



STAFF REPORT

LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: 321-733-3042

landdevelopmentweb@palmabayflorida.org

Prepared by

Patrick J. Murphy, Assistant Growth Management Director

CASE NUMBER

V-12-2020

PLANNING & ZONING BOARD HEARING DATE

July 1, 2020

PROPERTY OWNER & APPLICANT

Rook at Palm Bay, LLC (Jake Wise, Civil Engineer from CEG, Representing)

PROPERTY LOCATION/ADDRESS

Located south of and adjacent to Malabar Road; between Emerson Drive SE and Wal-Mart

SUMMARY OF REQUEST

Variance from Sections 185.038 (F)(7)(e) and 185.043(F)(7)(d). The requests are to encroach the front parking setback of a proposed apartment building clubhouse; encroach the rear building setback of a proposed grocery store; and to encroach the rear parking setback in two (2) separate commercial locations.

Existing Zoning

CC, Community Commercial and RM-20, Multiple-Family Residential

Existing Land Use

Commercial Use and Multiple Family Residential Use

Site Improvements

Vacant, Undeveloped Land

Site Acreage

21 acres, more or less

SURROUNDING ZONING & USE OF LAND

North

CC, Community Commercial; Malabar Road

East

CC; Wal-Mart, Hurricane Car Wash, and Retention Pond; and RS-1, Single-Family Residential; Stormwater Treatment Facilities

South

RR, Rural Residential; Undeveloped Land and a Drainage Ditch

West

CC, Funeral Home, Vacant Land; RR, American Legion Post 117

COMPREHENSIVE PLAN

COMPATIBILITY

Not specifically addressed

BACKGROUND:

The property is located south of and adjacent to Malabar Road; between Emerson Drive SE and the Palm Bay Wal-Mart. The site is vacant, undeveloped land. Specifically, the subject property is Tax Parcels 4-6 and Tax Parcel 9, all lying within Section 5, Township 29 south and Range 37 east. The north 6.08 acres of land is zoned CC, Community Commercial. The remaining 14.92 acres are zoned RM-20, Multiple Family Residential.

The CC-zoned portion of the project is bordered by Malabar Road to the north; CC and HC zoning to the east and west; and by the remainder of the project to the south. The RM-20 zoned property abuts CC zoned lands to the north; RR, Rural Residential zoned lands to the south and west, containing undeveloped land (south) and the American Legion Post 117 (west); and to the east lies the Palm Bay Wal-Mart and a drainage ditch.

The Rook at Palm Bay, LLC., is requesting Variances from Sections 185.038 (F)(7)(e) and 185.043(F)(7)(d). The requests are to encroach the front parking setback for a proposed apartment building clubhouse; encroach the rear building setback of a proposed grocery store; and to encroach the rear parking setback in two (2) separate commercial locations. Representing the applicant in this request is Jake Wise, Civil Engineer from the Construction Engineering Group, LLC.

ANALYSIS:

Variances from the terms of the Land Development Code (LDC) may be granted when special conditions exist that would result in unnecessary hardship if the provisions of the LDC were enforced. However, a variance may not be granted if the approval of such would compromise the public health and safety. An application must demonstrate that Items 1 through 7 of Section 169.009 of the Code of Ordinances have been met. A review of these items is as follows.

Item 1 - *"Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, buildings or structures in the same land use category, zoning district or situation."*

The Applicant's Representative has provided the following Analysis: *"The 21-acre property is unusual in that it has less than 400 feet of frontage on Malabar Road (its only road frontage), a depth of almost 1,300 linear feet, and has an overall T-shape. This results in a property ratio that exceeds 3 to 1 in depth to width, which is atypical for standard development patterns. In order to create commercial parcels for conveyance, and frontage for the residential development, a new roadway shall be created. Due to the existing roadway geometry of Malabar Road, this new roadway must be centered within the property so that the safest intersection can be provided. An additional site constraint is the existing stormwater retention pond owned by the City that necessitated a drainage easement be placed upon a portion of*

the subject property for access and maintenance of these improvements.” Staff generally concurs with this assessment and believes the Board and Council should consider such.

Item 2 - *"The special conditions and circumstances identified in Item 1 above are not the result of the actions of the applicant."*

The special conditions and circumstances identified above may be viewed as a partial result of the actions of the Applicant in that the parcels are being offered for sale. If the development was established as “lease parcels” the setback encroachments would not be required as the adjacent property lines would be considered side interior (not rear) and the applicable setbacks would be met. However, consideration should be given to the assessment provided by the Applicant’s representative since most commercial developments contain for-sale properties. The items of discussion in said assessment are not self-induced. As for the residential variance, the apartment complex design has necessitated this 10’ parking encroachment request, not the shape of the land.

Item 3 - *"Literal interpretation and enforcement of the Land Development Code regulations would deprive the applicant of rights commonly enjoyed by other properties in the same land use category, zoning district or situation under the terms of the land development code, and would work unnecessary and undue hardship on the applicant."*

Literal interpretation and enforcement of the LDC will require the Applicant to reduce the size of the grocery store, remove two (2) rows of parking spaces from the commercial development, and redesign the clubhouse. It shall be noted that the proposed building backs up to an existing pond, on the adjacent parcel to the west, and the parking encroachment just north of the building is 15’ from the property line. This adjacent parcel is also under administrative site plan review for a self-storage facility. These plans indicate that the existing pond is not being removed and the heavily wooded area north of the pond is being preserved. Thus, these improvements do not “encroach” upon existing or future development.

