



**AGENDA
BOARD OF ADJUSTMENT
REGULAR MEETING
SEPTEMBER 18, 2024
5:00 PM
CITY HALL COMMISSION CHAMBERS
204 ASH STREET
FERNANDINA BEACH, FL 32034**

- 1. CALL TO ORDER / ROLL CALL / DETERMINATION OF QUORUM**
- 2. PLEDGE OF ALLEGIANCE**
- 3. APPROVAL OF MEETING MINUTES**
 - 3.1 Approval of Minutes for the Regular Meeting of May 15, 2024.
- 4. OLD BUSINESS**
- 5. NEW BUSINESS**
 - 5.1 **BOA 2024-0004 - MARTY AND TINA SMITH, 0 AMELIA ROAD**
Variance request from LDC Table 4.02.01(J) Design Standards for Lots to create two (2) R-1 zoned lots totaling less than 75 feet wide at 74.72 feet. (*Quasi-Judicial*).
- 6. BOARD BUSINESS**
 - 6.1 Discussion: Establishing a *Hardship*
- 7. STAFF REPORT**
- 8. PUBLIC COMMENT**
- 9. ADJOURNMENT**

THE NEXT BOA REGULAR MEETING SCHEDULED FOR OCTOBER 16, 2024 IS CANCELLED.

All members of the public are invited to be present and be heard. Persons with disabilities requiring accommodations in order to participate in this program or activity should contact (904) 310-3115 or through the Florida Relay Services at 711 at least 24 hours in advance to request such accommodations.

All interested parties may appear at said meeting and be heard as to the advisability of any action, which may be considered with respect to such matter. For information regarding this matter, please contact the Planning Department (904) 310-3135.



**MINUTES
BOARD OF ADJUSTMENT
REGULAR MEETING
MAY 15, 2024
5:00 PM
CITY HALL COMMISSION CHAMBERS
204 ASH STREET
FERNANDINA BEACH, FL 32034**

1. CALL TO ORDER 5:00 PM

ROLL CALL / DETERMINATION OF QUORUM

MEMBERS PRESENT

Chuck Oliva (Vice-Chair)
Faith Ross
Barry Hertslet

Margaret Davis (Alt 2)
Jag Pagnucco
Kelly Powers (Alt 1)

MEMBERS ABSENT

Steven Papke (Chair)

OTHERS PRESENT

Taylor Hartmann, City Planner
Harrison Poole, Attorney Pro Tem
Sylvie McCann, Recording Secretary

2. PLEDGE OF ALLEGIANCE

Vice-Chair Oliva seated Member Powers as a voting member for this meeting.

Harrison Poole, Attorney Pro Tem for this meeting, explained the Quasi-Judicial procedures regarding variances and the appeal process. He clarified that a super majority of votes to grant a variance and also noted that if the super majority is not met, the variance application is deemed denied.

All Board Members disclosed receiving an email from Taina Christner. Member Davis disclosed that she also spoke with Commissioner Chip Ross and Victoria Robas, Chair of the PAB. Member Hertslet disclosed speaking with the owner of a neighboring property to the property in the current case.

Ms. McCann administered the oath to any parties that wished to give testimony.

3. APPROVAL OF MEETING MINUTES

3.1 Approval of Minutes for the Regular Meeting of April 17, 2024.

Member Ross noted that the Action Taken should be corrected to show votes to be all ayes except for her vote being Nay. *(the motion to approve the amended Minutes was made at the end of the meeting).*

ACTION TAKEN: A motion was made by Member Hertslet, seconded by Member Ross, to approve the

DRAFT

Minutes for the regular meeting of April 17, 2024, as corrected.

Vote upon passage of the motion was taken by voice vote, and being all ayes, carried.

4. NEW BUSINESS

4.1 BOA2024-0003 - COMPASS GROUP INC., AGENT FOR WORTHY INVESTMENT LLC, 119, 123, and 125 S. 4TH STREET

Variance request from LDC Section 1.03.05 Construction or Demolition of Structures on Combined Lots, to restore 25 ft underlying lots of record. (*Quasi-Judicial*)

Ms. Hartmann presented the Staff Report Analysis and recommended denial with the following 3 criteria not being met: 3. Literal Interpretation, 5. General Harmony, and 6. Public Interest criteria.

Member Davis asked if the removal of the structures would allow the restoration of the lots. Ms. Hartmann clarified.

Member Ross asked about the date of the original survey in the packet. Ms. Hartmann provided that date as March 22, 2022.

Member Davis asked about the number of existing surrounding properties holding townhome design.

Member Ross asked about the density of the principal property before and after having the lots restored.

Member Davis asked about the closeness of the historic district boundaries, and if Comprehensive Plan Objective 11.6 was considered by Staff. Ms. Hartmann answered in the affirmative.

Vice-Chair Oliva asked about Staff's analysis of criteria 1, criteria 2, and criteria 4.

At this time, the applicant was not present to speak.

Public Hearing was opened.

Frank Santry, 241 Beech Street, spoke of the LDC section of 1.03.05 unique provisions. He then opined on the Staff's analysis of all the criteria and asked of the Board to deny this request.

Brad Clark, 312 Ash Street, opined on the Staff Report Analysis regarding lots from S. 3rd and S. 4th Street not being subject of 1.03.05 and provided a copy of an Order on Petition for Writ of Certiorari for the record. He also asked for the Board to deny the request.

Public Hearing was closed to allow the Applicant to speak.

Ron Flick, Compass Group, agent for the owner, spoke of the ambiguities of the LDC, expanded on their request and the intent of the owner. Mr. Flick was sworn in and then provided comments on the Staff analysis and the 6 criteria.

Member Ross asked if the property can still be developed if the variance request is denied. She also asked Mr. Flick to expand on his comments regarding the value of the potential development project.

Member Davis asked about the consequences of a denial of the request and the possibility of only building on the three lots.

Public Hearing was re-opened.

