



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

PUBLIC HEARING: October 10, 2017 – Planning and Land Development Regulation Commission (PLDRC)

CASE NO: V-17-063

SUBJECT: Variances to allow construction on a substandard lot; to separate nonconforming lots; and to the minimum yard requirements on Urban Single-Family Residential/Indian River Lagoon Surface Water Improvements and Management Overlay Zone (R-9W) zoned property.

LOCATION: Turtle mound Road, New Smyrna Beach

APPLICANT: Brent Walters, Agent

OWNER(S): Walters Construction of New Smyrna Beach

STAFF: Patricia Smith, AICP, Planner II

I. SUMMARY OF REQUEST

The applicant is requesting four variances to construct a single-family dwelling on the subject property located on Turtle mound Road, New Smyrna Beach. The property is approximately 3,959 square feet in size. The variance requests are as follows:

1. A variance to Section 72-206(1) to allow construction on a substandard lot, and
2. A variance to Section 72-206(1) *Nonconforming lots* to separate parcel 8505-01-36-0670 from parcel 8505-01-36-0290; and
3. A variance for a rear yard setback from the required 20 feet to 19 feet; and
4. A variance for a side yard setback from the required seven feet to six feet for a single-family dwelling on Urban Single-Family Residential/Indian River Lagoon Surface Water Improvements and Management Overlay Zone (R-9W) zoned property.

Staff Recommendation: Approval of the variance requests 1, 2, 3, and 4, case number V-17-063, as they meet all five criteria for granting said variances, subject to staff recommended conditions.

II. SITE INFORMATION

1. Location: East side of Turtle mound Road, approximately 200 feet north of its intersection with Pompano Avenue
2. Parcel No(s): 8505-01-36-0670
3. Property Size: 3,959 square feet
4. Council District: 3
5. Zoning: Urban Single-Family Residential/Indian River Lagoon Surface Water Improvements and Management Overlay Zone (R-9W)
6. Future Land Use: Urban Low Intensity (ULI)
7. ECO Overlay: No
8. NRMA Overlay: No
9. Adjacent Zoning and Land Use:

DIRECTION	ZONING	FUTURE LAND USE	CURRENT USE
North:	R-9W	ULI	Single-family dwelling
East:	R-9W	ULI	Single-family dwelling
South:	R-9W	ULI	Single-family dwelling
West:	B-7W and R-9W	ULI	JB's Fish Camp Restaurant and Single-family dwelling

10. Maps:



ZONING MAP



FUTURE LAND USE MAP

III. OVERVIEW

The applicant is seeking four variances in order to construct a new single-family dwelling on a nonconforming lot located on Turtlemound Road in the community of Bethune Beach. The R-9W zoning classification requires a minimum lot area of 7,500 square feet and a minimum lot width of 75 feet. The minimum lot area of the subject property is 3,959 square feet, and it is an average of 79.36 feet deep by 49.89 feet wide. In addition to being a nonconforming lot, the property is defined as a substandard lot, which includes lots of less than 5,000 square feet or lots with a lot width of less than 50 feet.

As part of the variance application package, the applicant provided a nonconforming lot letter indicating that the property was previously under common ownership with the lots northeast of and adjacent to the rear property line.

This parcel falls within the Indian River Lagoon Surface Water Improvements and Management Overlay Zone, otherwise known as the Class II overlay, to which the provisions of Division 16 of the land development code apply. The requirement of this Class II ordinance is to provide a volume of stormwater retention equivalent to one-half-inch of depth over the entire lot upon completion of the single family residence. The Class II overlay also requires property within the boundary to maintain or plant 35% native vegetation. The plans submitted for this variance do not provide stormwater calculations or the location of the retention areas. Therefore, it is unclear if the project can meet the requirements of the Class II overlay.

In order to build a house on the subject property that is in keeping with the character of the neighborhood, four variances are being requested. Each variance is described below.

Variance 1: This variance request is to Section 72-206(1) to allow construction on a substandard lot. This property qualifies as substandard because it is only 3,959 square feet in area.

The subject property is comprised of Lots 67 and 68 of Block 36, Bethune-Volusia Beach Subdivision (circa 1946). When originally platted, the lots were 25 feet wide by 100 feet deep. In the 1960s, the Florida Department of Transportation (FDOT) embarked on an effort to increase the distance between State Road (SR) A1A (South Atlantic Boulevard) and the ocean. SR A1A was rerouted westward to Turtlemound Road. As part of this process, FDOT increased the right-of-way to 100 feet wide by acquiring portions of the adjacent lots along Turtlemound Road. The subject property was reduced by 21 feet in depth along the entire width of Lots 67 and 68. The survey indicates that the actual size of the subject parcel ranges in depth along Turtlemound Road from 78.87 feet at the southern boundary to 79.85 feet at the northern boundary.