The parking setback encroachments on the east side of Crown Square, are adjacent to the undeveloped portion of the Car Wash parcel. A 17’ setback is proposed. Typical parking setbacks between commercial developments is 10’. Based on this analysis, literal interpretation would appear to create a hardship when compared to other developments within the same land use and zoning categories, for the commercial building and parking variances. Literal interpretation would require removal of the four (4) clubhouse parking spaces or redesign of the amenity to allow for the 10’ parking setback. The Planning and Zoning Board (Board) and City Council must determine if this would create a hardship.

Item 4 - *"The variance, if granted, is the minimum variance necessary to make possible the reasonable use of the land, building or structure."*

Per the attached Exhibit CSV-1, the minimum variances needed to accommodate the proposed development are as follows:

(1) 16' encroachment of the 25' rear building setback; (2) 9' encroachment of the rear parking setback (west side); (3) 7' encroachment of the 25' rear parking setback (east side); and a 10' encroachment of the 10' front parking setback for the apartment complex's clubhouse parking. All variance requests are highlighted and noted on this exhibit.

Item 5 - *"Granting of the variance request will not confer on the applicant any special privilege that is denied by the land development code to other lands, buildings or structures in the same land use category, zoning district or situation."*

The intent of this item is that of equity. That is, standards in the Zoning Code are intended to be administered fairly. Variances from such codes are issued to provide relief to a property which is unfairly burdened. The Applicant contends that denial of the variances requested would create a hardship due to the shape and overall size of the property and the existing median opening on Malabar Road, which are circumstances not experienced by other properties in the same land use and zoning district. It does not appear that any of the variance requests would create any life/safety concerns.

Item 6 - *"The granting of the variance will be in harmony with the general intent and purpose of this code and will not be injurious to the surrounding properties or detrimental to the public welfare."*

The Board and Council shall determine if the variances requested in this Application comply with the general intent of the applicable sections of the Land Development Code.

Item 7 - *"The variance represents a reasonable disposition of a claim brought under the Bert J. Harris Private Property Rights Protection Act, chapter 95-181, Laws of Florida, that a development order of the city has reasonably burdened the applicant's property, based on the recommendations of the special master appointed in accordance with the act, or the order of a court as described in the act."*

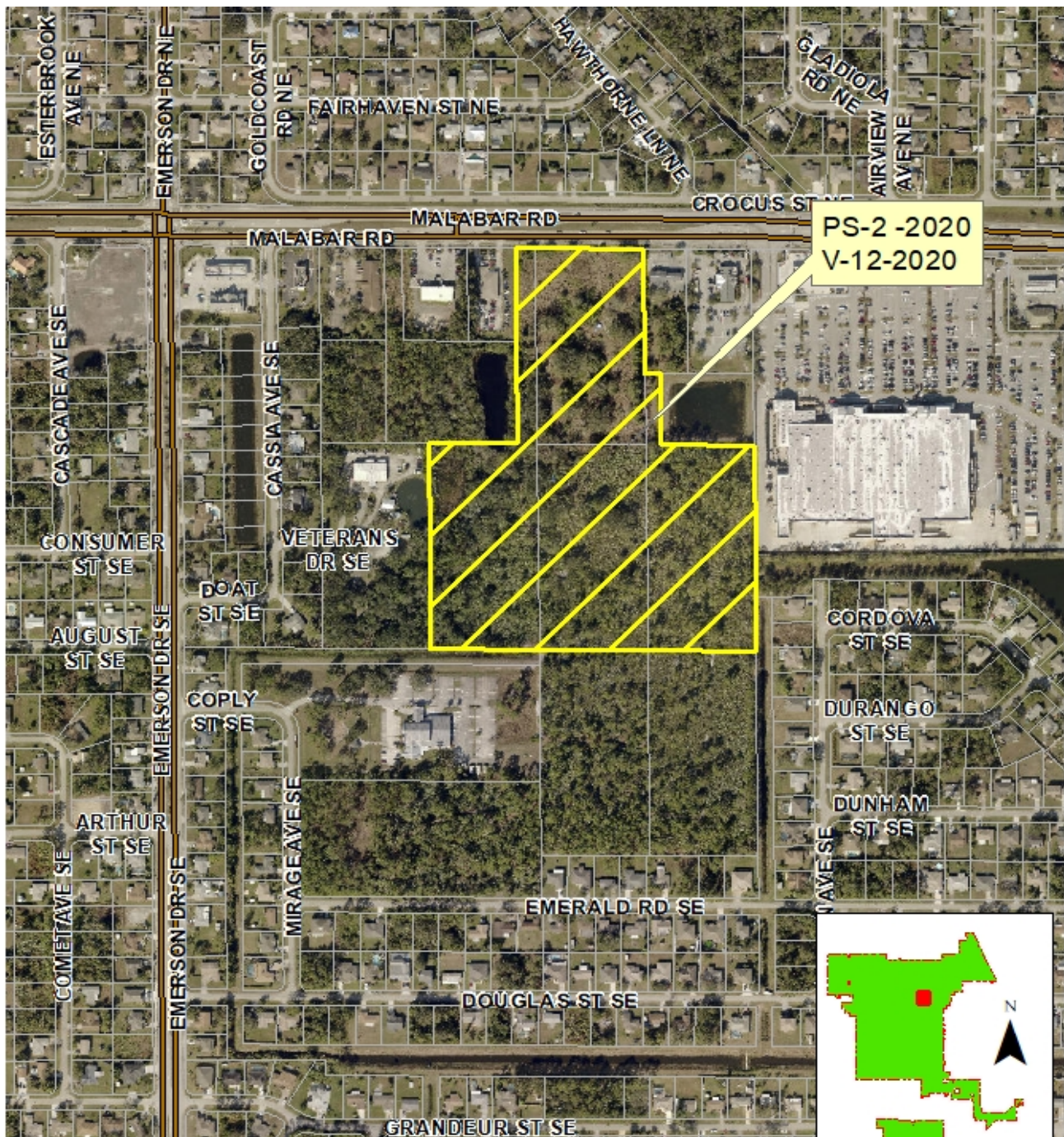
Staff has not received a claim made upon this property, with respect to the "Bert J. Harris Act," or any development order, as indicated above. Therefore, Item 7 is not applicable to the variance request.