John Cascone, 116 S. 4th Street, has lived at his address for 34 years. Spoke against the approval of this request, addressed comments from Mr. Flick, and disagreed with criteria 1, 2, and 4 being met.

Jack Ember, 1003 Broome Street, spoke against the approval of this request, the current litigation, and the

Comprehensive Plan requirements.

Monty Stewart, 121 N. 6th Street, neighbor of the property spoke of property rights, impact of tourism on property value, and spoke against the approval of this request.

Sandra Kerry, 1255 Forrest Drive, spoke against the approval of this request.

Mark Bennett, 815 S. Fletcher Avenue, was part of the Planning Advisory Board that wrote the original 2006 LDC. He spoke against the approval of this request.

Margaret Kirkland, 1377 Plantation Point, spoke on behalf of Conserve Nassau, spoke against the approval of this request.

Vanezza Stubbs, 744 Kenneth Court, spoke of the importance of open space and green space and spoke against the approval of this request.

Julie Ferreira, 501 Date Street, spoke against the approval of this request, and for the record, she handed out a copy of a memorandum from Debra Braga, City Attorney, that was part of the records of a special meeting back in 2006 regarding the addition of Section 1.03.05 to the LDC.

Paul Lore, 11 S. 7th Street, was sworn in by Ms. McCann, and spoke against the granting of this request.

Christian Stocks, 1553 Indigo Street, member of the Youth Advisory Council, spoke of the current generation and future generations' expectation of important decisions as this one and their impact.

Sandra Kerry, 1255 Forrest Drive, returned to the podium to speak of LDC Section 11.03.04 Withdrawal of Pending Application.

Ronda McKee, 409 S. 4th Street, voiced concern about this request affecting her property and this decision setting a precedent.

Ron Flick, Compass Group, provided some clarifications regarding comments by previous speakers. He spoke of reasons for a previous withdrawal of the application, property not being located in the historic district, compliance to the Comprehensive Plan policies, and the integrity of the intent of the request.

July Ferreira commented on comments from Mr. Flick regarding asbestos removal regulations being followed during the demolition of the original structures.

Public Hearing was closed.

Member Ross thanked the audience and spoke of the importance of substantial evidence being provided. She then proceeded in making a lengthy motion which Mr. Poole suggested that a more brief and succinct motion would be easier for the Chair to sign. That motion was not seconded. Member Ross then proceeded in making a 2nd motion.

ACTION TAKEN: A motion was made by Member Ross, seconded by Member Pagnucco, to deny BOA case 2024-0003, as amended by Staff and the applicant, AND move that the BOA make the following findings of fact and conclusions of law part of the record: That we incorporated the following references of the City's Comprehensive Plan Objective 1.06, the LDC Sections 1.03.05, 1.00.01, 4.02.01, Table 4.01.01, 4.00.02; AND the Board finds that based on substantial evidence, the applicant has failed to meet the 6 criteria afforded to variances in the City of Fernandina Beach and further based on evidence and testimony presented by Staff and all parties during the hearing the Board finds that the applicant's financial or economic concerns or preference of use of the parcels, to be insufficient to constitute a hardship as required by State law for the granting of a variance.

Vote upon passage of the motion was taken by voice vote, and being all ayes, carried.

5. BOARD BUSINESS

DRAFT

Member Ross suggested that an item of discussion be added to the next agenda regarding the requirements for variance by state law and proof of hardship.

6. STAFF REPORT

7. PUBLIC COMMENT

8. ADJOURNMENT 8:20

Sylvie McCann, Recording Secretary

Chuck Oliva, Vice-Chair

From: noreply@civicplus.com
To: [Planning Info](#)
Subject: Online Form Submittal: Board of Adjustment (BOA)
Date: Tuesday, July 23, 2024 3:11:50 PM

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender, were expecting this email, and know the content is safe.

Board of Adjustment (BOA)

BOARD OF ADJUSTMENT (BOA)

USE THIS FORM TO Apply for a variance to obtain relief from the design standards of this Land Development Code (LDC) where otherwise hardship would occur. A person who is adversely affected by any administrative decision may appeal such decision to the BOA.

Fees	Residential Properties \$1,500
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IMPORTANT NOTES

Application Requirements	<i>Field not completed.</i>
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Pre-Application Meeting

*To guide you through the process and ensure that your application is understood and properly processed, you must meet with the applicable planner prior to submitting your application. Completed Board applications are **due forty-five (45) days prior** to the meeting date. Cases in the historic districts or Community Redevelopment Area are heard by the Historic District Council, please use the HDC Variance Application. Cases in all other areas of the City are heard by the Board of Adjustment.*

Please see the Land Development Code (LDC) for detailed information:	<i>Field not completed.</i>
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The LDC is available for review at	www.fbfl.us/LDC
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Appeals

Any person aggrieved by any decision of the BOA regarding a variance may present to a court of record a petition, duly verified, setting forth that the decision is illegal, in whole or in part, specifying the grounds of the illegality. The petition shall be presented to the court within thirty (30) days after the filing of the decision at the office of the Board; otherwise, the decision of the Board shall be final.

