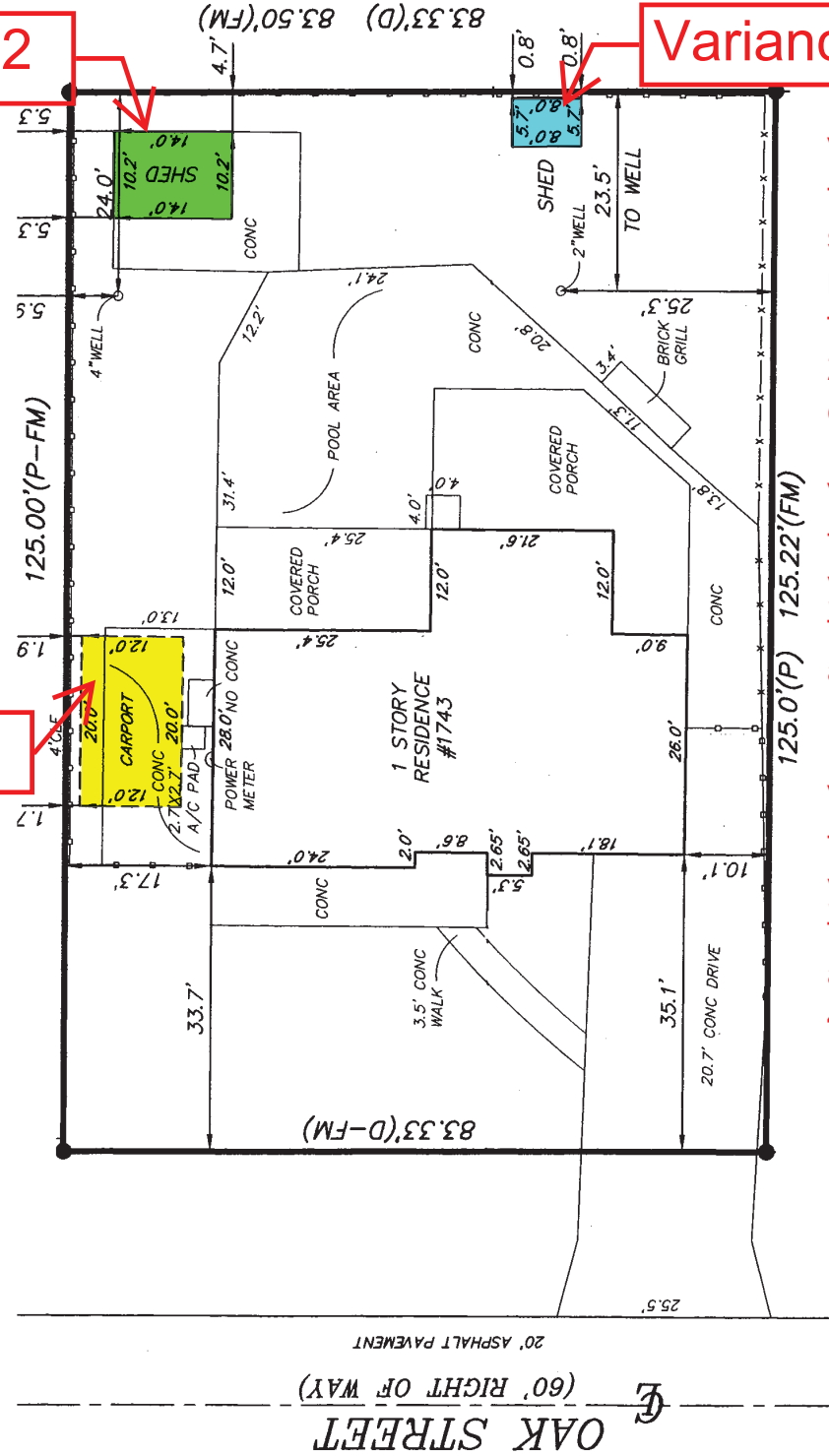
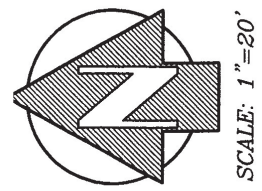
Variance 3

Variance 1

Variance 1: A variance to the minimum north side yard from the required five feet to 1.7 feet for an existing 240-square-foot carport.