STAFF CONCLUSION:

The Planning and Zoning Board must determine, based on the facts presented, to what degree, if any, of minimal relief is required to meet the needs of the variance being requested, as required under Section 169.009 of the City of Palm Bay Code of Ordinances and make recommendations to City Council for a final review. Under 59.05(A)(14) City of Palm Bay Code of Ordinances, "The quasi-judicial body shall direct the clerk or [city] attorney acting as the body's legal counsel to prepare the necessary and appropriate written order in accordance

with the purpose of the hearing and findings of the quasi-judicial body. Pursuant to Florida Statutes, in the event relief is denied to the applicant, the specific provision of statute or code that was deficient shall be stated for the record.”

Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.

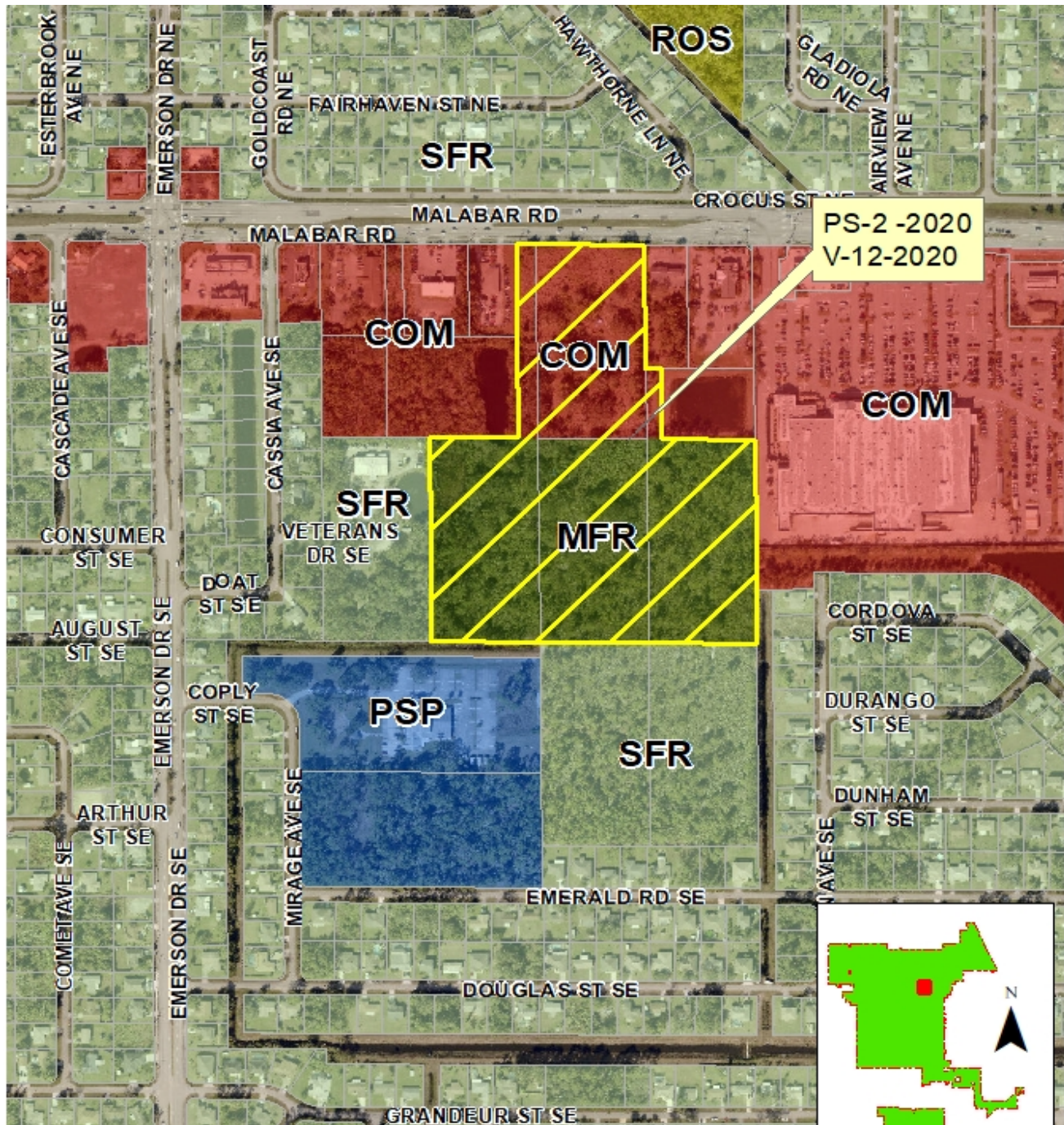


AERIAL LOCATION MAP: CASES PS-2-2020 AND V-12-2020

Subject Property

South of and adjacent to Malabar Road SE, in the vicinity east of Cassia Avenue SE

Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



FUTURE LAND USE MAP: CASES PS-2-2020 AND V-12-2020

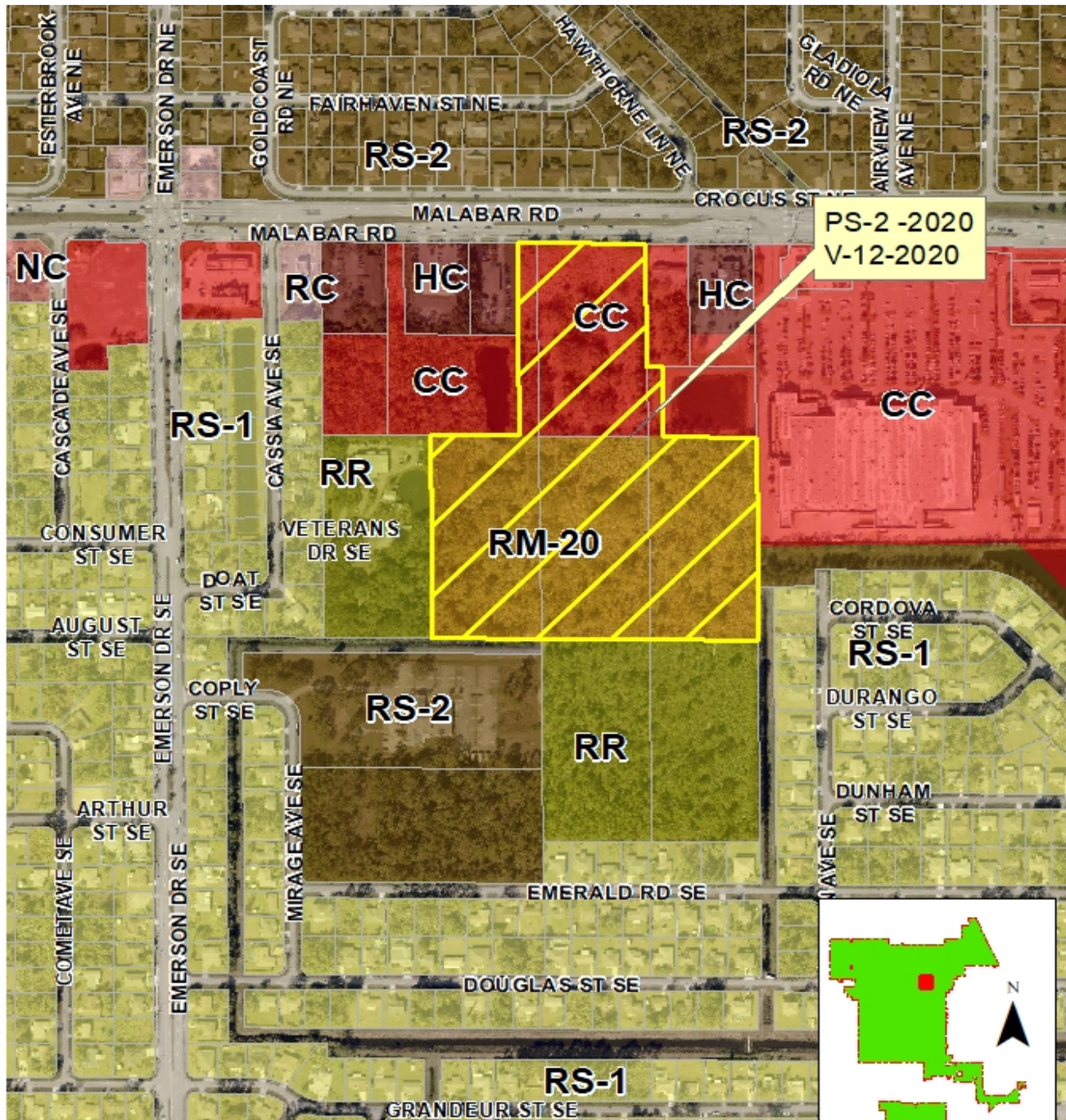
Subject Property

South of and adjacent to Malabar Road SE, in the vicinity east of Cassia Avenue SE

Future Land Use Classification

MFR – Multi Family Residential Use and COM - Commercial

Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



ZONING MAP:

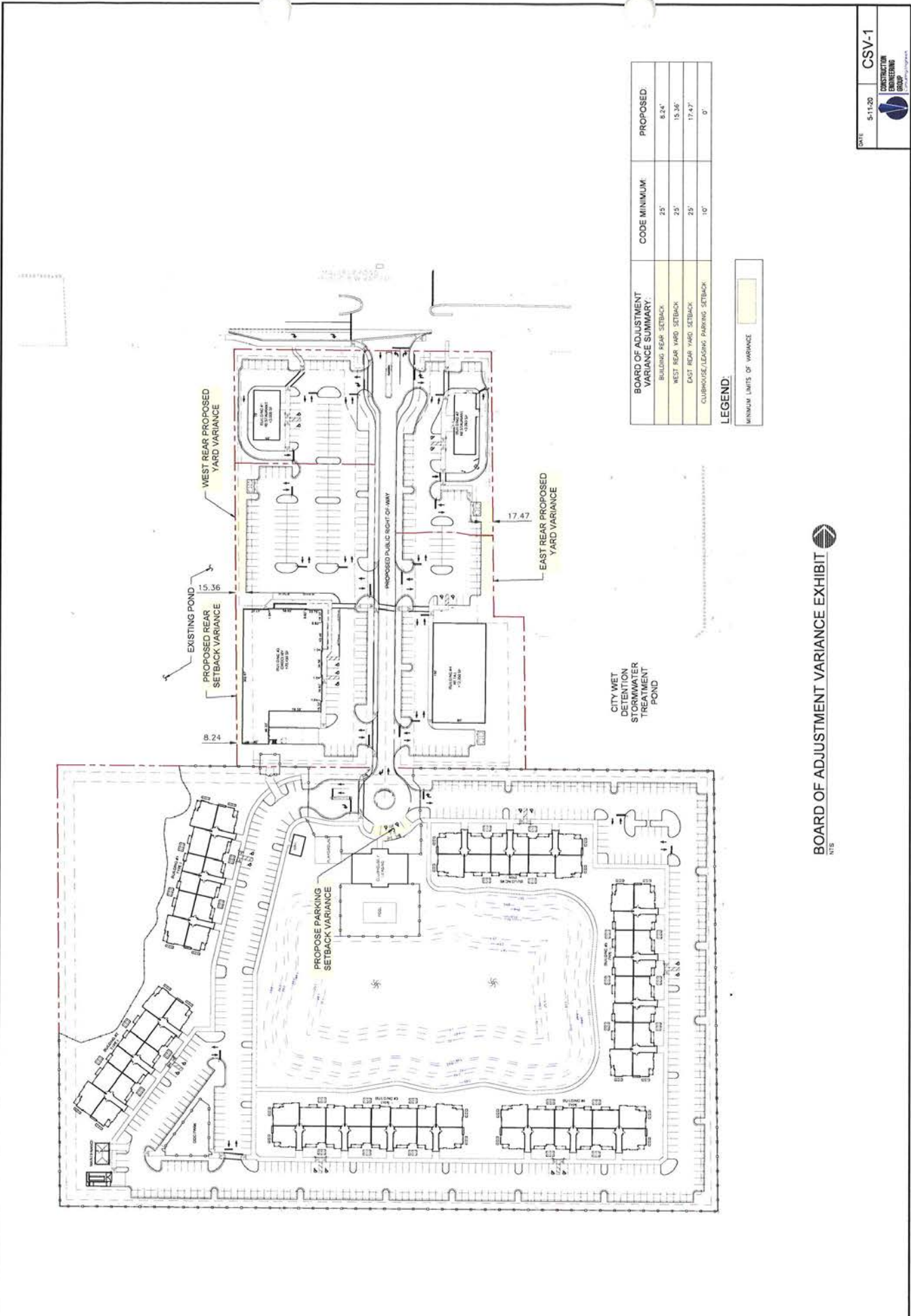
CASES PS-2-2020 AND V-12-2020

Subject Property

South of and adjacent to Malabar Road SE, in the vicinity east of Cassia Avenue SE

Current Zoning Classification

RM-20 - Multi Family Residential and CC – Community Commercial District



Crown Square Board of Adjustment Variance Request

SUMMARY:

The property requesting the Board of Adjustment variance is approximately 21 acres with its only public roadway frontage being Malabar Road to the north. The property is zoned CC (commercial) along Malabar Road and RM-20 (multi-family) in the rear of the site. The RM-20 zoning has no public roadway frontage at this time. The property is unusual in that for its size it has less than 400 feet of frontage, it overall has a T-shape, and it is almost 1300 linear feet deep. That is over a 3 to 1 ratio in depth to width, very unusual for the zonings it has. The commercially zoned portion of the property is almost 630 feet deep and the site has existing a City public stormwater easement over a portion of it that provides treatment and conveyance for stormwater runoff from Malabar Road.

In order to create a separate parcel for the RM-20 multi-family zoning in the back of the site it needs to have public right-of-way frontage so the parcel either had to have multiple flag lots which would not have worked well at all or a new public right-of-way into the property as proposed. In order to provide the safest design for a new public right-of-way the roadway connection to Malabar Road needed to be in the middle of existing driveways to the east and west of this property and line up with an existing median cut. It was further determined that a traffic signal was warranted for the development of this site too. Based on all of these restrictions that were not caused by the applicant at all the necessity for the variances are the minimum needed for the best development of the site.

The variance requests are per the attached CSV-1 exhibit and include one rear setback, two rear yard setbacks, and one parking setback. The lone building setback request is along only a small portion of the western boundary and on the adjacent parcel is an existing pond and wetlands. The property happens to be in design development at this time and does not plan to construct any improvements on this portion of their site at all. It is proposing mini-storage in the far western portion of the property. The other two rear yard variance requests are also only along a minimal portion of the site per the attached exhibit for the rear yards to be still provided but slightly reduced in size. Both of these areas back up to existing ponds and undeveloped areas and would not be any type of impact to the adjacent properties. There is still ample space for landscaping, grade transitions, buffering if desired, the east area still includes substantial tree preservation as proposed. The parking setback is at the very south end of the public right-of-way seeking the ability to provide 4 total parking spaces including two handicap spaces that back up to the privately maintained public right-of-way. This is the minimum parking needed to provide spaces for the publicly accessible clubhouse and leasing office. The rest of the apartments project is gated. These areas will all be privately maintained and not a burden to the City.

