



**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-17-064

SUBJECT: Variances to allow construction on a substandard lot and to separate nonconforming lots 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 for Charles Woerner, Jr., representative

OWNER(S): John A. Bollman III Estate

STAFF: Patricia Smith, AICP, Planner II

I. SUMMARY OF REQUEST

The applicant is requesting two variances to construct a single-family dwelling on the subject property located on Turtle mound Road, New Smyrna Beach. The property is approximately 3,500 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 8505-01-37-0390 from parcel 8505-01-50-0011 and parcel 8505-01-49-0370 on Urban Single-Family Residential (R-9W) zoned property.

Staff Recommendation: Approval of the variance requests 1 and 2, case number V-17-064, as they meet all five criteria for granting said variances, subject to staff recommended conditions.

II. SITE INFORMATION

- 1. Location: Southeast corner of Turtle mound Road and Pompano Avenue
- 2. Parcel No(s): 8505-01-37-0390
- 3. Property Size: 3,500 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 two variances in order to construct a new single-family dwelling on a nonconforming lot located on Turtle mound 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

3,500 square feet, and it is 70 feet deep by 50 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.

The required minimum front yard setback for the R-9W classification is 25 feet, except for corner lots, where one front yard can be reduced to a minimum setback of 15 feet. The subject parcel is a corner lot on which the applicant is requesting to accommodate a single-family dwelling within a 28x38 foot building footprint. The applicant has provided a nonconforming lot letter indicating that the property was previously under common ownership with the lots across the street on Turtlemound Road.

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, two 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 3,500 square feet in area.

The subject property is comprised of Lots 39 and 40 of Block 37, 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. Turtlemound Road was designated as part of SR A1A, and traffic was rerouted westward. As part of the 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 30 feet in depth along the entire width of Lots 39 and 40.

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: According to the nonconforming lot letter 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.

The subject was previously owned together with parcel 8505-01-50-0011 and 8505-01-49-0370 west of Turtle mound Road. A public records search revealed that Lots 1 and 2, Block 50, Unit 6 were purchased by John Bollman on May 24, 1979. Therefore, the subject property and the adjoining parcels are considered to be an undivided lot. The estate of John Bollman no longer owns these parcels. Parcel 8505-01-50-0011 is owned by the Utilities Commission of the City of New Smyrna Beach, and Parcel 8505-01-49-0370 is owned by Captain JB's Fish Camp,



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 variance is needed to legitimize the separation of the parcels.

IV. REVIEW CRITERIA AND ANALYSIS

Variance Plans

For this review, the applicant provided a conceptual sketch that depicts the potential building area. Plans with specific building measurements were not provided. Based on the drawing that was submitted by the applicant, two variances are required to comply with the R-9W zoning classification. More specific plans are needed for the building process; however, based on the information currently under review, it appears that the applicant can meet the minimum yard requirements for the R-9W zoning classification.

Variance Criteria

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: FDOT's acquisition of properties along the former State Road A1A right-of-way has 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 a total width of 50 feet by 70 feet in depth.

Staff finds this criterion is met for Variance 1.

Variance 2: As mentioned previously, the property was required to remain under single ownership with adjacent properties west of Turtlemound Road. However, the subject property has changed ownership since being owned in conjunction with the adjacent lots.

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. While the owner of the subject property did historically own an adjacent lot west of Turtlemound Road, it was ultimately acquired by New Smyrna Beach Utilities for a public purpose.

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

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 the property owner.

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

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 are the minimum requirements needed to make it possible to obtain permits for a single family home. The proposed variance site plan indicates that the house footprint can meet the minimum dimensional standards of R-9W zoning classification as a corner lot. The applicant is only asking for a lot size variance with a lot separation. He is not seeking a lot coverage variance or setback variance.

Staff finds this criterion is met for Variations 1 and 2.

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 variations 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 variations is consistent with the character, appearance, and aesthetic values of the surrounding neighborhood, and the variations are consistent with the intent of the zoning code.

Staff finds this criterion is met for Variations 1 and 2.