Variance 2: A variance to the minimum rear yard from the required five feet to 4.7 feet for an existing 140-square-foot shed.

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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 10' SHED WAS ON PROPERTY WHEN PURCHASED, IT'S 5 INCHES FROM PROPERTY LINE. THE 6'X8' SHED WAS PUT IN OVER SITE THAT HAD OLD WATER SOFTNER UNDER LEAN TO. IT ALREADY HAD ELECTRIC AND WATER LINE TO HOUSE. WE PUT IN SOFTNER WITH CHLORINATOR, BUT REMOVED SELF FLUSHING UNIT WAS A BIT EXPENSIVE. WE PUT IN SLAB AND METAL SHED TO PROTECT. REFER TO PAGE ON REVERSE SIDE.

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 BE COST PROHIBITED TO REMOVE AND RELOCATE SAID SHEDS AND CARPORT. 10' SHED HAS BEEN THERE SINCE HOUSE WAS BUILT. 8' SHED HAS BEEN IN PLACE SINCE ABOUT 2007, CARPORT IN PLACE 2012. CARPORT CAN'T BE MOVED TOWARD HOUSE 3'X3' AC IN WAY. CAN'T BE MOVED BACK DUE TO NEW WELL, AND IF MOVED 5' FOOT FROM FENCE, IT WOULD BE SITTING ON POOL DECK. AND THERE WOULD BE NO ACCESS TO WELL.

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 THEY ARE LEFT IN PLACE, WE CAN USE THE STRUCTURES AS ARE. NO REMODELING OR MOVING OR EXPENSE TO REWIRE OR PLUMBING.

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?

ARE YARD HAS A 6' FENCE. CARPORT IS IN GOOD STANDING. STRUCTURES DO NOT IMPOSE ANY HEALTH, SAFETY, MORAL OR GENERAL WELFARE ISSUE AGAINST PUBLIC HEALTH OR VOLUSIA CO.

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

THE STRUCTURES HAVE BEEN PLACE ANYWHERE FROM 41 YEARS TO 9 YEARS. WE HAVE HAD NO INJURIES OR COMPLAINTS FROM NEIGHBORS. OR THE COUNTY.

1. THE CARPORT WAS GIVEN TO ME FROM A RESIDENT AT WORK. SO WE BROUGHT HOME AND PUT NEXT TO HOUSE TO PUT OUR BOAT UNDER TO KEEP THE SUN FROM EATING UP THE GEL COAT.

CRESTLAND AVENUE

LEGAL DESCRIPTION:
(OR 3746 PG 3254)

LOT 15 AND THE NORTH 2/3 OF LOT 14, BLOCK 8, CRESTLAND ESTATES, A SUBDIVISION ACCORDING TO MAP IN MAP BOOK 10, PAGE 182, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

FND 5/8" IR
"NO ID"

NOTES:

BEARINGS SHOWN BASED ON THE EAST RIGHT-OF-WAY LINE OF OAK STREET AS BEING A BEARING OF N. 00°10'00" E. (ASSUMED).

