



# STAFF REPORT

## LAND DEVELOPMENT DIVISION

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

[landdevelopmentweb@palmbayflorida.org](mailto:landdevelopmentweb@palmbayflorida.org)

### Prepared by

Christopher Balter, Senior Planner

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#### CASE NUMBER

V-28-2020

#### PLANNING & ZONING BOARD HEARING DATE

November 4, 2020

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#### PROPERTY OWNER & APPLICANT

Dale Herscher

#### PROPERTY LOCATION/ADDRESS

Lot 30, Port Malabar Unit 9, Section 05, Township 29,  
Range 37, Brevard County, Florida

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#### SUMMARY OF REQUEST

A variance to allow a proposed carport to encroach 6.5 feet into the 8-foot side interior building setback as established by Section 185.033(F)(7)(b) of the Palm Bay Code of Ordinances.

##### Existing Zoning

RS-1, Single-Family Residential District

##### Existing Land Use

Single-Family Residential Use

##### Site Improvements

Single-Family Home

##### Site Acreage

0.23 acres, more or less

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#### SURROUNDING ZONING & USE OF LAND

##### North

RS-1, Single-Family Residential; Single-Family Home

##### East

RS-1, Single-Family Residential; Single-Family Home

##### South

RS-1, Single-Family Residential; Melbourne-Tillman Canal No. 76

##### West

RS-1, Single-Family Residential; Single-Family Home

#### APPLICABILITY

Insert here

#### COMPREHENSIVE PLAN COMPATIBILITY

Insert here

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**BACKGROUND:**

The subject property was built in 1984. The property is a standard GDC lot with a dimension of 80' wide by 125' deep. There are homes on either side of the property and the surrounding neighborhood is mostly developed. The applicant received a vacate of easement in 2017 via 2017-31.

**ANALYSIS:**

Variances from the terms of the Land Development Code may be granted when special conditions exist that would result in unnecessary hardship if the provisions of the Land Development Code were enforced. However, a variance may not be granted when the public health and safety would be compromised as a result of the variance. 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 states that, "they vacated the easement in 2017 to put a slab in, so that his wife with a bad hip doesn't have to risk injuring herself." The applicant is requesting to put a carport on the existing slab so that it is even safer for his wife when it rains. This may be special circumstances that the Board and Council may wish to consider.

**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 in item 1 is not a direct result of the actions of the applicant.

**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 Land Development Code would require the applicant to build within the applicable setbacks. Building within the required setbacks would not allow for the proposed carport in the desired location.

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

A maximum of 6.5 feet into the 8-foot side interior building setback would be needed to meet the applicant's request.

**Item 5** - *"Granting of the variance request 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."*

Granting of the variance would confer upon the applicant a special privilege for the setback relief, as the same development standards apply to other properties in this community.

**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."*

Staff has not identified any detrimental effect to public welfare.