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 8505-01-37-0390 from parcel 8505-01-50-0011 and parcel 8505-01-49-0370 (Variance 2) 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 variations are limited to a proposed single-family dwelling, consistent with the enclosed variance site plan/sketch, dated September 7, 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 39 and 40, Block 37 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.

Current Planning
Received

July 28, 2017



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?

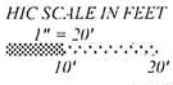
Our request is to build one single family home with the consideration of the character and aesthetics of the area. Please see attached photos of past projects in the area.

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.

COMERY
CURRENT PLANNING
ACTIVITY
SEP 07 2017
RECEIVED

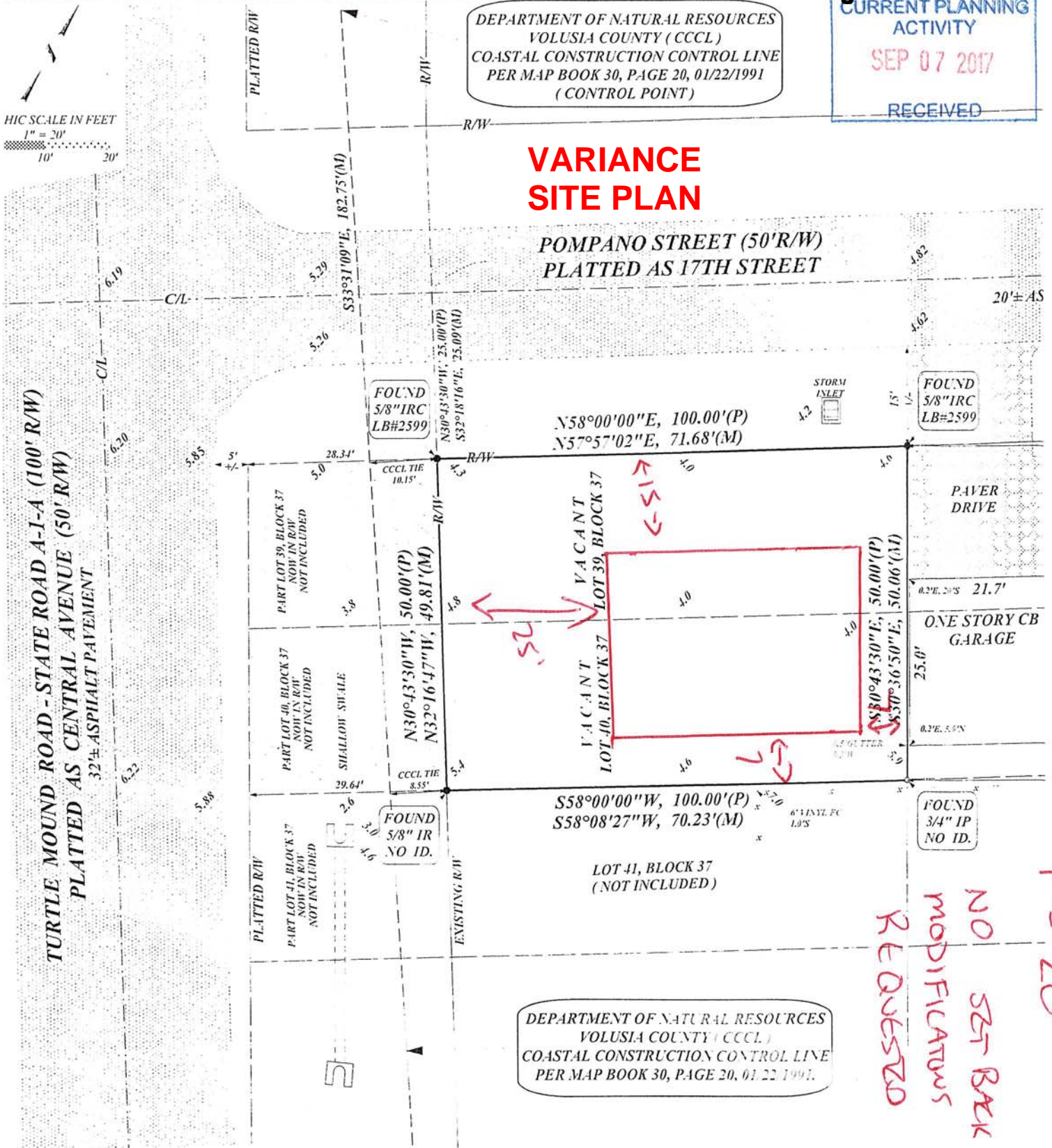
DEPARTMENT OF NATURAL RESOURCES
VOLUSIA COUNTY (CCCL)
COASTAL CONSTRUCTION CONTROL LINE
PER MAP BOOK 30, PAGE 20, 01/22/1991
(CONTROL POINT)