Limitations on the Grant of a Variance	<i>Field not completed.</i>
REVIEW TYPE	Variance
Have you met with a planner for a pre-application meeting?	Yes
What was the date of your pre-application meeting?	7/23/2024
PROPERTY INFORMATION	Property information can be found at the Nassau County Property Appraiser's Website → Map Search
Site Address	0 Amelia Road
City	Fernandina Beach
State	FL
Zip	32034
Parcel ID #(s)	00-00-30-044B-0030-0020
Zoning District	R-1
Future Land Use Designation	Low Density Residential
OWNER OF RECORD <i>As recorded with the Nassau County Property Appraiser</i>	
First Name	Marty and Tina
Last Name	Smith
Company (if applicable)	Oaks of Amelia
Mailing Address	PO Box 695
City	Fernandina Beach
State	FL
Zip	32035
Telephone Number	704-589-1965

E-mail Address	tina@sellingnassau.com
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OWNER'S AGENT

If other than owner. If an agent will be representing the owner, an Owner's Authorization For Agent Representation form must be included

First Name	Marty
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Last Name	Smith
-----------	-------

Company (if applicable)	Field not completed.
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Mailing Address	Field not completed.
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City	Field not completed.
------	----------------------

State	Field not completed.
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Zip	Field not completed.
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Telephone Number	704-309-7227
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E-mail Address	marty.collisionsafety@gmail.com
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PROJECT INFORMATION

Variance Requested from LDC Section(s)	Variance Requested from LDC Section(s): LDC Table 4.02.01(J) Design Standards for Lots
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Summary of Request (more detailed information to be provided in required letter of intent)	We are requesting a variance from the required 75-foot lot width required in the R-1 zoning district in order to divide the existing 1.32-acre lot into two lots that would each have 74.72 feet of lot frontage, which is 3.36 inches less than the required lot width.
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REQUIRED FINDINGS FOR A GRANT OF A VARIANCE

In order for an application for a variance to be approved or approved with conditions, the BOA must make a positive finding with regard to each of the provisions below. The applicant has the burden of proof of demonstrating that the application for a variance complies with each of the requirements. Please explain in detail how your case meets the following requirements:

1. Special Conditions: Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and	When we purchased the parcel, the legal description for the parcel included a deeded lot frontage of 150 feet along the right-of-way of Amelia Road and 1.388 acres of lot area. However, when we had the surveyed, the survey reflected that the lot only has a frontage of 149.43 feet and only 1.32 acres of lot area.
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which are not applicable to other lands, structures, or buildings in the same zoning district. Special conditions or circumstances do not result from actions of the applicant and are not based on a desire to reduce development costs.

2. Special Privilege: Granting the variance does not confer upon the applicant a special privilege that is denied by the Land Development Code to other lands, structures, or buildings in the same zoning district.

We are only requesting a minimal variance of 3.36 inches that would result in the lot being able to be divided into two (2) lots that would still be much larger in size than the contiguous R-1 zoned lots, therefore, the granting of the variance would not confer any special privilege that is denied to other lands, structures, or buildings in the same zoning district.

3. Literal Interpretation: Literal interpretation of the provisions of the Land Development Code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district.

The contiguous lots located in the R-1 zoning district are approximately .19 acres in size. Should the variance consisting of only several inches of relief in the lot width not be granted, the lot would not be able to be divided and would be required to remain approximately seven (7) times the size of the adjacent lots in the same zoning district. Therefore, the lot would be deprived of the rights commonly enjoyed by other properties in the same zoning district.

4. Minimum Variance: The variance requested is the minimum variance needed that will make possible the reasonable use of the land, structure, or building.

The variance of 3.36 inches to the lot width is a minimal request that would allow for the 1.32-acre parcel to be split into two (2) parcels within the R-1 zoning district that allows a gross density of up to four (4) dwelling units per acre or in the case of the current lot, would allow the lot to be divided into five (5) lots based on the current lot size, therefore, the variance would make possible the reasonable use of the land.

5. General Harmony: Granting the variance will be in harmony with the general intent and

The granting of the variance would be in harmony with the general intent and purpose of the Land Development Code and Comprehensive Plan as the proposed lots would not exceed the maximum number of dwelling units allowed per the comprehensive plan for the R-1 zoning district, and while the two

purpose of the Land Development Code and Comprehensive Plan.	(2) lots would still be much larger than the contiguous R-1 zoned lots, the lots would be more consistent in size to other lots fronting along Ameila Road that are in Nassau County's jurisdiction.
6. Public Interest: Granting the variance is compatible with surrounding properties, will not cause injury to the area involved, or otherwise be detrimental to the public health, safety, welfare or environment.	The proposed lots would be compatible with other properties along Amelia Road that contain varying lot widths that are both greater than and lesser than the width of the proposed lots, therefore, the granting of the variance would not cause any injury to the area, or otherwise be detrimental to the public health, safety, welfare or environment.
Upload Supplemental Materials	GLS 22-45 PARCEL 1 SURVEY.pdf
Upload 2	GLS 22-45 PARCEL 2 SURVEY.pdf
Upload 3	<i>Field not completed.</i>
Upload 4	<i>Field not completed.</i>
Upload 5	<i>Field not completed.</i>
Upload 6	<i>Field not completed.</i>
Upload 7	<i>Field not completed.</i>
Certification	By signing below, I certify that the information contained in this application is true and correct to the best of my knowledge at the time of the application., I acknowledge that I understand and have complied with all of the submittal requirements and procedures., I AGREE THAT A POSTING NOTICE WILL BE INSTALLED ON THE PROPERTY(IES) IN QUESTION AND THAT SAID SIGN WILL ONLY BE REMOVED BY STAFF AFTER THE MEETING OR BROUGHT BACK TO CITY HALL BY APPLICANT.
I/We understand that the City Staff will install a Notice of Hearing sign on the property 14 days before the scheduled hearing and that the sign must only be removed after the hearing by City Staff, unless, the applicant or property owner brings the Notice of Hearing back to City Hall.	
Applicant's First Name	Tina Smith
Applicant's Last Name	Smith