Section 72-206(1) requires a variance to authorize construction on a substandard sized lot:

In any zoning classification, principal and accessory structures otherwise authorized under this article may be erected or constructed on any single nonconforming lot, except for a substandard lot or lots which require the granting of a variance as provided for in Subsection 72-379(3) which existed, separate and apart from other adjoining lots owned by the same person, on the effective date of adoption or amendment of this article, if all classification requirements other than lot area or width are met.

Variance 2: The subject property is a nonconforming lot because it does not meet the lot size requirements of the R-9W zoning classification and was previously owned together with the adjoining parcel to the northeast, PID 8505-01-36-0290 (Lots 29 and 30, Block 36).

Section 72-206(1) states:

If two or more lots and/or combinations of lots and/or portions of lots that abut in single ownership existed on the effective date of adoption or amendment of this article, or if such lots and/or portions thereof are subsequently combined in single ownership with other adjoining lots, and if all or part of the lots do not meet the requirements for lot width or lot area, then the lands involved shall be considered to be an undivided lot for the purpose of this article. No portion of said undivided lot shall be sold or subdivided in a manner which does not comply with the lot width or lot area requirements established by division 7 of this article.



A nonconforming lot letter, dated April 5, 2017, was submitted as part of the variance package. Since July 28, 1980, a prior owner of the subject property has owned property adjacent to the subject property. According to Section 72-206(1), the subject property and adjoining parcel 8505-01-36-0290 (Lots 29 and 30, Block 36) are considered to be an undivided lot. The subject parcel was sold to John Bollman on June 12, 1995. Property appraiser records show that Walters Construction of New Smyrna Beach acquired the property from the Bollman estate in April 2017. A variance is needed to legitimize the separation of the parcels.

Variance 3: This request is to reduce the minimum rear-yard setback to 19 feet in order to increase the building footprint by one foot in depth. The standard rear-yard setback in the R-9W classification is 20 feet. As stated previously, the survey indicates that the actual size of the subject parcel ranges in depth along Turtlemound Road from 78.87 feet at the southern boundary to 79.85 feet at the northern boundary. The code defines lot depth as the average horizontal distance between the front and rear lot lines. A

maximum of a one foot variance is being requested to allow for placement of a 36x35 ft structure on a parcel with a varying lot line.

Variance 4: The applicant has requested to reduce the minimum side-yard setback to six feet on one of the side yards in order to increase the building footprint by one foot in width. The standard side yard setback in R-9W zoning is seven feet. The survey indicates that the actual size of the subject parcel ranges in width from 50.04 feet on the western boundary to 49.74 on the eastern boundary. The code defines lot width as the horizontal distance between the side lot lines measured along the front building setback line. A maximum of a one foot variance is being requested to allow for placement of a 36x35 ft structure on a parcel with a varying lot line.

IV. REVIEW CRITERIA AND ANALYSIS

Section 72-379(1) a.4 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 government action to obtain right-of-way along former State Road A1A reduced the size of the subject property to a substandard lot. The Bethune–Volusia Beach Subdivision (circa 1946) as originally platted allowed for lot sizes of 25 feet wide by 100 feet deep. The proposed single-family home is being constructed on two, adjacent lots for an average total width of 49.89 feet by 79.36 feet in depth. The applicant is requesting to construct a rectilinear structure on a parcel that varies in depth and width.

Staff finds this criterion is met for Variance 1, 3, and 4.

Variance 2: As mentioned previously, the property was required to remain under single ownership with the property that abuts the rear property boundary. However, the lot has changed ownership since being owned in conjunction with the adjacent lot.

Staff finds this criterion is met for Variance 2.

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

The lot was reduced in size by way of a government action decades prior to acquisition of the subject property by the current owner.

Staff finds this criterion is met for Variances 1, 2, 3, and 4.

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.

According to the code, without the granting of variances, this lot would be deprived of rights commonly enjoyed by other properties in the same zoning classification and within the Bethune-Volusia Beach Subdivision. Variance 1 is required in order to allow any construction on a substandard lot. Variance 2 is required to acknowledge the separation of the undivided lot which was previously owned by an adjacent property owner. Variances 3 and 4 are needed to meet minimum rear and side yard requirements to build a 36 x35 foot residential dwelling. According to the survey, dated 8/14/17, the lot falls short of the allowable rear setback by an average of 0.64 feet and from the allowable side setback by an average of 0.11 feet. Allowing a variance of one foot for the rear yard setback and one foot on one side yard will allow the applicant to place a 36x35 foot dwelling on the property.

Staff finds this criterion is met for Variances 1, 2, 3, and 4.

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 are the minimum requirements needed to make it possible to obtain permits for the proposed single family home. The proposed variance site plan indicates that the house footprint can meet the minimum dimensional standards of R-9W zoning classification except for the lot size and an approximate one foot setback to the rear yard and one side yard. The applicant is not seeking a lot coverage variance.

Staff finds this criterion is met for Variances 1, 2, 3 and 4.

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.