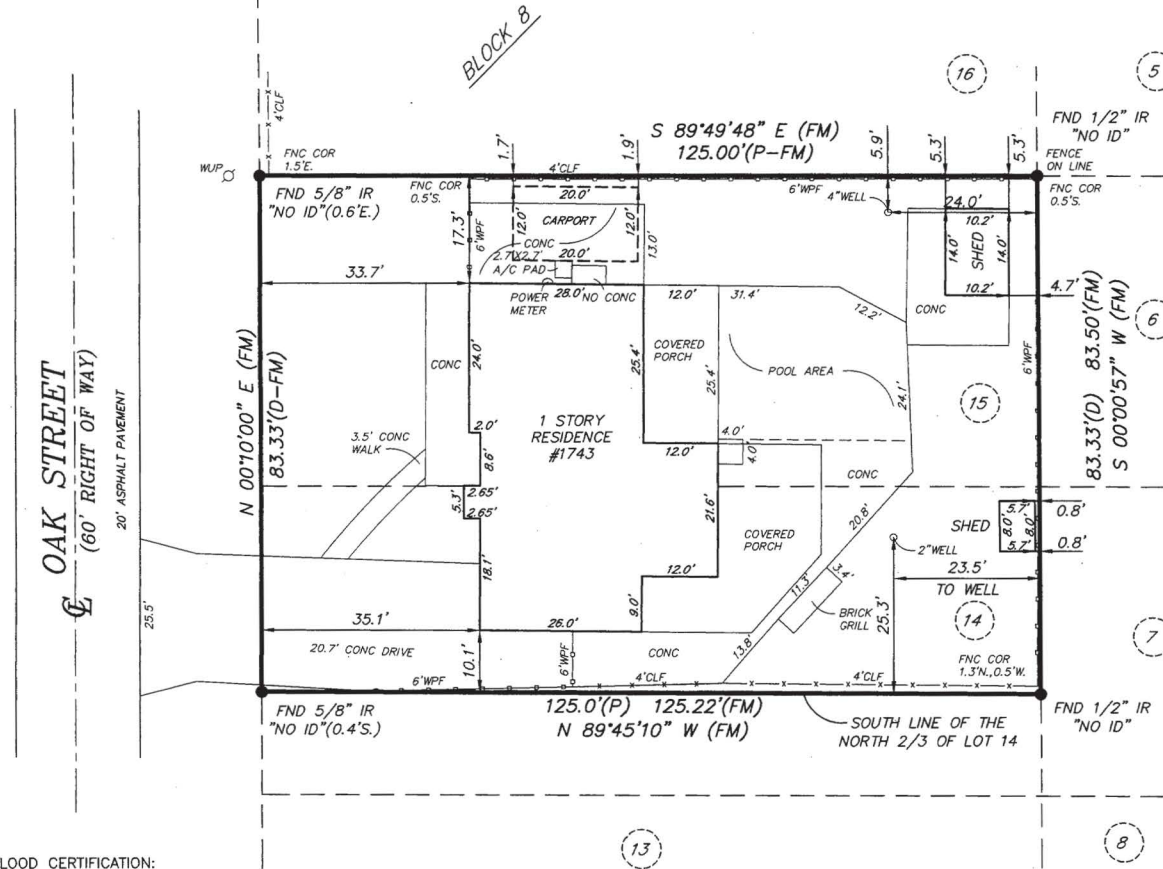
THE FLOODPLAIN BOUNDARY, IF SHOWN HEREON, WAS SCALED FROM A LARGE SCALE FEMA FLOOD INSURANCE MAP AND AS SUCH HAS AN INHERENT ERROR OF 10% OF THE FEMA MAP SCALE.

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.



SCALE: 1"=20'



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-0460-H Map, Panel 460 of 930, Zone "X".

BOUNDARY SURVEY RECERTIFIED TO TIM SCHELL DATED: 02/10/20

LEGEND AND ABBREVIATIONS

A	Arc Length	LS	Land Surveyor (Registered)
ARC	As-Crossing Utility	MB	Map Book
BM	Benchmarks	MON	Monument
CL	Center Line	NO ID	No Identify
CAV	Cable TV Service	OHW	Ordinary High Water Line
CLF	Chainlink Fence	O.R.	Official Record Book
CHB	Chord Bearing	(P)	Plot
CHD	Chord Distance	PC	Point of Curve
CONC	Concrete	POC	Point of Compound Curve
CM	Concrete Monument	PCP	Permanent Control Point
Δ	Delta (Central Angle)	PRC	Point of Reverse Curve
(D)	Deed Call	PRM	Permanent Reference Monument
DRM	Drainage Right of Way	PSI	Point of Street Intersection
EL	Elevation	PSM	Professional Surveyor & Mapper
FND	Found	PVC	Poly-Vinyl-Chloride Pipe
FH	Fire Hydrant	R	Radius of Curve or Radial Line
FFE	Finish Floor Elevation	RD	Round
(FM)	Field Measurement	RLS	Registered Land Surveyor
IR	Iron Rod	T	Tangent
IRC	Iron Rod & Cap	TBM	Temporary Benchmark
L	Length of Arc	WPF	Wood Privacy Fence
LB	Land Surveying Business	WUP	Wood Utility Pole

BLACKWELL & ASSOCIATES
LAND SURVEYORS, INC

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

BOUNDARY SURVEY CERTIFIED TO:

TIM & RHONDA
SCHELL

NOTE:

This Plot 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 whomsoever.