Today's Date

7/23/2024

DEPARTMENT OF PLANNING & CONSERVATION

204 Ash Street | Fernandina Beach, Florida 32034 | 904 310-3480 |

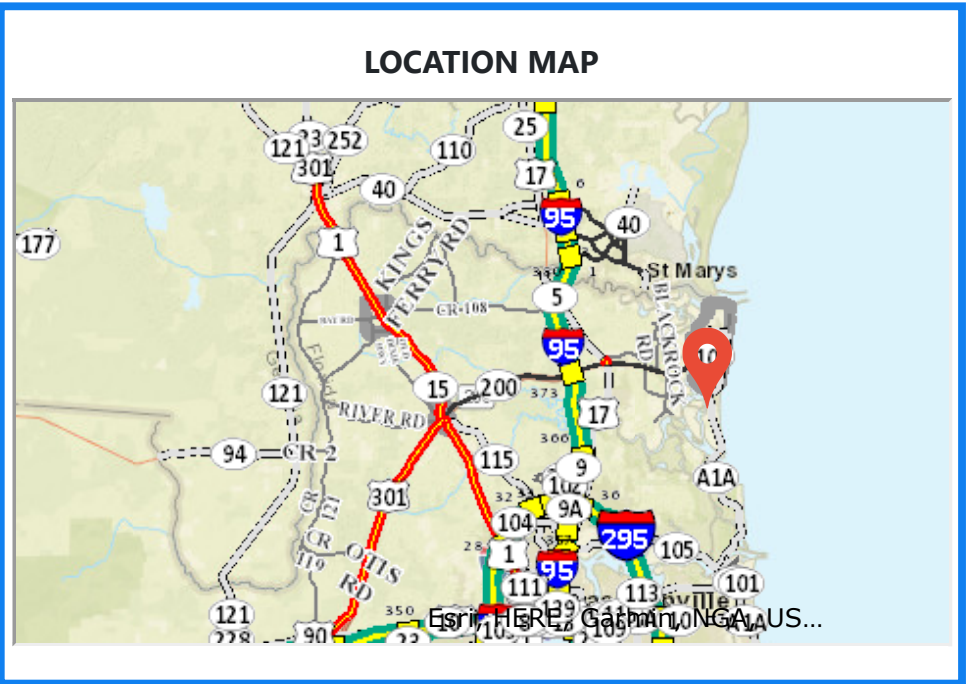
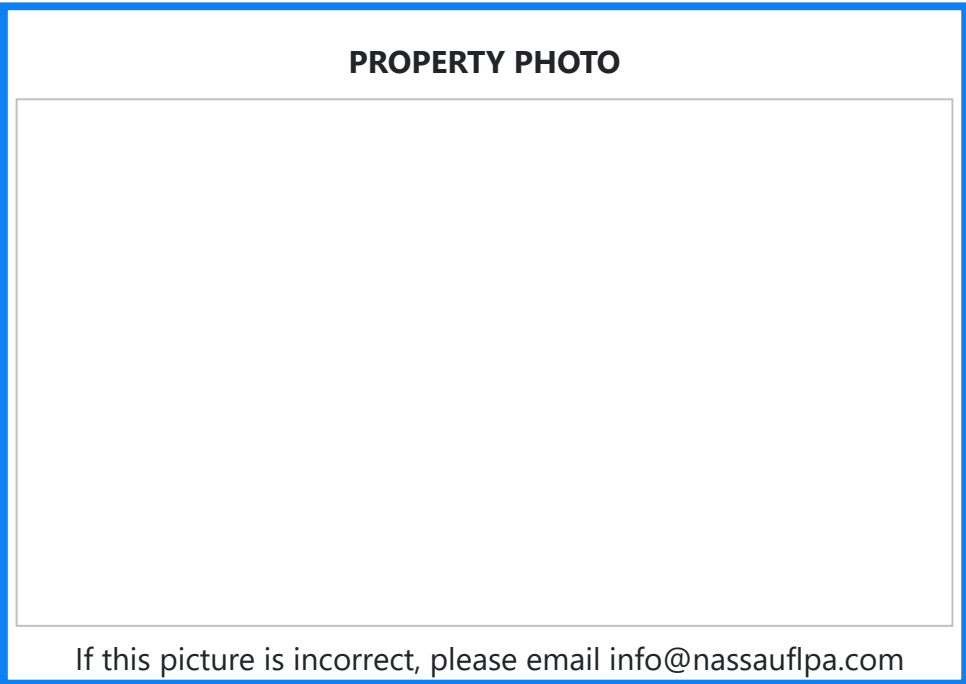
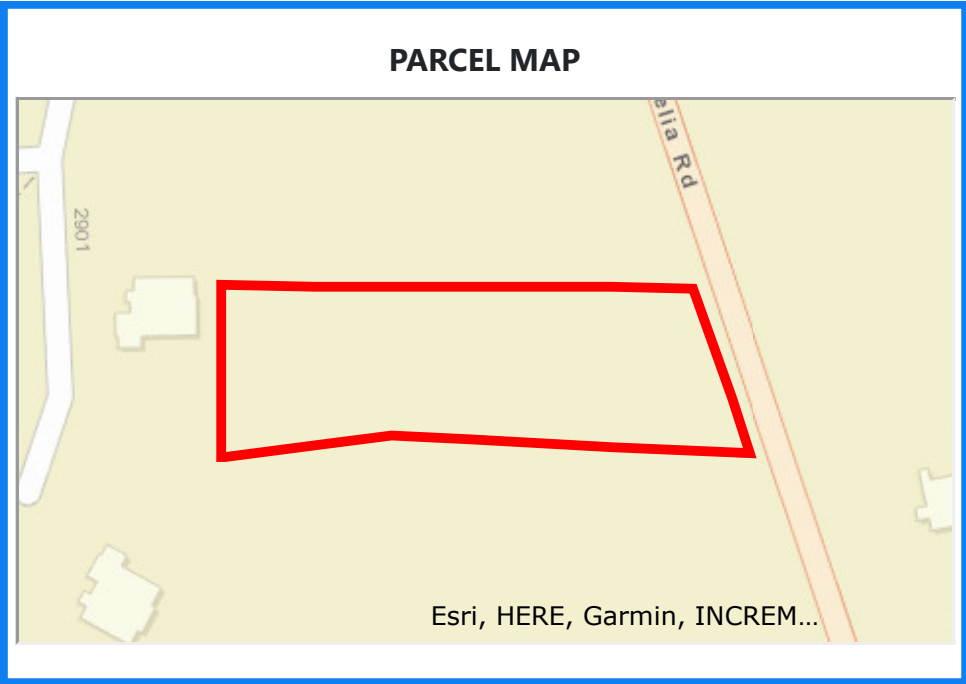
www.fbfl.us/planning

Please make sure to disable pop-up blocker in order to submit.