Granting the requested variances makes it possible for the applicant to obtain permits for construction of a new, single-family home on the subject parcel that is within an acceptable footprint area and of a customary shape and size. Granting these variances is consistent with the character, appearance, and aesthetic values of the surrounding neighborhood, and the variances are consistent with the intent of the zoning code.

Staff finds this criterion is met for Variances 1, 2, 3 and 4.

V. STAFF RECOMMENDATION

Approval of a variance to Section 72-206(1) to allow construction on a substandard lot (Variance 1); and a variance to Section 72-206(1) nonconforming lots to separate parcel 8505-01-36-0670 from parcel 8505-01-36-0290 (Variance 2); and a variance for a rear yard setback from the required 20 feet to 19 feet (Variance 3); and a variance for a side

yard setback from the required 7 feet to 6 feet (Variance 4) for a single-family dwelling on Urban Single-Family Residential/Indian River Lagoon Surface Water Improvements and Management Overlay Zone (R-9W) zoned property, subject to the following staff recommended conditions:

1. The variance is limited to a proposed single-family dwelling, consistent with the enclosed variance site plan, dated July 20, 2017.
2. The property owner or authorized agents shall obtain and complete all required building and development permits and inspections for the proposed new house.
3. Prior to applying for a building permit, the applicant shall submit an application for subdivision exception review to combine Lots 67 and 68, Block 36 Bethune-Volusia Subdivision into one, unified building site, through the Land Development Office, pursuant to Section 72-537 (a)(4) of the land development code.
4. The applicant shall comply with Division 16 of the Land Development Regulations which includes storm water requirements within the Indian River Lagoon Surface Water Improvements and Management Overlay Zone, otherwise known as the Class II overlay.

VI. ATTACHMENTS

- Written Petition
- Survey
- Variance Site Plan
- Map Exhibits

VII. AUTHORITY AND PROCEDURE

The commission may, except as otherwise provided in Section 72-379 of the zoning code, 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.

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.

From: Brent walters <brentwalters@me.com>
To: <pssmith@volusia.org>
Date: 9/25/2017 9:03 AM
Subject: v-17-063

Setback Modification.

Thanks for your call this Morning Trish.

Can you please add the following to the variance request:

1. Reduce rear setback by 1 foot to accommodate house design submitted.
2. Reduce Side setbacks by 1 foot to allow house to be constructed as submitted.

Thanks for your help,

Brent walters
brentwalters@mac.com
Walters Construction Corp.
386.663.1295



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?

At a point and time in the Past the Department of Transportation utilized Imminent Domain to take a large portion of the property for a ROW. This reduction of lot size created a substandard Lot.

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?

Literal interpretation of the current zoning ordinances would deprive the right to build a home on the lot.

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.

We are only seeking a variance to Build a single family home on a lot. We are not asking for any setback variances or lot coverage variance. Therefore this is the minimum request required to make reasonable use of the property.

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?

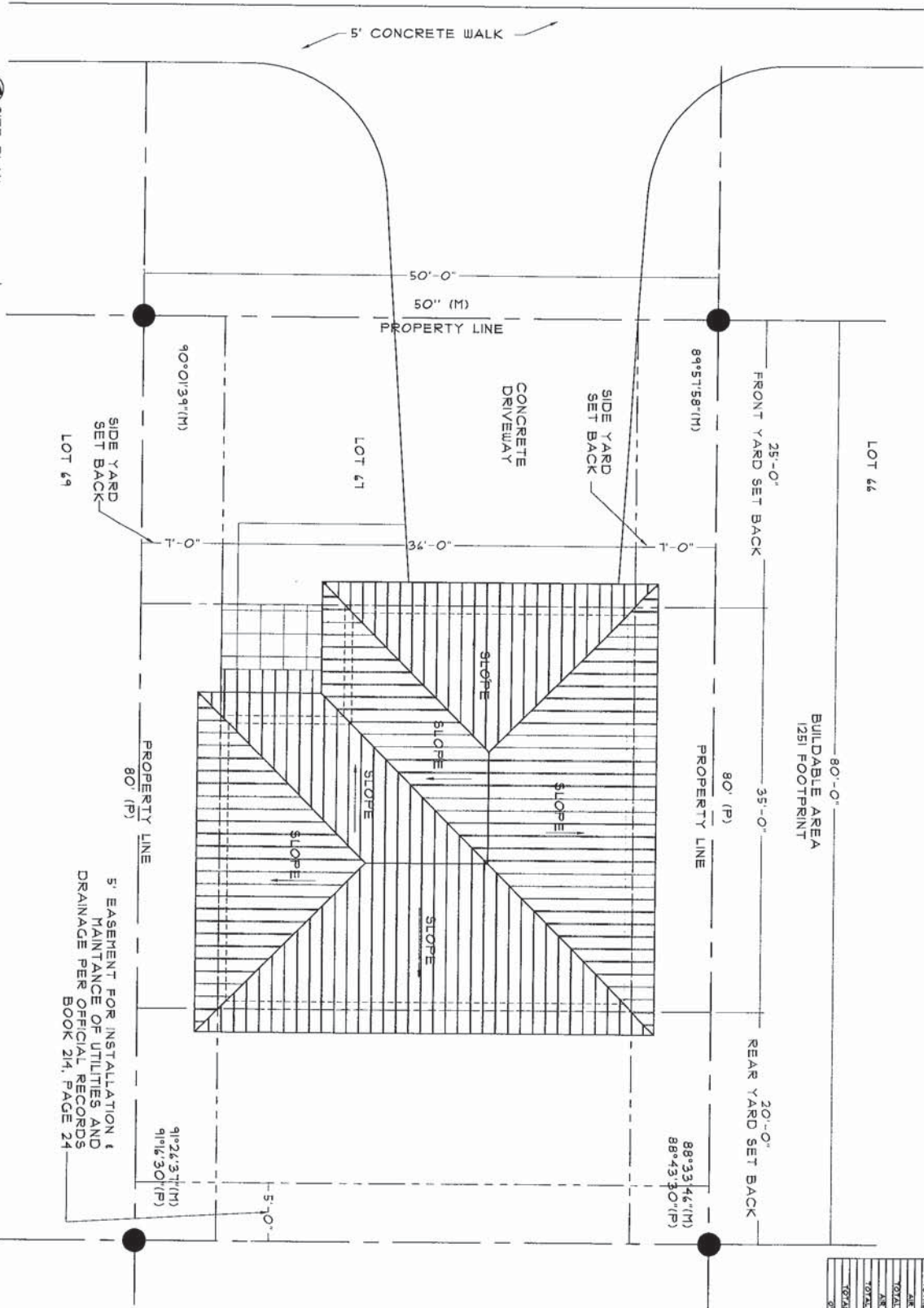
Our request is to build one single family home with the consideration of the character and aesthetics of the area. Please see attached photos of past projects in the area.