VARIANCE SITE PLAN

POMPANO STREET (50' R/W)
PLATTED AS 17TH STREET

TURTLE MOUND ROAD - STATE ROAD A-1-A (100' R/W)
PLATTED AS CENTRAL AVENUE (50' R/W)
32"± ASPHALT PAVEMENT



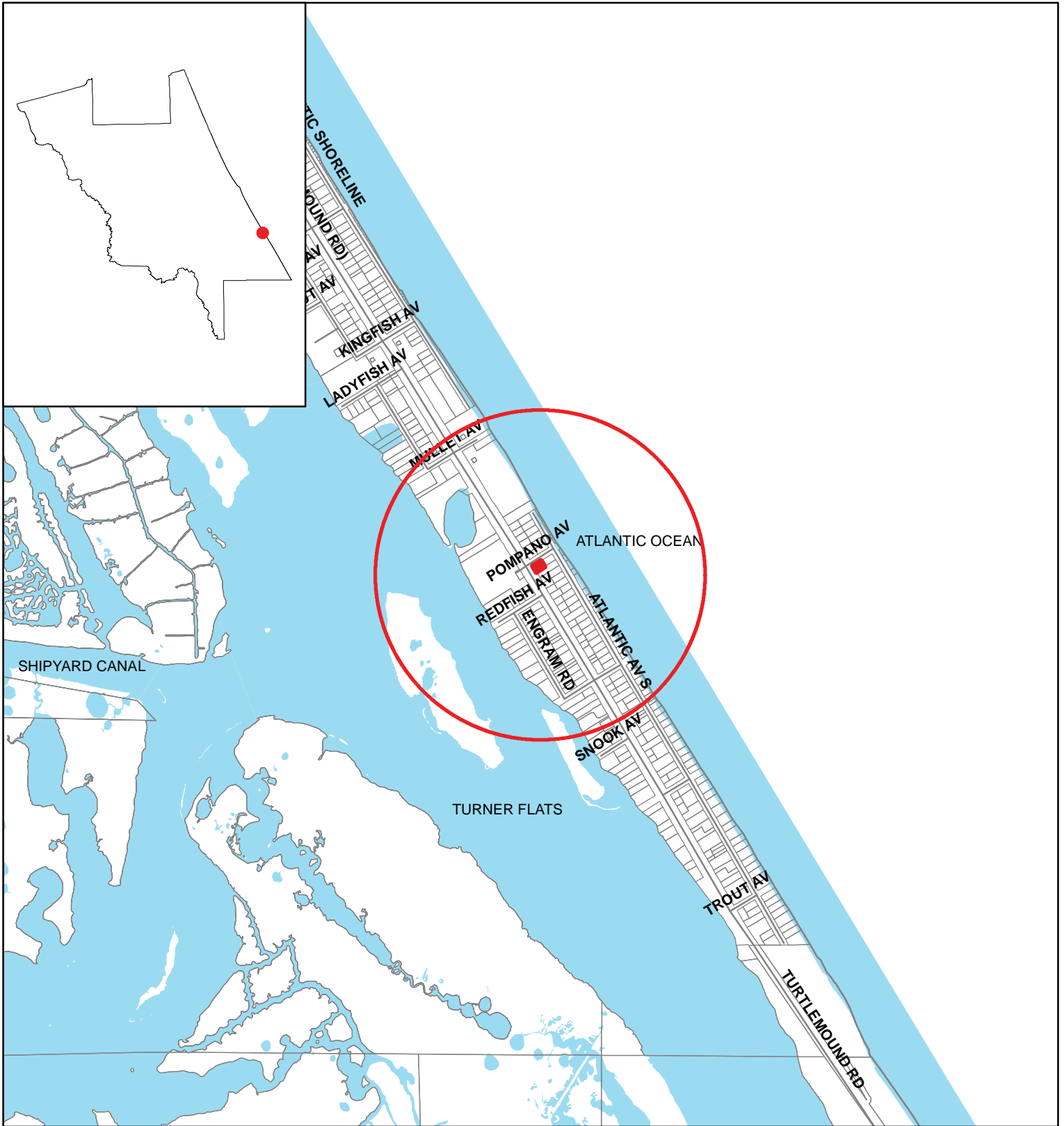
DEPARTMENT OF NATURAL RESOURCES
VOLUSIA COUNTY (CCCL)
COASTAL CONSTRUCTION CONTROL LINE
PER MAP BOOK 30, PAGE 20, 01/22/1991.