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
SURVEYORS, INC. (LB #2791)
REGISTERED LAND SURVEYOR
ROBERT G. GEWERS
FLORIDA CERTIFICATE # 10675

DATE: 3/23/16
W.O. No. 03-68-16
DRAWN BY: DCW
FIELD BOOK: 708-42
CADD FILE: 03-68-16

**Inter-Office
Memorandum**



TO: Trevor Bedford, Planner II **DATE:** October 10, 2021
FROM: Samantha J. West, Environmental Specialist III
SUBJECT: Parcel #: 6035-02-08-0140
Case #: V-22-019

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

The subject property is located within the Little Haw Creek 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



To: Susan Jackson, AICP
Planning Manager

Date: October 10, 2021

From: Direne Ostrander
Land Development Assistant II

Subject: V-22-019
Parcel #: 6035-02-08-0140

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

The subject parcel was previously approved by Schell Unrecorded (2016-S-EXM-0141) and complies with the exempt provisions of the county's subdivision regulations.

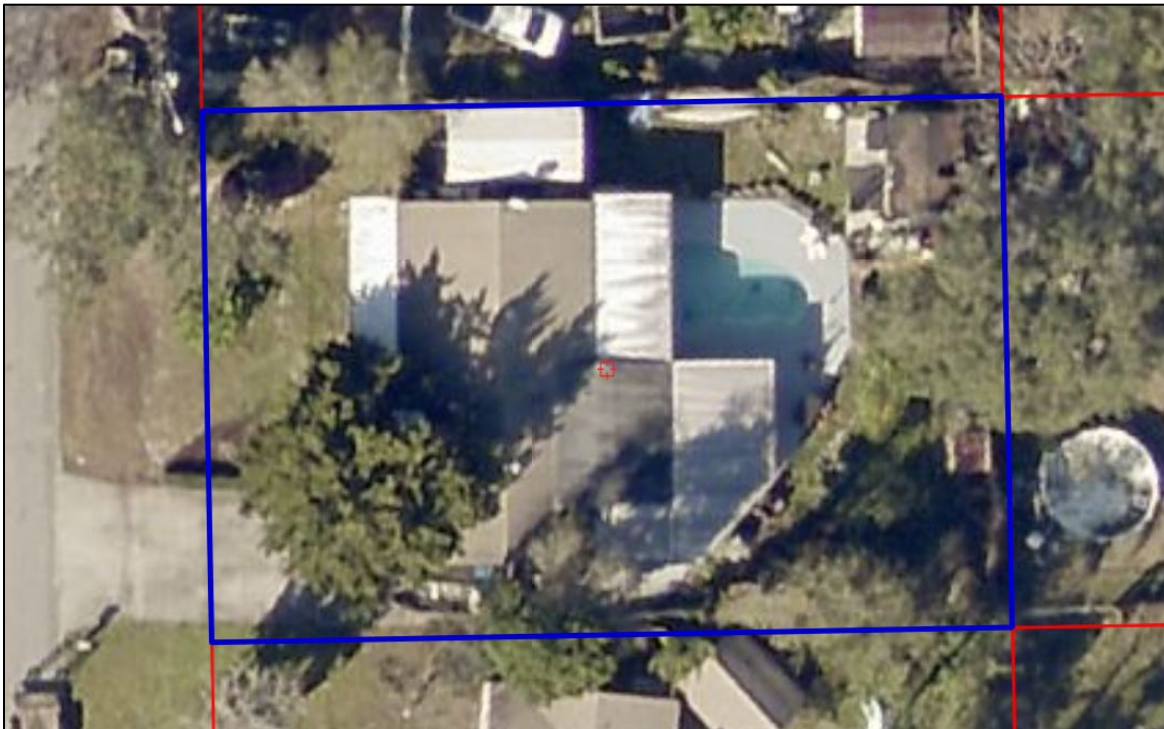
Please call the Land Development Office at 386-736-5942 for any questions.