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

Granting our request for variance would grant the ability to construct a new single family home in the style and character of the Bethune Beach area. Our new homes will certainly be "in-line" with the surrounding area.

TURTLEMOUND RD - C.R. A-1-A (100' R/W)

SITE PLAN
SCALE: 1/4" = 1'-0"



AREA CALCULATIONS

LOT AREA	221,800
CONCRETE DRIVEWAY	48,000
CONCRETE WALK	10,000
TOTAL DRIVEWAY & WALK	58,000
LOT AREA	221,800
CONCRETE DRIVEWAY	48,000
CONCRETE WALK	10,000
TOTAL DRIVEWAY & WALK	58,000
LOT AREA	221,800
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CONCRETE WALK	10,000
TOTAL DRIVEWAY & WALK	58,000

DESIGN REVIEW

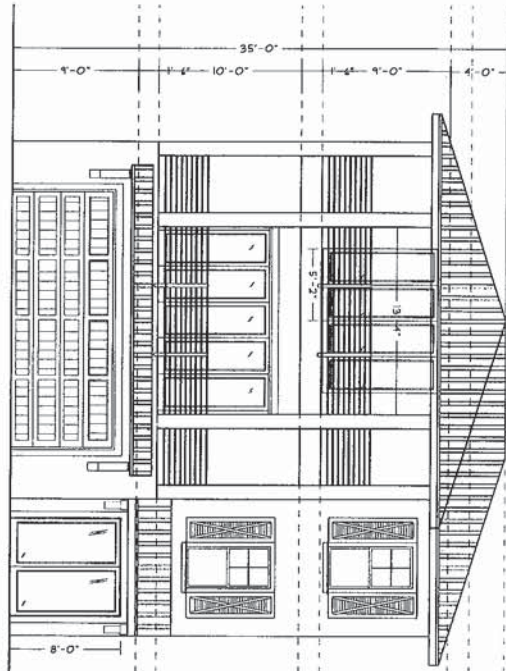
DATE: JULY 20, 2011
REVISION:

WALTERS CONSTRUCTION
LITTLE AND USI
NEW SHYRNA BEACH, FL 32168

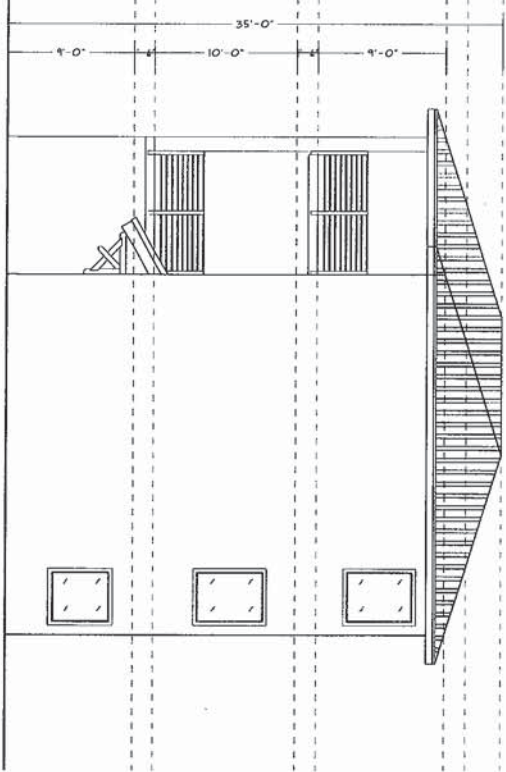
GERARD J. PENDERGAST
221 CANAL STREET
NEW SHYRNA BEACH, FLORIDA 32168
ARCHITECTURE/PLANNING
AR 003441