1" = 20'
NO SET BACK
MODIFICATIONS
REQUESTED

THE SURVEY DEPICTED HEREON IS NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED S

ENTS OF RECORD DISPLAYING EASEMENTS, RIGHT-OF WAYS AND OR OWNERSHIP WERE FURNISHED TO THIS
2) THE SURVEY DEPICTED HEREON IS SUBJECT TO ANY ADDITIONAL RECORDS THAT MAY BE FOUND IN THE
3) NO UNDERGROUND INSTALLATIONS, CONCRETE FOOTERS, AND OR IMPROVEMENTS HAVE BEEN LOCATED
M CERTIFIED IS THE PROFESSIONAL OPINION OF THIS SURVEYOR AND DOES NOT CONSTITUTE A GUARANTEE OR
IMPLIED. 5) ADJOINING PROPERTY DESCRIPTIONS WERE NOT FURNISHED TO THIS SURVEYOR EXCEPT WHERE
TO ANY FACTS DISCLOSED BY A FULL AND ACCURATE TITLE SEARCH. THIS SURVEY IS CERTIFIED BASED ON THE
TE OF SIGNATURE 7) UTILITY EQUIPMENT OR MACHINERY BOTH ABOVE AND BELOW GROUND NOT LOCATED
L RELATION TO PROPERTY LINES AND OR OTHER FEATURES EXAGGERATED FOR CLARITY. 9) THE PROPERTY
TT TO ANY RESTRICTIONS, RESERVATIONS, LIMITATIONS, EASEMENTS AND RIGHT OF WAYS, WHETHER RECORDED
ENTS OR RIGHT-OF-WAY OF RECORD, OTHER THAN THOSE ON RECORD PLATS. IS REQUIRED, THIS INFORMATION
YOR AND MAPPER, PER FLORIDA STATUTES RULE 61G17-6.002(14)(a) 11) THIS SURVEYOR OR FIRM, DOES NOT
L NOT BE LIABLE FOR CLAIMS ARISING FROM ERRONEOUS OR INCORRECT INFORMATION FURNISHED BY THE
FACTORS OR OTHERS, WHICH IS USED TO FORMULATE THIS SURVEYOR'S OPINION.

PREPARED BY
JAMES MARVIN BUNN PROFESSION
PROFESSIONAL SURVEYOR
LB # 7037 PSM
211 LIVE OAK STREET, NEW SMYRNA BI
PHONE (386) 424-0998 FAX