Email not displaying correctly? [View it in your browser.](#)

PROPERTY INFORMATION	
Parcel Number 00-00-30-044B-0030-0020	
Owner Name	OAKS OF AMELIA LLC
Mailing Address	501 CENTRE STREET STE 103
	FERNANDINA BEACH, FL 32034
Location Address	0 AMELIA RD
	FERNANDINA BEACH 32034
Tax District	002 - FERNANDINA BEACH
Milage	18.3806
Homestead	No
Property Usage	VACANT 000000
Deed Acres	1.33
Short Legal	PT LOT 30 IN OR 2705/917 (EX PT IN OR 2634/1509)

2024 Preliminary Values	
Land Value	\$318,000
(+) Improved Value	\$0
(=) Market Value	\$318,000
(-) Agricultural Classification	\$0
(-) SOH or Non-Hx* Capped Savings	\$0
(=) Assessed Value	\$318,000
(-) Homestead	\$0
(-) Additional Exemptions	\$0
(=) School Taxable Value	\$318,000
(-) Non-School HX & Other Exempt Value	\$0
(=) County Taxable Value	\$318,000
Note - *10% Cap does not apply to School Taxable Value	



BUILDING INFORMATION									
Type	Total Area	Heated Area	Bedrooms	Baths	Primary Exterior	Secondary Exterior	Heating	Cooling	Actual Year Built
VACANT									

MISCELLANEOUS INFORMATION			
Description	Dimensions L X W	Units	Year Built

SALES INFORMATION

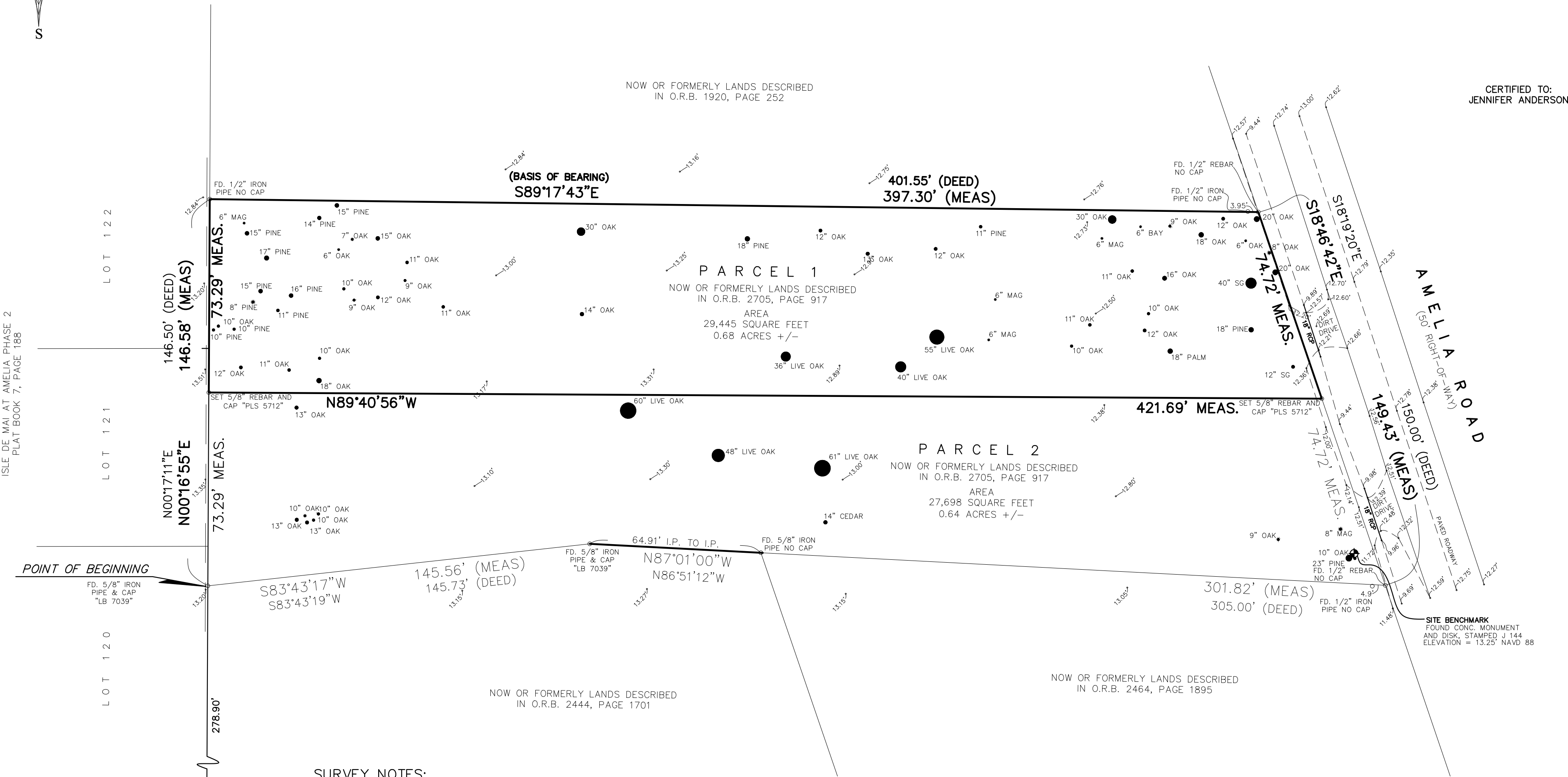
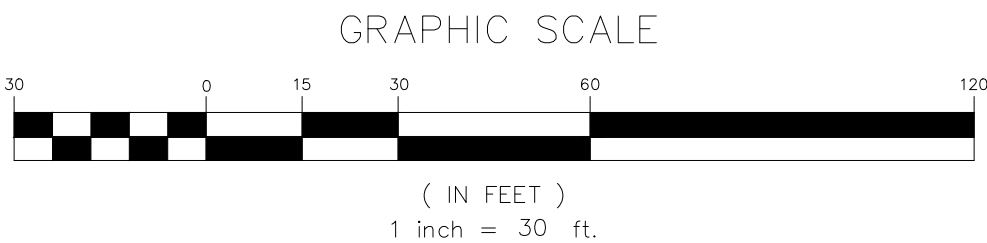
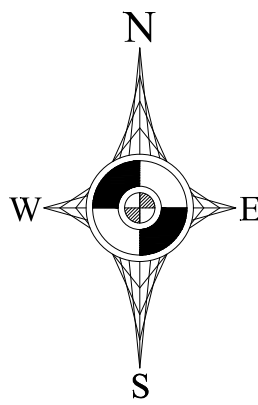
Sale Date	Book Page	Price	Instr	Qual	Imp	Grantor	Grantee
2024-04-10	2705 / 917	\$100	QC	U	V	SMITH JAMES MARTY & TINA	OAKS OF AMELIA LLC
2023-04-28	2634 / 1444	\$465,000	WD	Q	V	DA LAND LLC	OAKS OF AMELIA LLC
2022-01-14	2530 / 791	\$415,000	WD	Q	V	JACOBS STEVEN & LINDA	DA LAND LLC
2014-06-04	1921 / 1410	\$135,000	WD	Q	V	KIEFERNDORF CATHLEEN MAYER & HERBERT E	JACOBS STEVEN & LINDA
2004-07-19	1246 / 1151	\$100	QC	U	V	KIEFERNDORF CATHLEEN MAYER	KIEFERNDORF CATHLEEN & HERBERT E
1985-04-01	452 / 664	\$5,000	FS	U	V		