**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."*

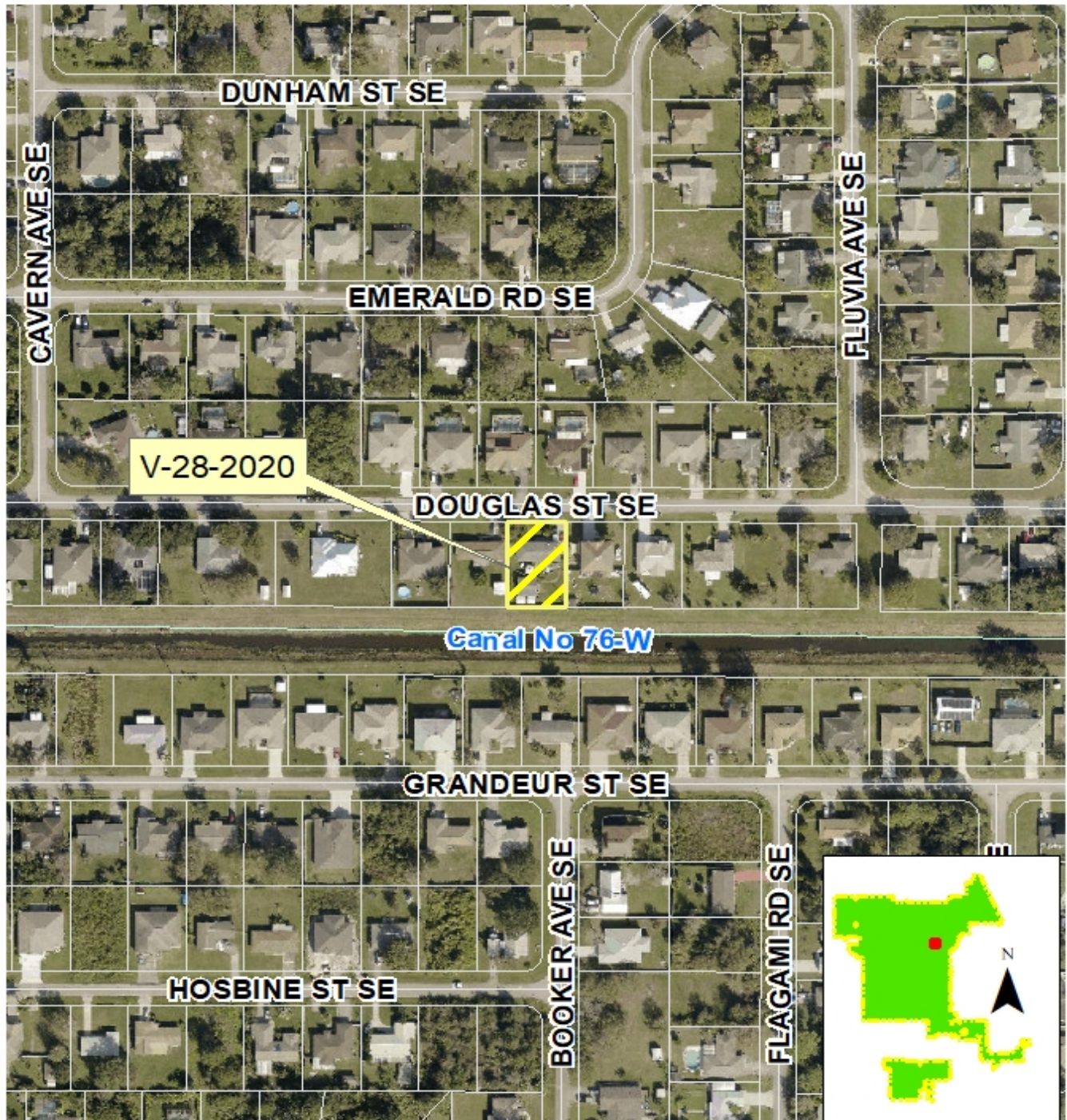
Staff has not received a claim made upon this property, with respect to the "Bert J. Harris Act," or any development order, as indicated above. Therefore, Item 7 is not applicable to the variance request.

#### **STAFF RECOMMENDATION:**

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 record."