JUSTIFICATION:

Per the variance application the following written explanations demonstrating the variance meets the criteria per City code section 169.009 is as follows:

- a. The special conditions and circumstances that exist for this site unique to only this property for the variance request. The existing site as outlined in the summary is very unique as follows:

- Has two separate zonings including commercial that is approximately 630 feet deep and multi-family in the back with no existing public roadway frontage.
- It is over 21 acres in size with an unusual T shape.
- It has less than 400 feet of public roadway frontage and overall has more than 3:1 ratio in depth versus width.
- It has an existing City easement on a portion of it that includes public stormwater infrastructure for the treatment and attenuation of stormwater runoff from Malabar Road.
- The adjacent development to the west is in design development at this time and it plans no improvements at all adjacent to the building and rear yard setback variance requests. This area off-site is planned to remain preservation including wetlands and an existing pond.
- The adjacent property to the east is already developed as a car wash and has not been modified in decades. The portion of the rear yard setback variance request is in the back of the car wash site set aside for stormwater treatment.

- b. The special conditions and circumstances referred herein are not a result of the applicant's actions.
- c. The literal interpretation and enforcement of the development code would deprive the applicant the ability to develop the property at its highest and best use as well as bring in needed class A apartment homes that will include new City residents, and bring in new commercial development that not only includes new jobs but also a significant tax base increase for the City. The planned commercial uses are a new grocery store and likely two new restaurants and office and/or retail space. The development also includes temporary construction jobs and millions of dollars in fees paid to the City and other permitting agencies.
- d. The variance is the minimum necessary per the unique shape and other conditions of the property.
- e. The granting of the variance would not provide any special privilege to the applicant.
- f. The granting of the variance would be in harmony with the general intent and purpose of the code and will not be injurious to the surrounding properties or detrimental to the public welfare. It would in fact be just the opposite. It would significantly increase the tax base, bring new residents to Palm Bay that would likely work in the City or potentially on this property. The residents would shop, eat out, purchase goods and create temporary design and construction jobs. The granting of the variance would bring in needed commercial uses including a planned grocery store, restaurants and potential retail/office space. These are in harmony with the existing uses in this corridor of the City.





Land Development Division
120 Malabar Road SE
Palm Bay, FL 32907
321-733-3042
Landdevelopmentweb@palmabayflorida.org

VARIANCE APPLICATION

This application must be completed, legible, and returned, with all enclosures referred to herein, to the Land Development Division, Palm Bay, Florida, Monday through Friday, during division office hours, to be processed for consideration by the Planning and Zoning Board. The application will then be referred by the Planning and Zoning Board for study and recommendation to the City Council. You or your representative are required to attend the meeting(s) and will be notified by mail of the date and time of the meeting(s). The Planning and Zoning Board holds their regular meeting the first Wednesday of every month at 7:00 p.m. in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida, unless otherwise stated.

PARCEL ID 29-37-05-00-4; 29-37-05-00-5; 29-37-05-00-6; 29-37-05-00-9

TAX ACCOUNT NO. 2925024; 2925025; 2925026 & 2925029

LEGAL DESCRIPTION OF THE PROPERTY COVERED BY THIS APPLICATION:

See Attached

STREET ADDRESS OF PROPERTY COVERED BY APPLICATION:

Malabar Road

SIZE OF AREA COVERED BY THIS APPLICATION (calculate acreage): +/- 20.008

EXISTING ZONING CLASSIFICATION OF PROPERTY (ex.: RS-2, CC, etc.): CC & RM-20

ARE THERE ANY STRUCTURES ON THE PROPERTY NOW? YES X NO

HAS A VARIANCE APPLICATION PREVIOUSLY BEEN FILED FOR THIS PROPERTY? YES X NO

IF SO, STATE THE NATURE OF THE PREVIOUS APPLICATION, WHETHER THE REQUEST WAS APPROVED OR DENIED, AND DATE OF ACTION:

N/A

DESCRIBE THE EXTENT OF THE VARIANCE REQUESTED AND THE INTENDED USE OF THE PROPERTY IF THE VARIANCE IS GRANTED (SPECIFY NUMBER OF INCHES/FEET ENCROACHING INTO SPECIFIC REQUIRED YARD SETBACK OR REQUIRED HEIGHT RESTRICTIONS):

See enclosed

CITE THE APPLICABLE SECTION(S) OF THE ZONING ORDINANCE AND ITS REQUIREMENT FROM WHICH VARIANCE IS REQUESTED (ex.: 185.034(f)(7)):

See enclosed

GIVE WRITTEN EXPLANATION(S) DEMONSTRATING HOW THE VARIANCE MEETS THE FOLLOWING CONDITIONS PER SECTION 169.009:

- (a) That special conditions and circumstances exist which are peculiar to the land, structures or buildings involved and which are not applicable to other lands, structures or buildings in the same land use category, zoning district, or situation.
- (b) That special conditions and circumstances referred to above do not result from the actions of the applicant.
- (c) That literal interpretation and enforcement of the development code regulations would deprive the applicant of rights commonly enjoyed by other properties in the same land use category, zoning district, or situation under the terms of the development code, and would work unnecessary and undue hardship on the applicant.
- (d) That if granted, the variance is the minimum variance necessary to make possible the reasonable use of the land, building or structure.
- (e) That granting the variance requested will not confer on the applicant any special privilege that is denied by the development code to other lands, buildings, or structures in the same land use category, zoning district, or situation.
- (f) That granting the requested variance will be in harmony with the general intent and purpose of this code and will not be injurious to the surrounding properties or detrimental to the public welfare.