MAP SHOWING BOUNDARY TOPOGRAPHIC AND TREE SURVEY

SURVEYOR'S LEGAL DESCRIPTION

A PORTION OF LOT 30, OCEAN BREEZE, AS RECORDED IN PLAT BOOK 2, PAGE 19, OF THE PUBLIC RECORDS OF NASSAU COUNTY, FLORIDA. PARENT TRACT BEING RECORDED IN OFFICIAL RECORDS BOOK 2530, PAGE 791, NASSAU COUNTY FLORIDA.

COMMENCE AT THE SOUTHWEST CORNER OF LOT 30, AFOREMENTIONED; THENCE NORTH 00°17'11" EAST, ALONG THE WEST LINE OF SAID LOT 30, A DISTANCE OF 278.90 FEET TO THE SOUTHWEST CORNER OF THE AFORESAID PARENT TRACT; THENCE CONTINUE NORTH 00°17'11" EAST ALONG THE AFORESAID WEST LINE, A DISTANCE OF 73.29 FEET TO THE **POINT OF BEGINNING**; THENCE CONTINUE NORTH 00°17'11" EAST ALONG THE AFORESAID WEST LINE, A DISTANCE OF 73.29 FEET TO THE NORTHWEST CORNER OF THE PARENT PARCEL; THENCE SOUTH 89°17'43" EAST (BEARING BASIS) ALONG THE NORTH LINE OF THE PARENT PARCEL A DISTANCE OF 397.30 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF AMELIA ROAD (A 50' RIGHT-OF-WAY); THENCE SOUTH 18°46'42" EAST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 74.72 FEET TO A POINT; THENCE NORTH 89°40'56" WEST A DISTANCE OF 421.69 FEET TO THE **POINT OF BEGINNING**. CONTAINING 0.68 ACRES MORE OR LESS



ISLE DE MAL AT AMELIA PHASE 2
PLAT BOOK 7, PAGE 188

LOT 122

LOT 121

LOT 120

CERTIFIED TO:
JENNIFER ANDERSON

SURVEY NOTES:

- 1) The "Legal Description" hereon is in accord with the the description provided by the client.
- 2) Underground improvements were not located or shown.
- 3) Lands shown hereon were not abstracted by this office for easements, rights-of-way, ownership or other instruments of record.
- 4) Bearings based on S89°17'43"E FOR THE NORTHERLY LOT LINE.
- 5) Fence ownership, if applicable, has not been determined by this office. Fences are drawn out of scale in order to accentuate their relationship to property lines. Fences are not deemed to be encroachments unless ownership is apparent.
- 6) "Unless it bears the signature and the original raised seal of a Florida licensed surveyor and mapper, this map/report is for informational purposes only and is not valid.
- 7) The property shown hereon appears to lies within flood zone "X" as per F.E.M.A. Flood Insurance Rate Map, Panel 120170 0239 D, Dated 8-2-17.
- 8) Unless otherwise noted Measured angles and distances are the same as Plat or Deed angles and distances.
- 9) This survey has been performed according to the standard of care to achieve the following accuracies for the following surveyed.
Surveyed Accuracy: 1 foot in 19837 feet
Commercial / High risk Linear Accuracy: 1 foot in 10000 feet
SOP Rule 5J-17.05(3) (B) (15) b.ii