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



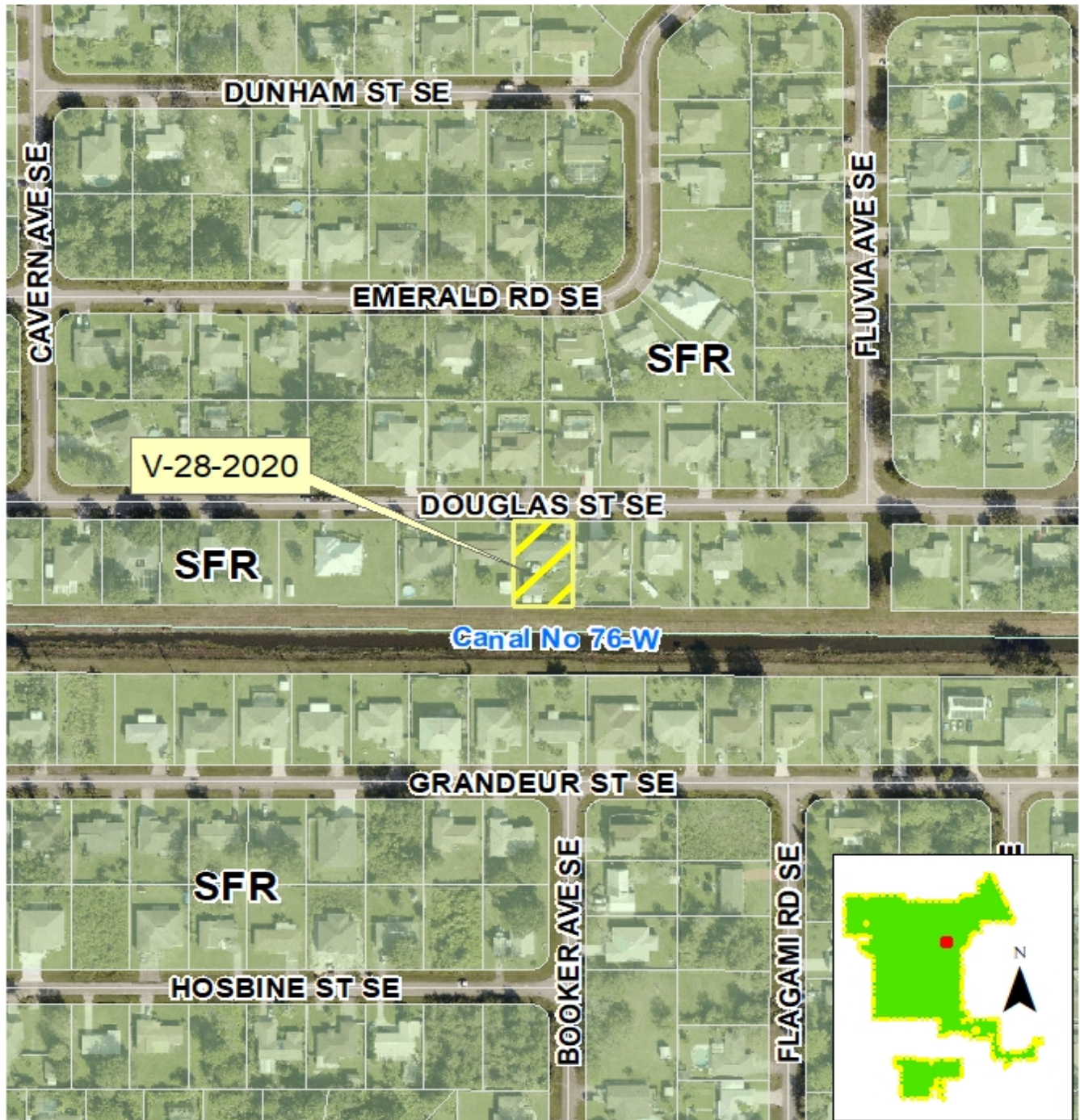
## **AERIAL LOCATION MAP      CASE V-28-2020**

### **Subject Property**

South of and adjacent to Douglas Street SE, in the vicinity west of Fluvia Avenue SE, specifically at 1128 Douglas Street SE