See enclosed

CITY OF PALM BAY, FLORIDA
VARIANCE APPLICATION
PAGE 3 OF 3

EVIDENCE MUST BE PROVIDED TO CONSIDER VARIANCES BASED ON THE FOLLOWING CLAIMS:

_____ BERT J. HARRIS PRIVATE PROPERTY RIGHTS PROTECTION ACT, Chapter 95-181, Laws of Florida.
Provide a copy of one of the following:

☐ Special master appointed in accordance with the act. ☐ Court order as described in the act.

_____ AMERICANS WITH DISABILITIES ACT. Cite the section of the act from which the variance request will provide relief: _____

THE FOLLOWING PROCEDURES AND ENCLOSURES ARE REQUIRED TO COMPLETE THIS APPLICATION:

X _____ *\$350.00 Application Fee. Make check payable to "City of Palm Bay."

X _____ A listing of legal descriptions of all properties within a 500 foot radius of the boundaries of the property covered by this application, together with the names and mailing addresses (including zip codes) of all respective property owners within the above referenced area. (This should be obtained for a fee from the Brevard County Planning and Zoning Department at 321-633-2060.)

X _____ A site plan drawn to scale which shows all property and yard dimensions, its structures (if any) and the variance desired, including abutting highway or road boundaries. The site plan shall also be provided on Memory Drive.

X _____ Site plan data may be shown on a copy of the survey and must also be provide on Memory Drive.

X _____ A survey prepared by a registered surveyor showing all property lines and structures. The survey shall also be provided on Memory Drive.

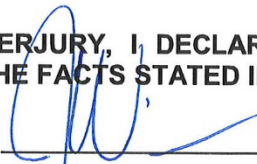
X _____ Sign(s) posted on the subject property. Refer to Section 51.07(C) of the Legislative Code for guidelines.

X _____ **Where property is not owned by the applicant**, a letter must be attached giving the notarized consent of the owner for the applicant to request the variance.

I, THE UNDERSIGNED UNDERSTAND THAT THIS APPLICATION MUST BE COMPLETE AND ACCURATE BEFORE CONSIDERATION BY THE PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY AND CERTIFY THAT ALL THE ANSWERS TO THE QUESTIONS IN SAID APPLICATION, AND ALL DATA AND MATTER ATTACHED TO AND MADE A PART OF SAID APPLICATION ARE HONEST AND TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING VARIANCE APPLICATION AND THAT THE FACTS STATED IN IT ARE TRUE.

Signature of Applicant



Date

4-13-20

Printed Name of Applicant

Jake Wise, PE- Construction Engineering Group, LLC

Full Address

2651 W Eau Gallie Blvd; Suite A; Melbourne, FL 32935

Telephone

321-610-1760

Email

jwise@cegengineering.com

*NOTE: APPLICATION FEE IS NON-REFUNDABLE UPON PAYMENT TO THE CITY

March 18, 2020

Re: Letter of Authorization

As the property owner of the site legally described as:

Parcel IDs: 29-37-05-00-4; 29-37-05-00-5; 29-37-05-00-6; 29-37-05-00-9

I, Emilia R. Akridge, Authorized Representative for Rook at Palm Bay, LLC, hereby authorize to represent my
Site Plan Variance request(s):

Rep. Name: Jake Wise, PE- Construction Engineering Group, LLC

Address: 2651 W Eau Gallie Blvd, Suite A; Melbourne, FL 32935

Telephone: 321- 610-1760

Email: Jwise@cegengineering.com

Rook at Palm Bay, LLC

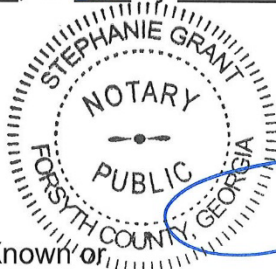
By: Emilia R. Akridge
(Property Owner Signature)

STATE OF GEORGIA

COUNTY OF DEKALB

The foregoing instrument was acknowledged before me this 18th day of
March, 2020 by Emilia R. Akridge, Authorized Representative for Rook at Palm Bay, LLC

(SEAL)



Stephanie Grant
, Notary Public

☒ Personally Known or

☐ Produced Identification

Type of Identification Produced: _____

11-9-23

CORRESPONDENCE



The American Legion
Charles F. Thomas IV Post 117
189 Veterans Drive
Palm Bay, Florida 32909

SUBJ: Quasi-Judicial Process Case V-12-2020 and Case PS-2-2020

TO: Terese Jones
City Clerk, City of Palm Bay
120 Malabar Rd. SE
Palm Bay, FL, 32907

Dear Ms. Jones,

Please let this letter serve as notice that American Legion Post 117 wishes to become a party in the quasi-judicial proceeding as an adjacent property in case PS-2-2020.

We have several concerns involving traffic, the wetlands surrounding our post, the impact upon our retention pond, and most of all the security and atmosphere of our post home.

We do not dispute the property owners right to build what they choose on their property. However, the City Regulations that this Variance is being requested for were put in place to allow an appropriate buffer and protections of surrounding properties in instances such as this. We wish for the Variance to be denied or appropriate concessions made to protect both us and the developer.