REVISED TO SHOW TOPOGRAPHIC INFORMATION 04-20-2023
REVISED TO SHOW LOT SPLIT 07-10-2024

TREE ABBREVIATIONS:
MAG = MAGNOLIA TREE
SG = SWEET GUM TREE

LEGEND

—E—E— = AERIAL UTILITY WIRES A/C = AIR CONDITIONER AKA = ALSO KNOWN AS B.R.L. = BUILDING RESTRICTION LINE TV = CABLE TELEVISION PEDESTAL Δ = CENTRAL ANGLE ℄ = CENTERLINE -x-x- = CHAIN LINK FENCE CB = CHORD BEARING CD = CHORD DISTANCE	CONC. = CONCRETE CMP = CORRUGATED METAL PIPE E = ELECTRICITY METER ELEV. = ELEVATION F.F. = FINISHED FLOOR FIRE = FIRE HYDRANT G = GAS METER L = ARC LENGTH LP = LIGHT POLE	MEAS. = MEASURED N.G.V.D. = NATIONAL GEODETIC VERTICAL DATUM O.R.B. = OFFICIAL RECORD BOOK P.I.N. = PARCEL IDENTIFICATION NUMBER P.O.B. = POINT OF BEGINNING P.O.C. = POINT OF COMMENCEMENT R = RADIUS RCP = REINFORCED CONCRETE PIPE R/W = RIGHT-OF-WAY S = SEWER CLEANOUT SM = SEWER MANHOLE	Ⓢ = STORM MANHOLE T = TELEPHONE PEDESTAL W = WOOD FENCE W = WOOD POWER POLE W = WATER METER W = WELL FD. = FOUND ELEVATION POINT
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THE INFORMATION SHOWN HEREON MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

BY:
ALAN FRANKLIN GLASS
FLORIDA REGISTERED SURVEYOR
MAPPER CERTIFICATE No. 5712

GLASS LAND SURVEYING, LLC

GLASS LAND SURVEYING, LLC
23884 CRESCENT PARK COURT, FERNANDINA BEACH, FLORIDA 32034
(904) 261-0128 • CELL: (904) 370-0318
LICENSE BUSINESS NO. LB 8359

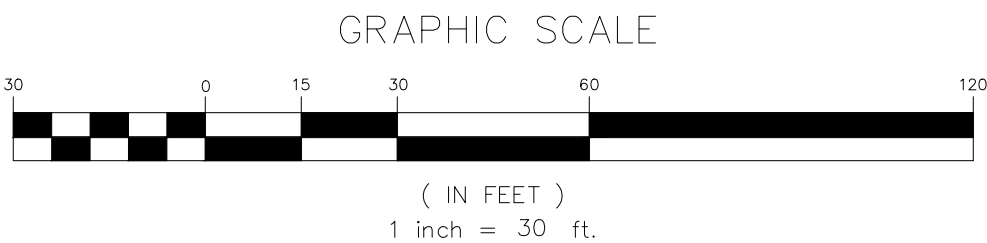
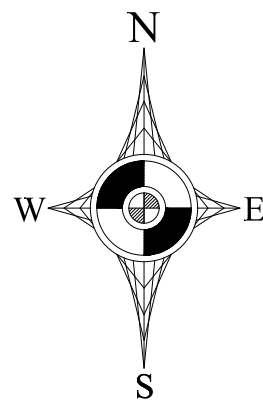
SCALE: 1"=30'
DATE: 02-22-22
DRN BY: TN
CKD BY: AG
JOB NO: 22-45
F.B. NO: DC
PAGE NO: DC