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



## **FUTURE LAND USE MAP**

## **CASE V-28-2020**

### **Subject Property**

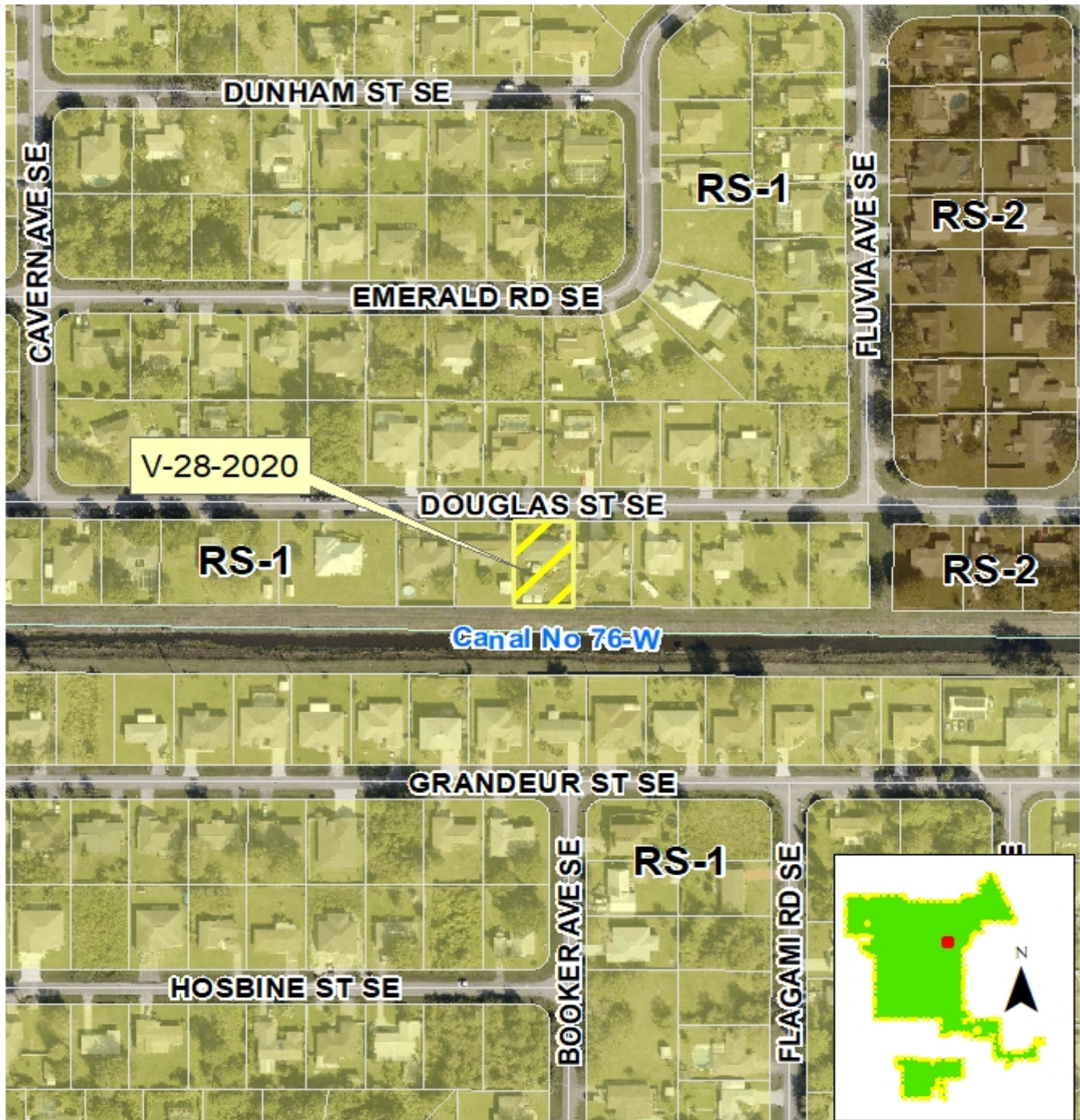
South of and adjacent to Douglas Street SE, in the vicinity west of Fluvia Avenue SE, specifically at 1128 Douglas Street SE

### **Future Land Use Classification**

SFR – Single Family Residential Use



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



## ZONING MAP

## CASE V-28-2020

### Subject Property

South of and adjacent to Douglas Street SE, in the vicinity west of Fluvia Avenue SE, specifically at 1128 Douglas Street SE

### Current Zoning Classification

RS-1 – Single Family Residential District



A = AIR  
A/C = AIR CONDITIONER  
BFE = BASE FLOOD ELEVATION  
BLDG = BUILDING  
BLK = BLOCK  
BM = BENCHMARK  
CRG = CURB BEARING  
(C) = CALCULATED  
CATV = CABLE TELEVISION  
CERS = CONCRETE BLOCK STRUCTURE  
CHD = CHORD  
C/L = CENTERLINE  
CLF = CABLE LINK FENCE  
CMF = CONCRETE MONUMENT FOUND  
CMP = CORRUGATED METAL PIPE  
CONC = CONCRETE  
COR = CORNER  
(D) = DEED  
DB = DEED BOOK  
DA = DELTA ANGLE  
ELEC = ELECTRIC  
ELEV = ELEVATION  
ENC = ENCROACHMENT  
EDGE = EDGE OF PAVEMENT  
EASMT = EASEMENT  
FB = FIELD BOOK