REQUEST AREA LOCATION



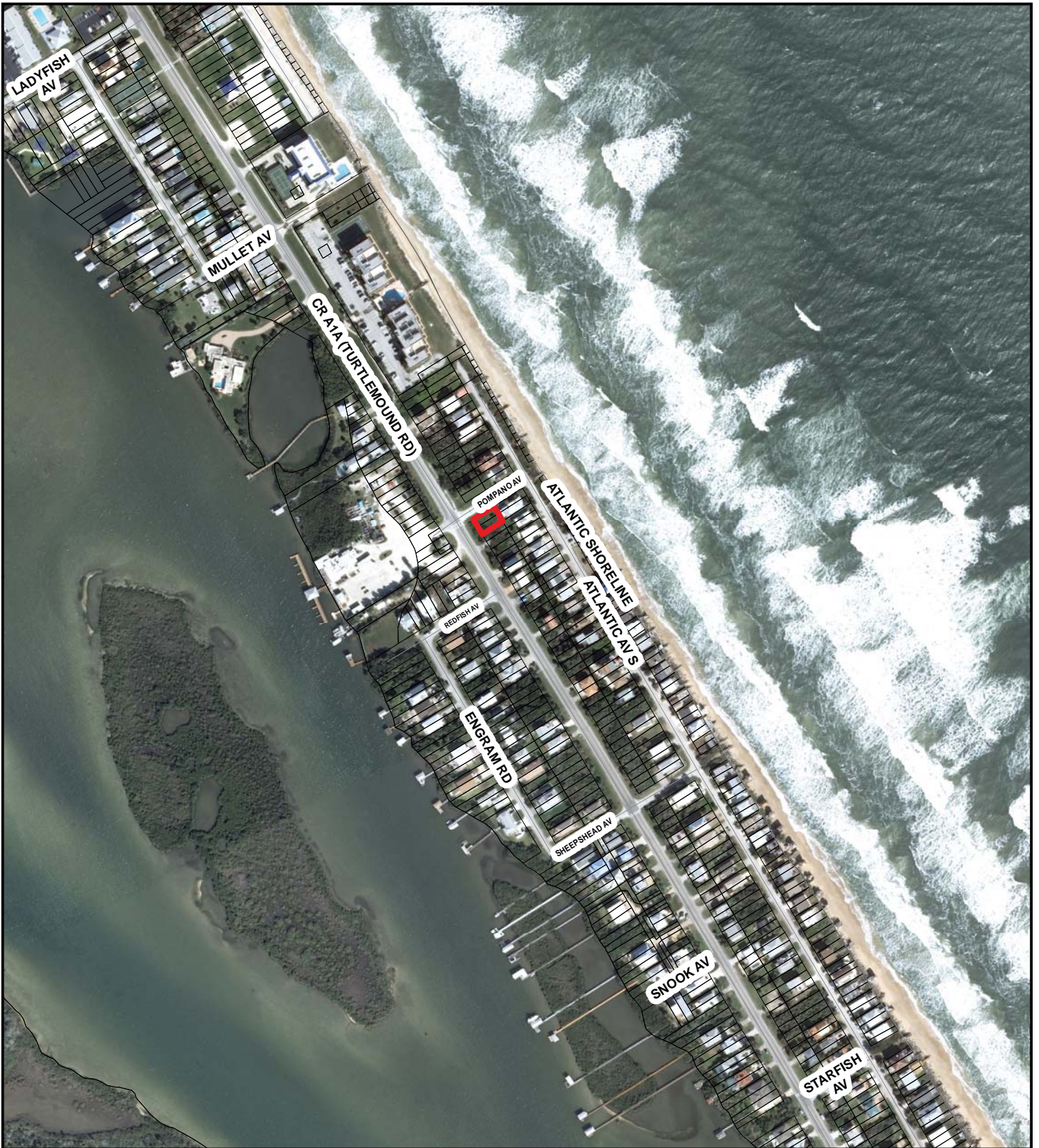
1" = 1000'