Photographs

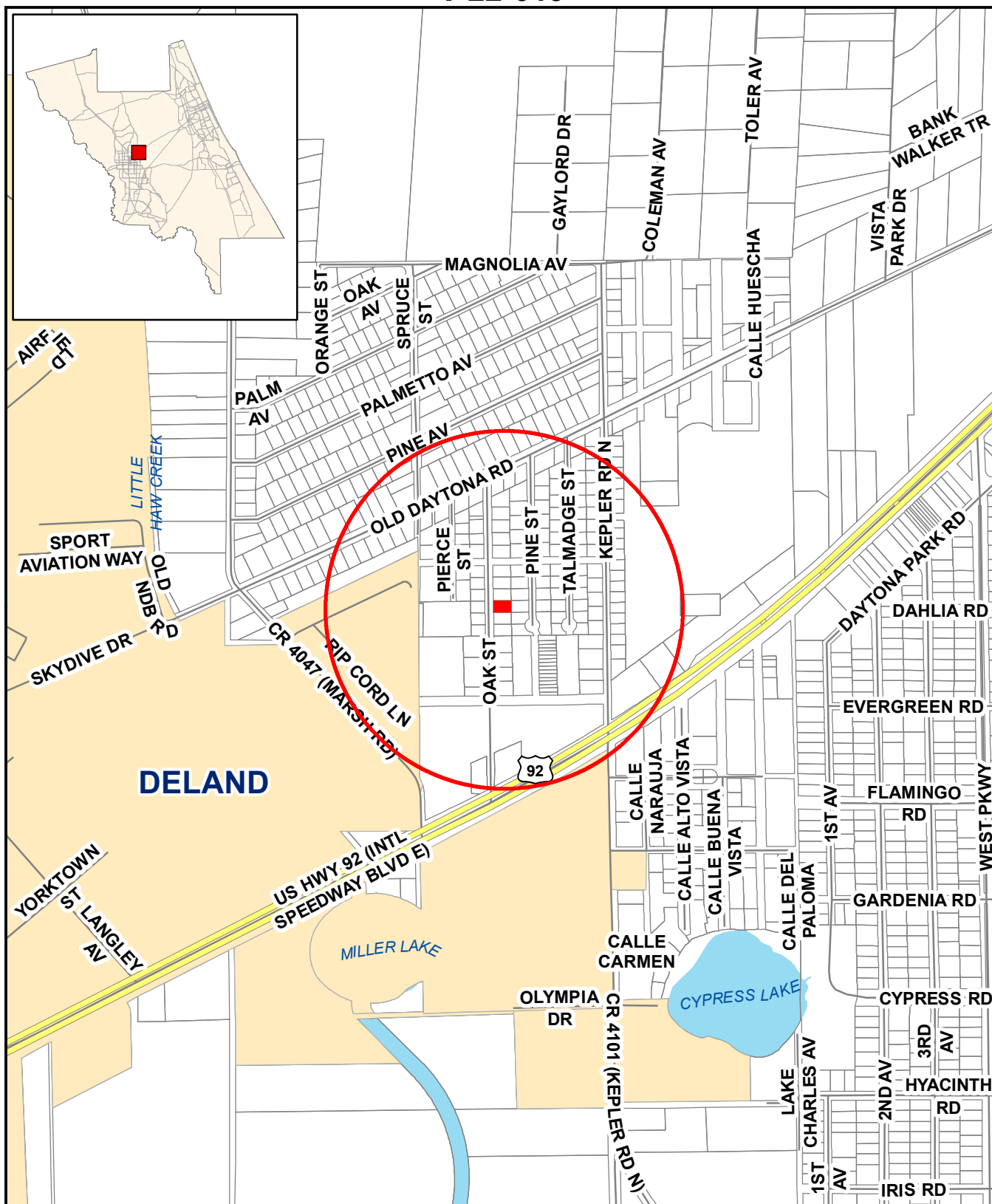
Aerial photograph of the area




Aerial photograph of the property



PROPERTY LOCATION V-22-019



 SUBJECT PROPERTY

 1" = 1,000'
10/5/2021