FFMA = FEDERAL EMERGENCY MANAGEMENT AGENCY  
FF = FINISHED FLOOR  
FND = FOUND  
FNDL = FOUND  
FP&L = FLORIDA POWER & LIGHT COMPANY  
I = IDENTIFICATION  
IPC = IRON PIPE FOUND  
IR = IRON ROD FOUND  
IRF = IRON ROD & CAP FOUND  
IRS = 5/8" IRON ROD SET "LB 7838"  
LB = LICENSED BUSINESS NUMBER  
LS (PLS) = LAND SURVEYOR REGISTERED OR PROFESSIONAL LAND SURVEYOR  
(M) = MEASURED  
NAVd = NORTH AMERICAN VERTICAL DATUM  
NDf = NAIL & DISK FOUND  
NDS = 1 1/4" NAIL & DISK SET "LB 7838"  
NGVD = NATIONAL GEODETIC VERTICAL DATUM  
No. = NUMBER  
ORB = OVERHEAD  
O/S = OFFICIAL RECORDS BOOK  
O/S = OFFSET  
(P) = PLAT  
PB = PLAT BOOK

PC = POINT OF CURVATURE  
PCC = POINT OF COMPOUND CURVATURE  
PCP = PERMANENT CONTROL POINT  
PI = POINT OF INTERSECTION  
PL = PROFESSIONAL LAND SURVEYOR  
POB = POINT OF BEGINNING  
POC = POINT OF COMMENCEMENT  
PRC = POINT OF REVERSE CURVATURE  
PRM = PERMANENT REFERENCE MONUMENT  
PSM = PROFESSIONAL SURVEYOR AND MAPPER  
PT = POINT OF TANGENCY  
PUE = PUBLIC UTILITY DRAINAGE EASEMENT  
R = PUBLIC UTILITY EASEMENT  
RADIUS  
REF = REFERENCE  
RNG = RANGE  
R/W = RIGHT OF WAY  
SEC = SECTION  
SFHA = SPECIAL FLOOD HAZARD AREAS  
TEL = TELEPHONE RISER  
TWP = TOWNSHIP  
TYP = TYPICAL  
UP = UTILITY POLE  
WD = WOOD  
WIT-COR = 5/8" IRON ROD SET WITH CAP "WITNESS LB 7838"  
XCF = CROSS CUT FOUND

LOT 30, BLOCK 328, PORT MALABAR UNIT NINE,  
ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT  
BOOK 15, PAGES 1-9, PUBLIC RECORDS OF BREVARD  
COUNTY, FLORIDA

**CERTIFIED TO:**  
DALE F. HERSCHER

**CERTIFICATION:**  
I HEREBY CERTIFY THAT THE ATTACHED SURVEY WAS DONE UNDER MY  
DIRECTION AND MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH BY  
THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER  
5J-17, FLORIDA ADMINISTRATIVE CODE PURSUANT TO SECTION 472.027  
FLORIDA STATUTES.

JOEL A. SEYMOUR PROFESSIONAL LAND SURVEYOR AND MAPPER  
STATE OF FLORIDA No. LS 6133

DRAWN BY: JIL

DATE: 9/1/16

SCALE 1 INCH = 20 FEET

1. BEARINGS BASED ON THE C/L BEING S 89°48'23" E AS PER PLAT (SEE SKETCH)
2. ELEVATIONS BASED ON
3. FLOOD ZONE MAP NO. 12009CD880G COMMUNITY NO. 120404, MARCH 17, 2014. FLOOD ZONE INFORMATION DEPICTED HEREON IS APPROXIMATE. FEMA RETAINS SOLE AUTHORITY REGARDING HAZARD AND EXTENT OF SFHA.
4. HORIZONTAL DISTANCES OR ANGLES OR EXCEEDS THE ACCURACY REQUIREMENTS FOR SUBURBAN LAND AS PER FLORIDA STATUTE 50-17-6 .03 AND DISTANCES OR ANGLES SHOWN ARE THE SAME AS PLAT, DEED OR RECORD UNLESS OTHERWISE.
5. NOT VALID WITHOUT THE SIGNATURE OF THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER, ADDITIONS OR DELETIONS TO A SURVEY MADE BY ANY OTHER THAN THE SIGNING PARTY.
6. THE SURVEYOR HAS NOT WRITTEN NOR ATTEMPTED TO LOCATE ANY UNDERGROUND FOUNDATIONS, OR STRUCTURES OTHER THAN THOSE THAT MAY BE SHOWN HEREON.
7. ANY BOUNDARY CORNER MONUMENTS AS SHOWN HEREON ARE TO BE USED FOR THE CONSTRUCTION OF IMPROVEMENTS.
8. UNLESS OTHERWISE INDICATED THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF A TITLE SEARCH OR ATTORNEY'S TITLE OPINION.