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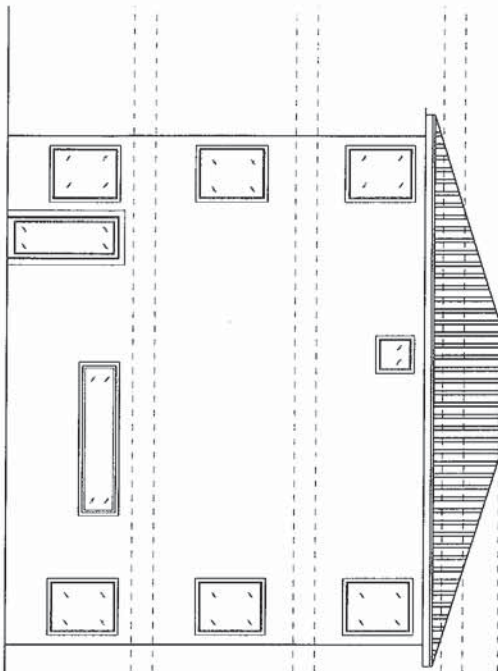
NORTH ELEVATION
SCALE 1/4" = 1'-0"



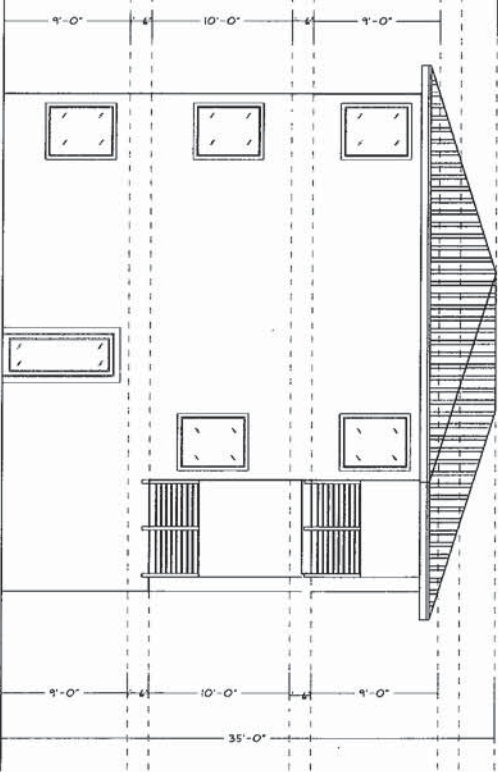
SOUTH ELEVATION
SCALE 1/4" = 1'-0"



EAST ELEVATION
SCALE 1/4" = 1'-0"



WEST ELEVATION
SCALE 1/4" = 1'-0"



DESIGN REVIEW

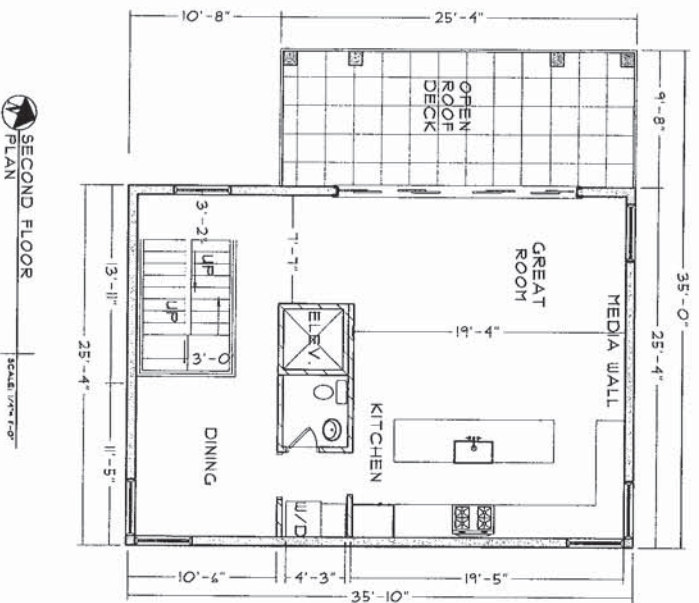
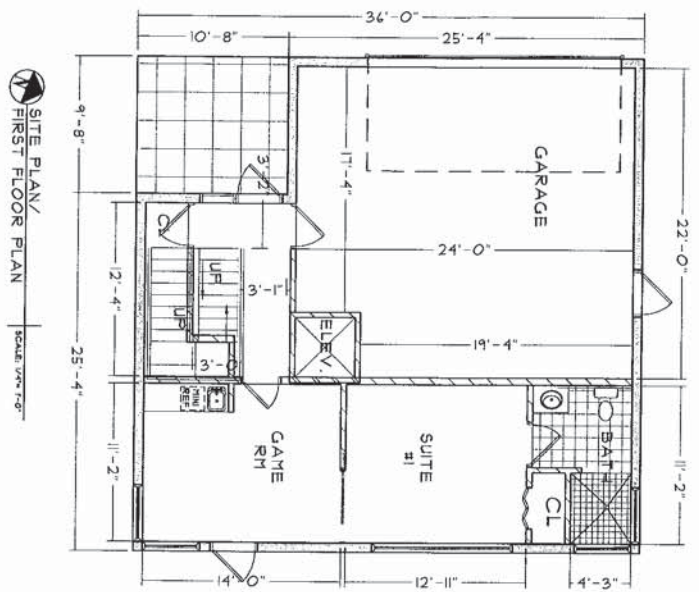
DATE: JULY 20, 2011
REVISION:

WALTERS CONSTRUCTION
LYTLE AND US
NEW SMYRNA BEACH, FL 32148

GERARD J. PENDERGAST
221 CANAL STREET
NEW SMYRNA BEACH, FLORIDA 32148

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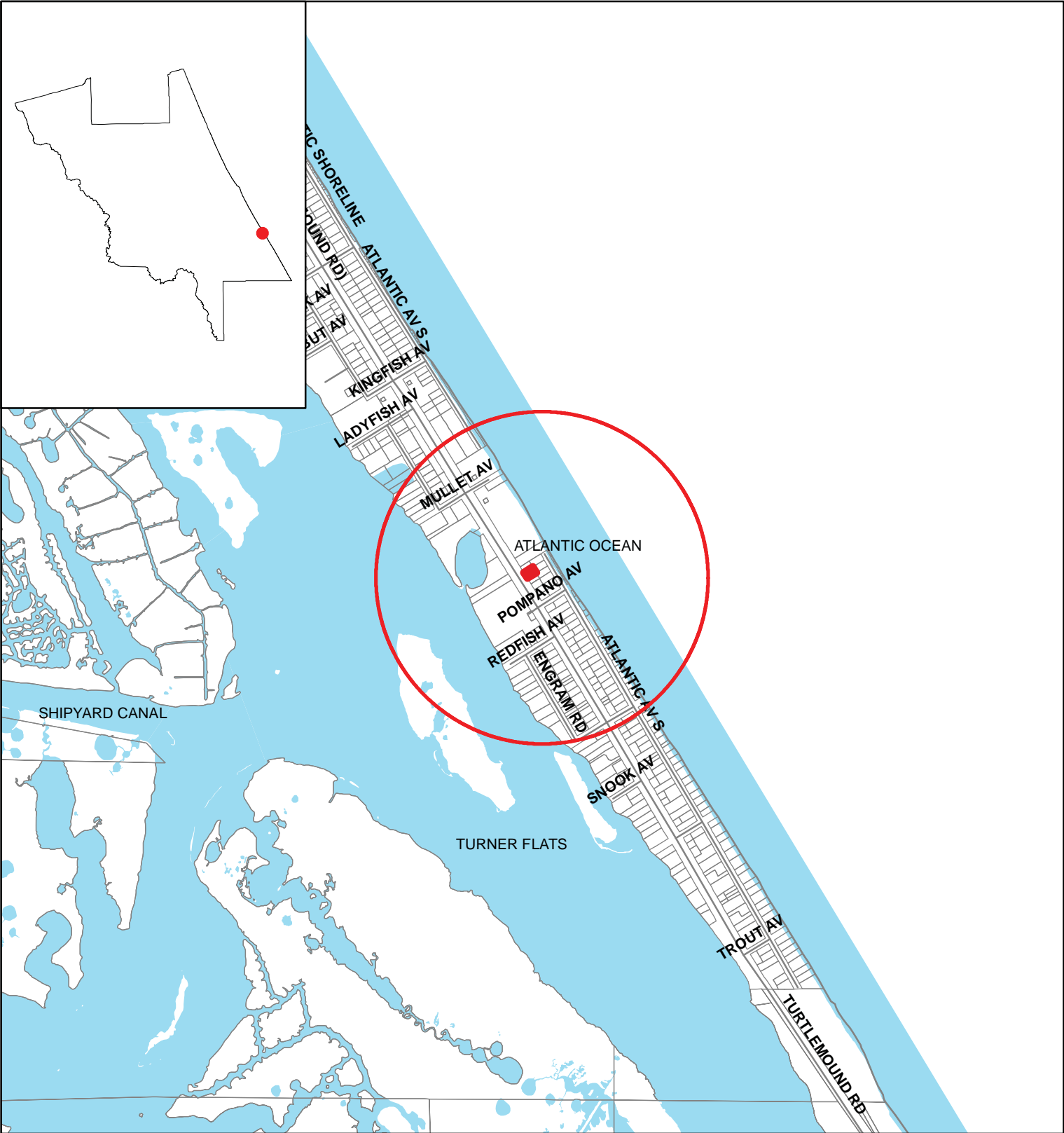