VARIANCE

CASE NUMBER

V-17-064



AERIAL 2015

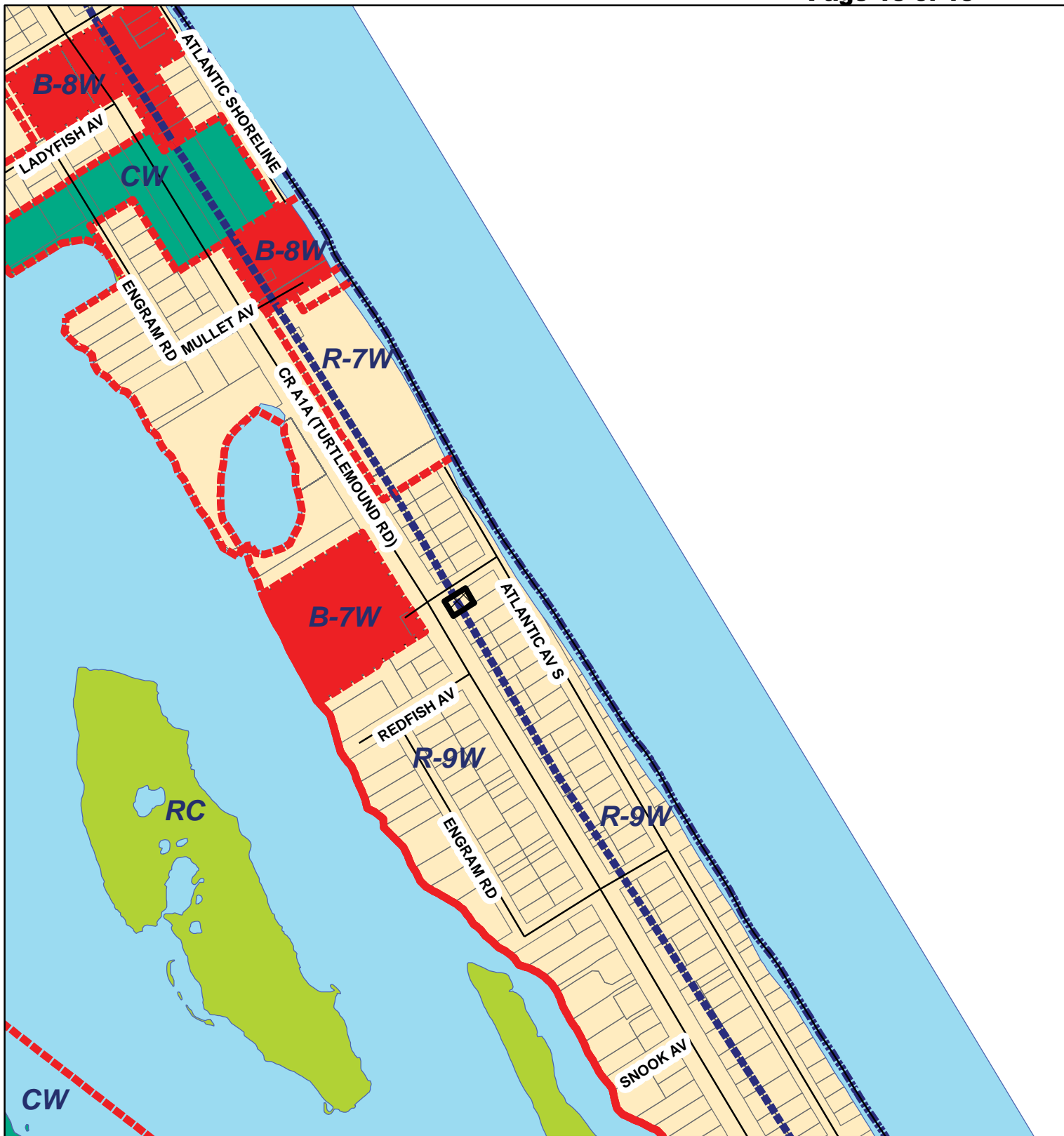
1" = 400'



VARIANCE
CASE NUMBER
V-17-064



REQUEST AREA



ZONING CLASSIFICATION

- COMMERCIAL
- RESIDENTIAL
- CONSERVATION
- RESOURCE CORRIDOR

1" = 400'



VARIANCE
CASE NUMBER
V-17-064



REQUEST AREA



FUTURE LAND USE

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

1" = 400'