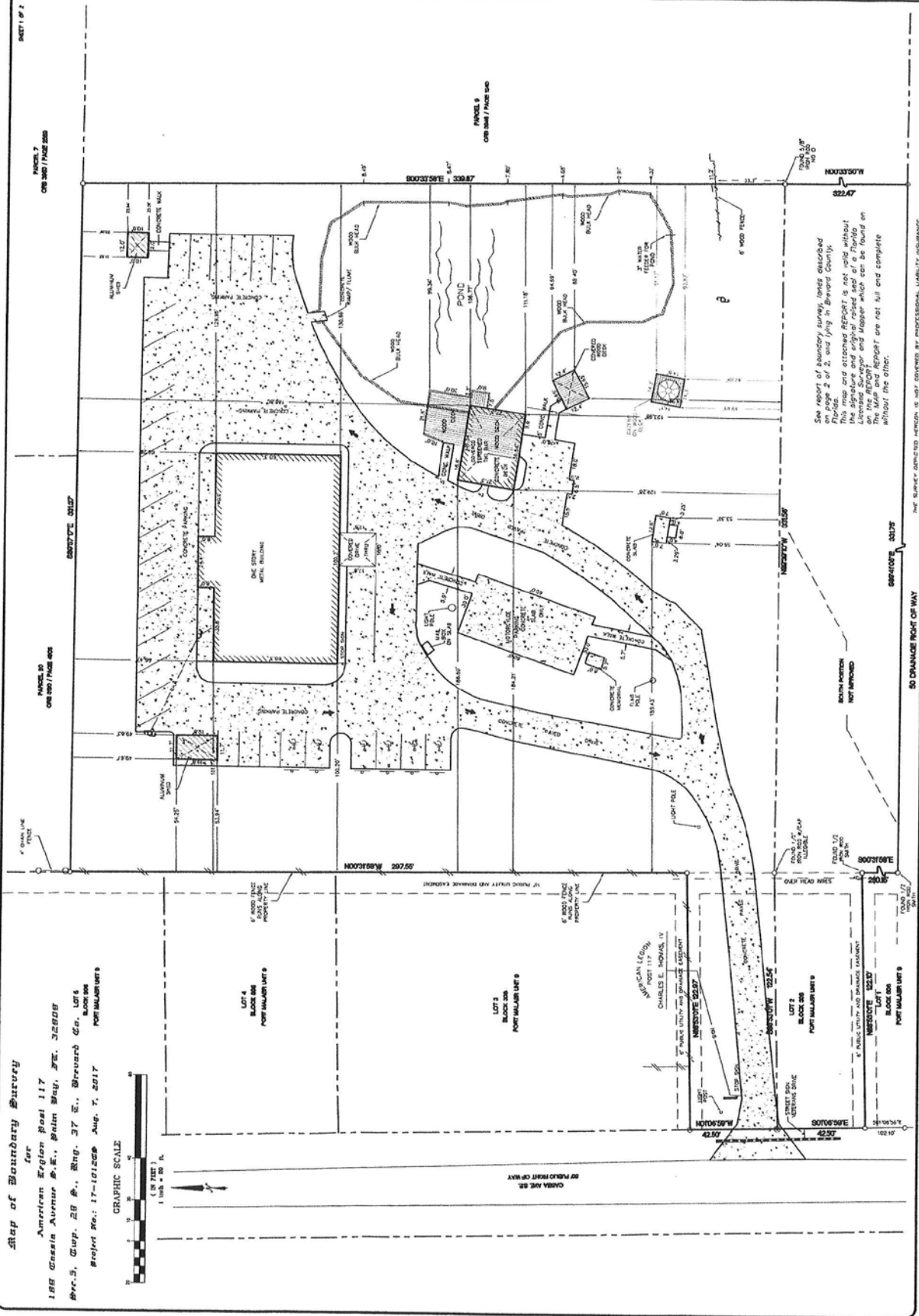
I have appointed Thomas Gaume as Post 117's representative concerning this matter. Please include him in all correspondence.

Thomas Gaume
1700 Lantana Ct. NW
Palm Bay, FL, 32907
321-557-4700, email: tgaume@gmail.com

Sincerely,

Bruce Thurber, Commander
American Legion Post 117
321-729-8089
commander@alpost117.com

American Legion Post 117
 188 Cassia Avenue S.E., Salem, Ore. 97308
 Sec. 5, Corp. 28 S., Reg. 37 E., Forward Co. 1st
 Project No.: 1-10126 Aug. 7, 2017
 BLOCK 804
 PORT MARIETTA



See report of boundary survey, lands described on page 2 of 2, and lying in Brevard County, Florida. This map and attached REPORT is not valid without the signature and original raised seal of a Florida Licensed Surveyor and Mapper which can be found on the REPORT.

THE SLOVEY ANTI-SLAV MONUMENT IS NOT COVERED BY PROFESSIONAL LIABILITY INSURANCE.

50 DRAINAGE RIGHT OF WAY

1



AMERICAN LEGION

POST 117

Serving Veterans for God & Country

American Legion Post 117
189 Veterans Dr SE, Palm Bay, FL 32909

Post 117 established in April 1986, next year will be our 35th anniversary.

Post 117 provides a safe sanctuary for our 1,879 Veteran Members and their families.

Post 117 is the larger of the two American Legion Post in Palm Bay.

Post 117 frequently holds outdoor events, and we are LOUD.

Public safety and traffic concerns.