DESIGN REVIEW

DATE: JULY 20, 2011
 REVISION:

WALTERS CONSTRUCTION
 LITTLE AND US!
 NEW SMYRNA BEACH, FL 32168

GERARD J. PENDERGAST
 221 CANAL STREET
 NEW SMYRNA BEACH, FLORIDA 32168
 ARCHITECTURE/PLANNING
 AR 003441



REQUEST AREA LOCATION



1 " = 1000'



VARIANCE

CASE NUMBER

V-17-063



AERIAL 2015

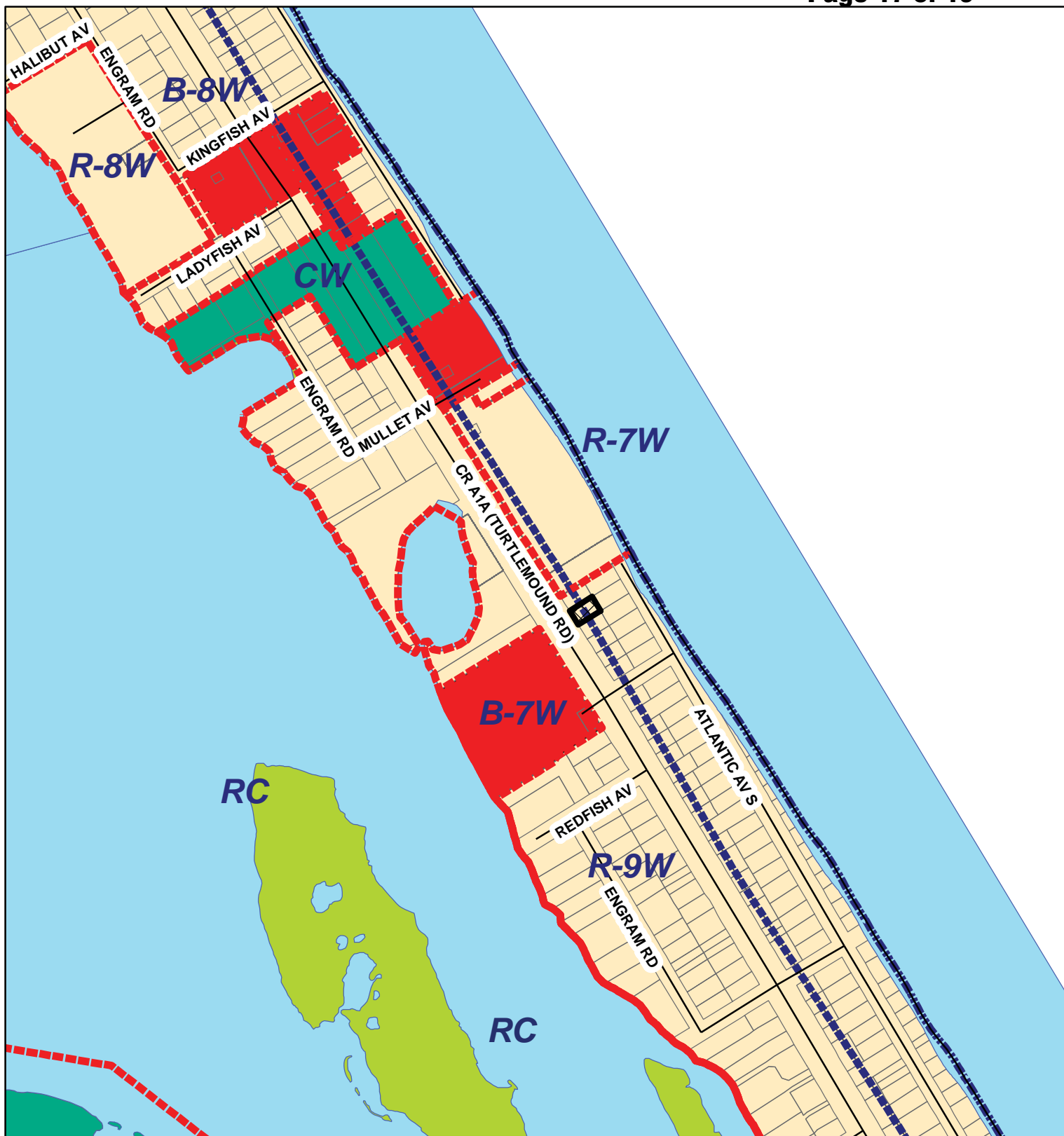
1" = 400'