AERIAL V-22-019



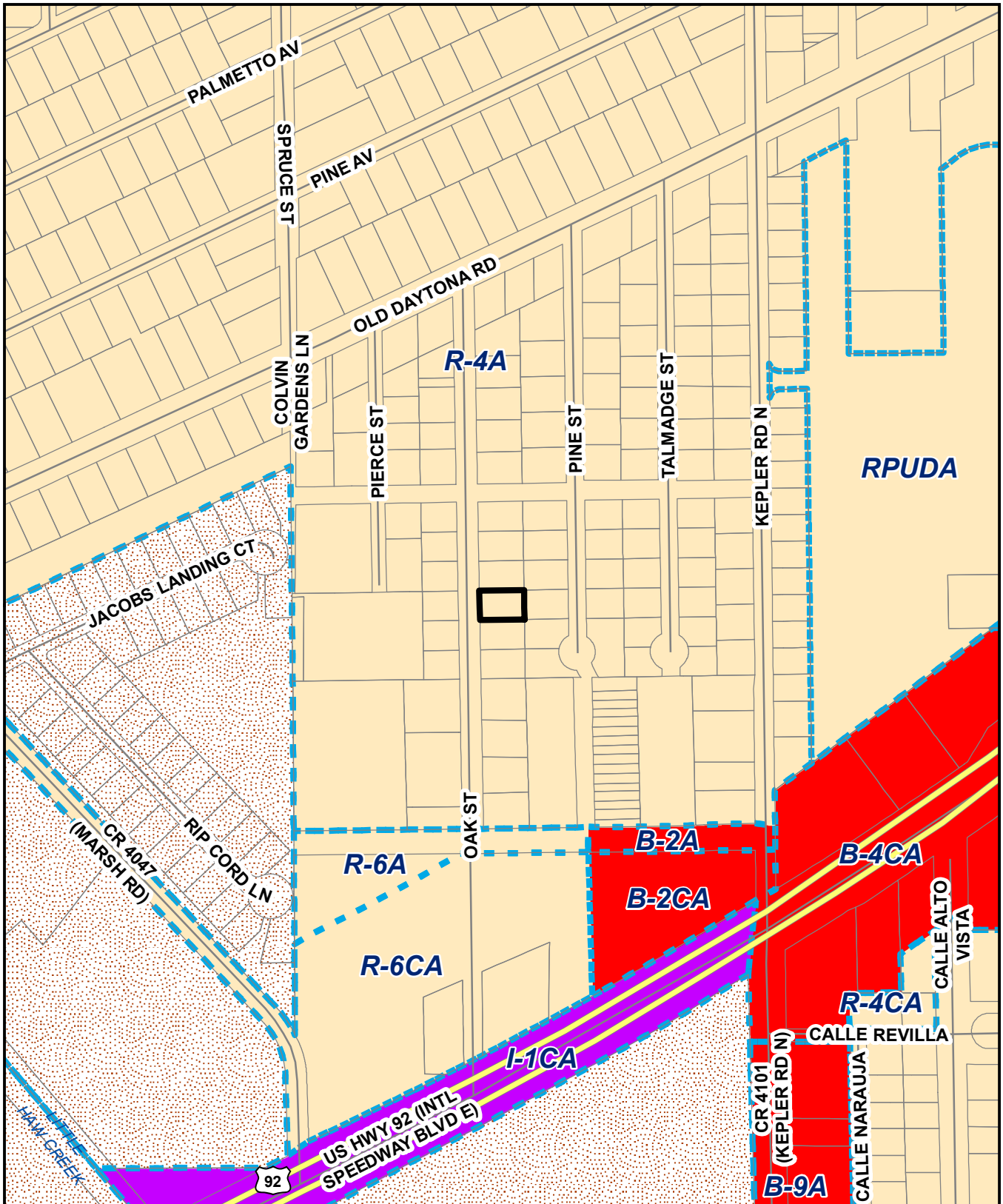
 SUBJECT PROPERTY







IMAGE DATE 2021




1" = 400'
10/5/2021

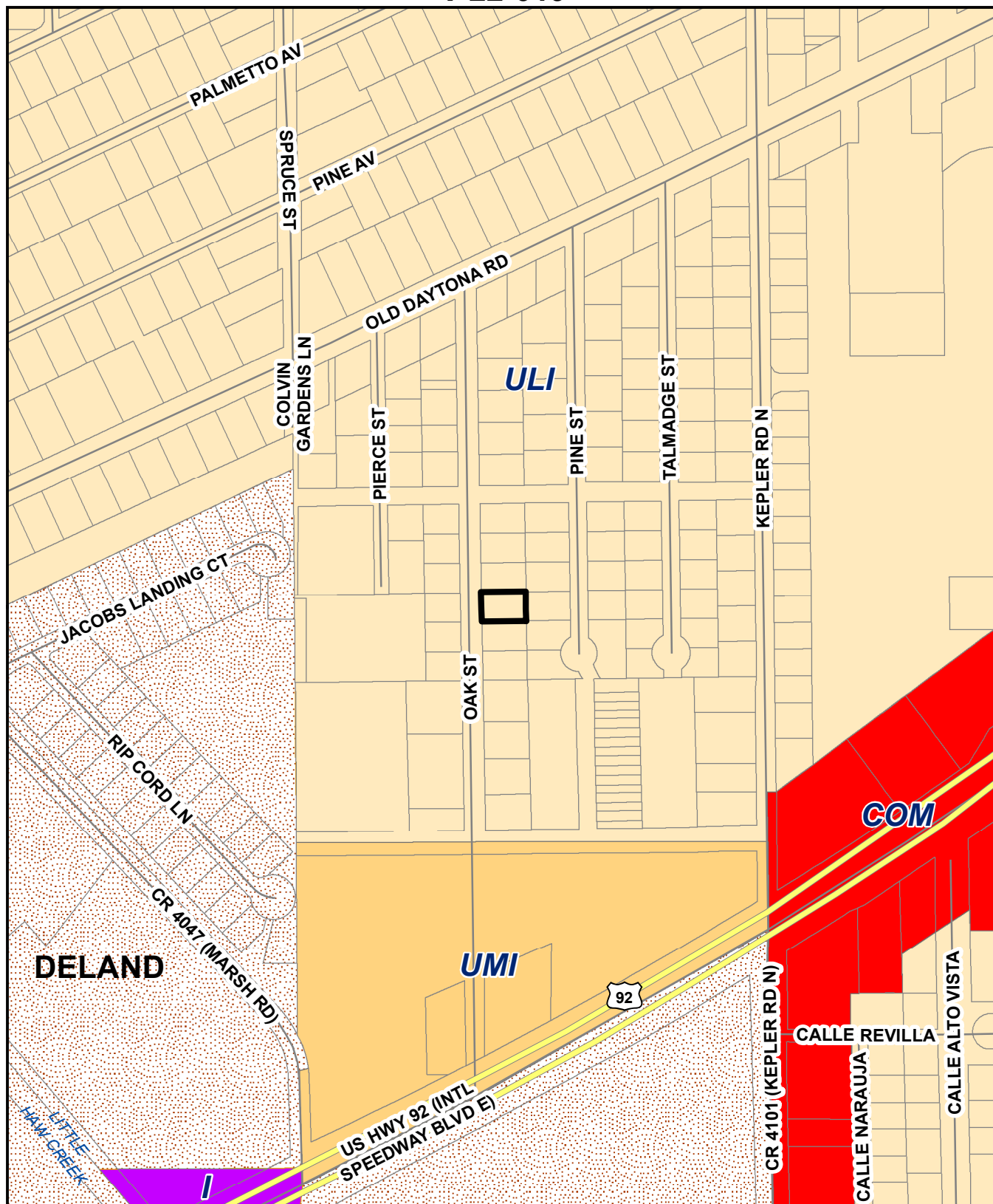
ZONING CLASSIFICATION V-22-019