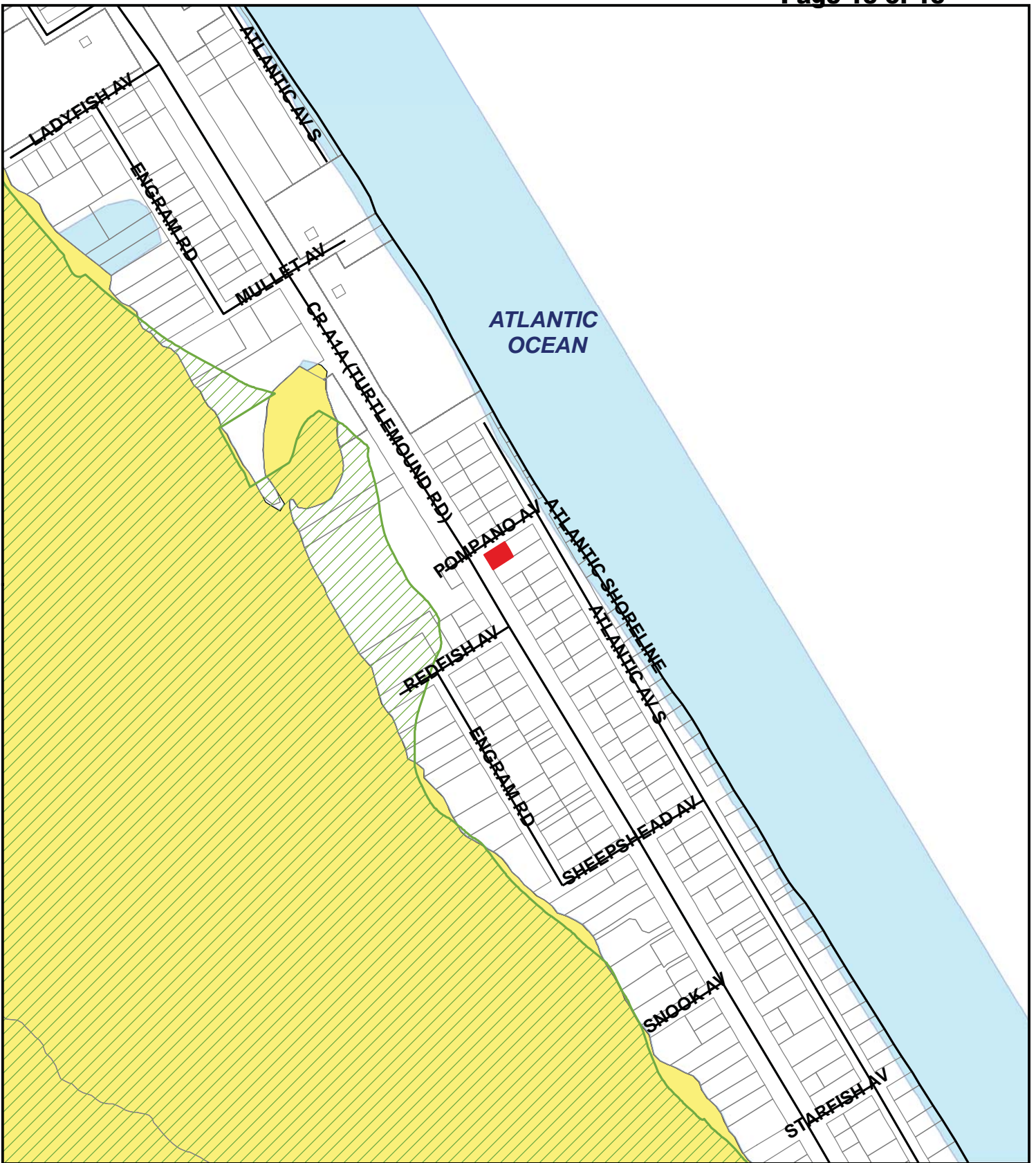
VARIANCE

CASE NUMBER

V-17-064




REQUEST AREA



ECO/NRMA

-  ECO
-  NRMA
-  REQUEST AREA

1" = 400'

 **VARIANCE**
CASE NUMBER
V-17-064