VARIANCE
CASE NUMBER
V-17-063



REQUEST AREA



ZONING CLASSIFICATION

- COMMERCIAL
- RESIDENTIAL
- CONSERVATION
- RESOURCE CORRIDOR

1" = 400'



VARIANCE
CASE NUMBER
V-17-063



REQUEST AREA



FUTURE LAND USE

- ENVIRONMENTAL SYSTEMS CORRIDOR
- WATER
- URBAN HIGH INTENSITY
- URBAN LOW INTENSITY

1" = 400'

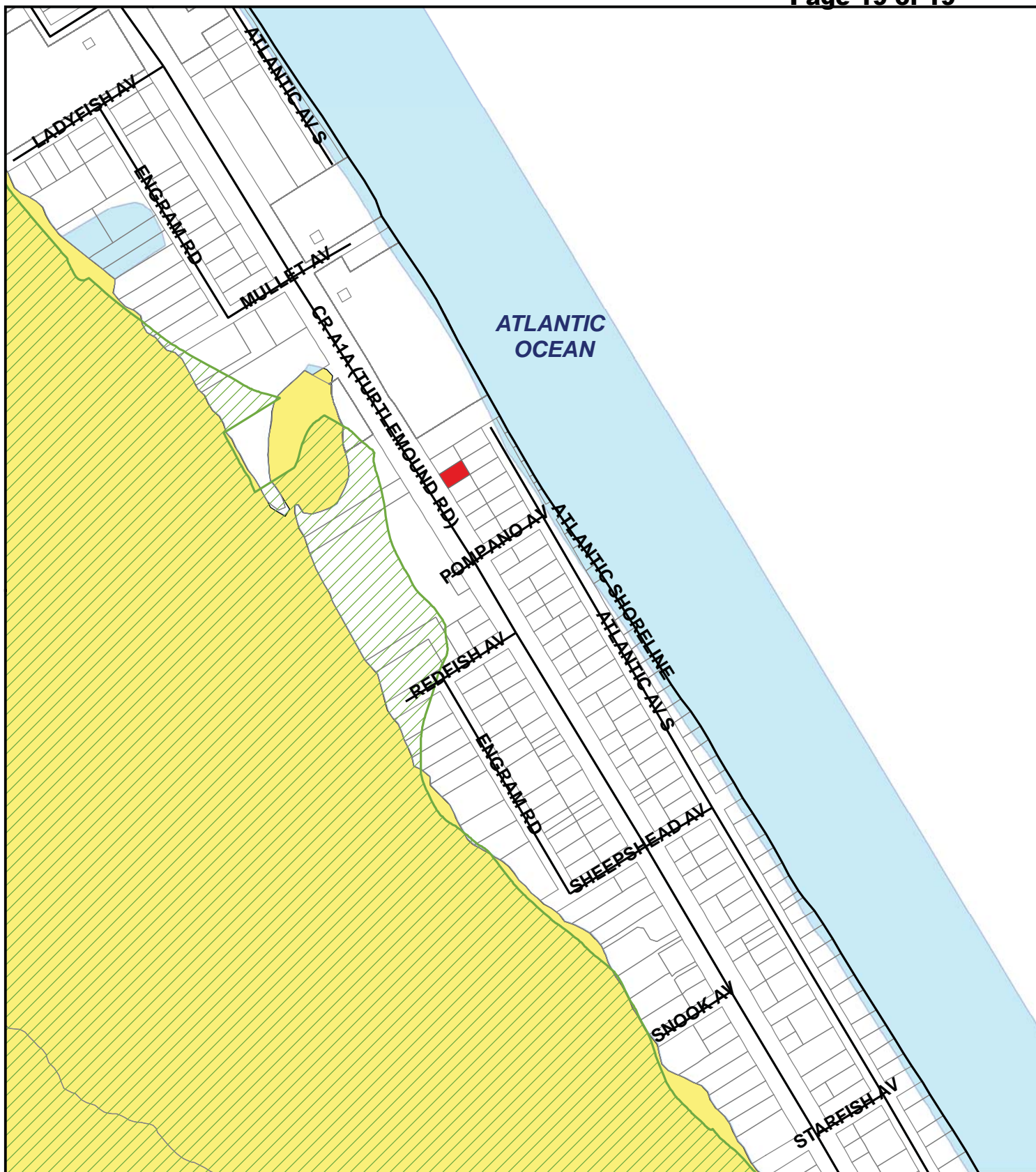


VARIANCE

**CASE NUMBER
V-17-063**



REQUEST AREA



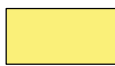
ECO/NRMA

1" = 400'

VARIANCE
CASE NUMBER



ECO



NRMA



REQUEST AREA

V-17-063