-  SUBJECT PROPERTY
-  ZONING BNDY
-  INDUSTRIAL
-  INCORPORATED
-  COMMERCIAL
-  RESIDENTIAL

 1" = 400'
10/5/2021

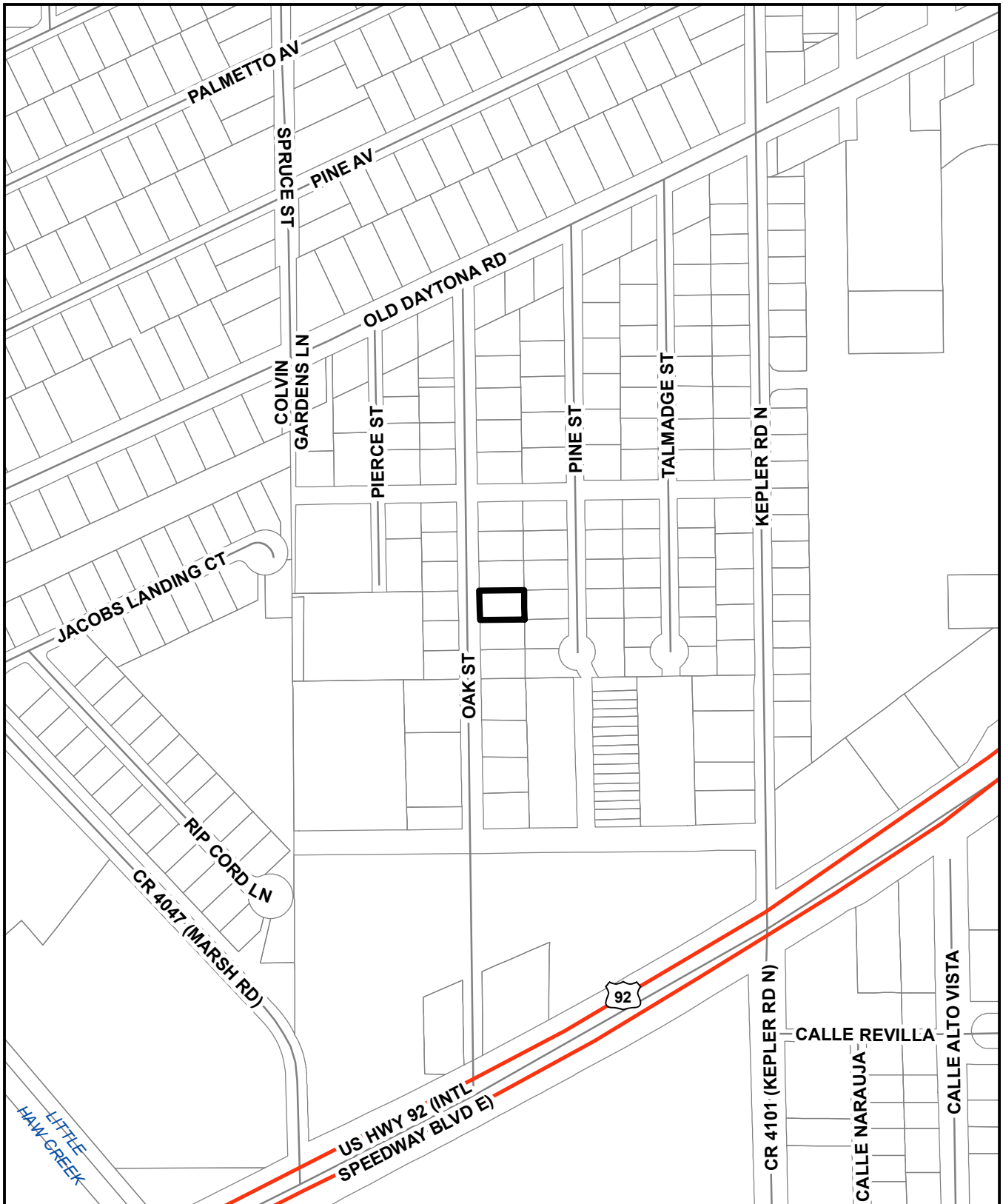
FUTURE LAND USE V-22-019







	SUBJECT PROPERTY		1" = 400'
	COMMERCIAL		INDUSTRIAL
	URBAN MEDIUM INTENSITY		URBAN LOW INTENSITY
	INCORPORATED		

10/5/2021

ECO/NRMA OVERLAY V-22-019



-  SUBJECT PROPERTY
-  ECO
-  NRMA

 1" = 400'
10/5/2021