**Kane Surveying, Inc.**  
FLORIDA LICENSED BUSINESS No. LB 7838  
505 DISTRIBUTION DRIVE  
MELBOURNE, FLORIDA 32904  
(321) 676-0427 FAX (321) 984-1448



**LAND DEVELOPMENT DIVISION**

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: (321) 733-3042  
Landdevelopment@palmabayflorida.org

**VARIANCE APPLICATION**

This application must be deemed complete and legible, and must be returned by the first day of the month during division office hours, with all enclosures referred to herein, to the Land Development Division, Palm Bay, Florida, to be processed for consideration the following month at the earliest 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-GJ-328-30

TAX ACCOUNT NUMBER 2924147

**LEGAL DESCRIPTION OF THE PROPERTY COVERED BY THIS APPLICATION:**

LOT 30 BLOCK 328 PORT MALABAR UNIT NINE PLAT BOOK 15 PAGES 1-9

**STREET ADDRESS OF PROPERTY COVERED BY APPLICATION:**

1128 DOUGLAS ST. SE. PALM BAY, FL 32909

SIZE OF AREA COVERED BY THIS APPLICATION (calculate acreage): 10.83 FT X 16.03 FT

EXISTING ZONING CLASSIFICATION OF PROPERTY (ex.: RS-2, CC, etc.) RS-1

ARE THERE ANY STRUCTURES ON THE PROPERTY NOW? ☒ YES ☐ NO

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

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

EXTENT CURRENT DRIVE WAY WIDTH AND LENGTH



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 HEIGHT RESTRICTIONS):

TO INSTALL A CARPORT TOP ALONG THE SIDE OF THE GARAGE TO PARK A CAR UNDER  
TO HELP MY WIFE WHEN IT RAINS SINCE SHE HAS A BAD HIP SO SHE WOULDN'T  
GET TOO WET,

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

185.033 (F) (7) (b)

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.

CITY OF PALM BAY, FLORIDA  
VARIANCE APPLICATION  
PAGE 3 OF 4

**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:**

☐

**\*\$350.00 Application Fee. Make Check payable to "City of Palm Bay."**

☐

**List 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.)**

☐

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.

☐

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

☐

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

☐

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

☐

**Where the property owner is not the representative for the request, a LETTER must be attached giving the notarized consent of the property owner(s) to a representative.**

**Name of Representative** \_\_\_\_\_



CITY OF PALM BAY, FLORIDA  
VARIANCE APPLICATION  
PAGE 4 OF 4

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.

Owner Signature Dale Herscher Date SEPT. 25, 2020  
Printed Name DALE HERSCHER  
Full Address 1128 DOUGLAS ST. SE, PALM BAY, FL 32909  
Telephone 321-724-9045 Email DALEHERSCHER@ATT.NET

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

- A) HAVE EXISTING SLAB THIS IS ONLY PLACE I CAN PUT UP A LEAN TO CAR PORT
- B) HAD SLAB INSTALLED IN 2017 AND GOT A VACATE FOR SLAB, TO PUT A VEHICLE ON IT. NOW I NEED TO PUT A LEAN TO CAR PORT (TOP ONLY) FOR A CAR TO GET CLOSER TO THE HOUSE SO MY WIFE WITH BAD HIP WON'T HAVE TO WALK AS FAR OR GET TOO WET IN THE RAIN
- C) PUTS CAR CLOSER TO GARAGE SO LESS IRRADIATION ON HER HIP AND IF RAINING WON'T GET TOO WET SINCE SHE MOVES SLOWLY,
- D) CAR PORT WILL NOT GO BEYOND SLAB AND WILL BE DONE TO CODE WITH A CONTRACTOR
- E) NO OTHER REQUESTS WOULD BE NECESSARY,
- F) PUT CAR ~~PORT~~ UNDER CAR PORT USING A LEAN TO ROOF WITH STANDS.