MAP SHOWING BOUNDARY TOPOGRAPHIC AND TREE SURVEY

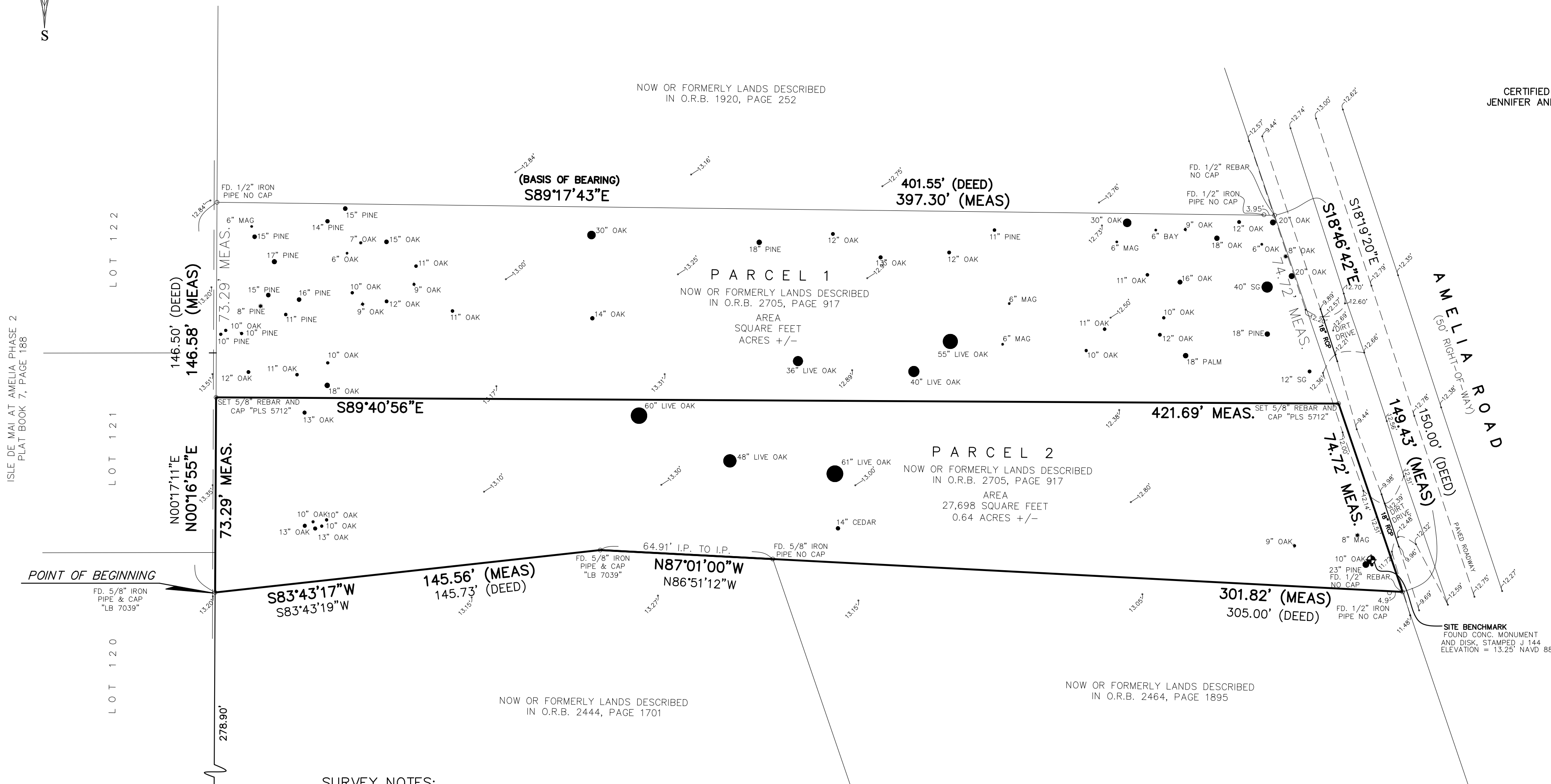
SURVEYOR'S LEGAL DESCRIPTION

A PORTION OF LOT 30, OCEAN BREEZE, AS RECORDED IN PLAT BOOK 2, PAGE 19, OF THE PUBLIC RECORDS OF NASSAU COUNTY, FLORIDA. PARENT TRACT BEING RECORDED IN OFFICIAL RECORDS BOOK 2530, PAGE 791, NASSAU COUNTY FLORIDA. THE BEARING BASIS OF THIS LEGAL DESCRIPTION IS THE NORTH LINE OF THE AFOREMENTIONED PARENT TRACT BEING SOUTH 89°17'43" EAST.

COMMENCE AT THE SOUTHWEST CORNER OF LOT 30, AFOREMENTIONED; THENCE NORTH 00°17'11" EAST, ALONG THE WEST LINE OF SAID LOT 30, A DISTANCE OF 278.90 FEET TO THE POINT OF BEGINNING ALSO BEING THE SOUTHWEST CORNER OF THE AFORESAID PARENT TRACT; THENCE CONTINUE NORTH 00°17'11" EAST ALONG THE AFORESAID WEST LINE, A DISTANCE OF 73.29 FEET; THENCE NORTH 89°40'56" WEST A DISTANCE OF 421.69 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF AMELIA ROAD (A 50' RIGHT-OF-WAY); THENCE SOUTH 18°46'42" EAST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 74.72 FEET TO THE SOUTHEAST CORNER OF THE AFORESAID PARENT TRACT; THENCE NORTH 87°01'00" WEST ALONG THE SOUTH LINE OF THE PARENT TRACT A DISTANCE OF 301.82 FEET TO AN ANGLE BEND IN SAID SOUTH LINE; THENCE SOUTH 83°43'17" WEST ALONG SAID SOUTH LINE A DISTANCE OF 145.56 FEET TO THE POINT OF BEGINNING. CONTAINING 0.64 ACRES MORE OR LESS.



CERTIFIED TO:
JENNIFER ANDERSON



SURVEY NOTES:

- 1) The "Legal Description" hereon is in accord with the description provided by the client.
- 2) Underground improvements were not located or shown.
- 3) Lands shown hereon were not abstracted by this office for easements, rights-of-way, ownership or other instruments of record.
- 4) Bearings based on S89°17'43"E FOR THE NORTHERLY LOT LINE.
- 5) Fence ownership, if applicable, has not been determined by this office. Fences are drawn out of scale in order to accentuate their relationship to property lines. Fences are not deemed to be encroachments unless ownership is apparent.
- 6) "Unless it bears the signature and the original raised seal of a Florida licensed surveyor and mapper, this map/report is for informational purposes only and is not valid.
- 7) The property shown hereon appears to lie within flood zone "X" as per F.E.M.A. Flood Insurance Rate Map, Panel 12017Q 0239 D, Dated 8-2-17.
- 8) Unless otherwise noted Measured angles and distances are the same as Plat or Deed angles and distances.
- 9) This survey has been performed according to the standard of care to achieve the following accuracies for the following surveyed.
Surveyed Accuracy: 1 foot in 19837 feet
Commercial / High risk Linear Accuracy: 1 foot in 10000 feet
SOP Rule 5J-17.05(3) (B) (15) b.ii

REVISED TO SHOW TOPOGRAPHIC INFORMATION 04-20-2023
REVISED TO SHOW LOT SPLIT 07-10-2024

TREE ABBREVIATIONS:
MAG = MAGNOLIA TREE
SG = SWEET GUM TREE

LEGEND

—E—E— = AERIAL UTILITY WIRES
A/C = AIR CONDITIONER
AKA = ALSO KNOWN AS
B.R.L = BUILDING RESTRICTION LINE
TV = CABLE TELEVISION PEDESTAL
Δ = CENTRAL ANGLE
CL = CENTERLINE
—x—x— = CHAIN LINK FENCE
CB = CHORD BEARING
CD = CHORD DISTANCE

CONC. = CONCRETE
CF = CONCRETE FLATWORK
CMP = CORRUGATED METAL PIPE
E = ELECTRICITY METER
ELEV. = ELEVATION
F.F. = FINISHED FLOOR
FH = FIRE HYDRANT
G = GAS METER
L = ARC LENGTH
LP = LIGHT POLE

MEAS. = MEASURED
N.G.V.D. = NATIONAL GEODETIC VERTICAL DATUM
O.R.B. = OFFICIAL RECORD BOOK
P.I.N. = PARCEL IDENTIFICATION NUMBER
P.O.B. = POINT OF BEGINNING
P.O.C. = POINT OF COMMENCEMENT
R = RADIUS
RCP = REINFORCED CONCRETE PIPE
R/W = RIGHT-OF-WAY
SC = SEWER CLEANOUT
SM = SEWER MANHOLE

⊙ = STORM MANHOLE
⊠ = TELEPHONE PEDESTAL
—□— = WOOD FENCE
⊙ = WOOD POWER POLE
W = WATER METER
⊙ = WELL
FD. = FOUND
⊙ = ELEVATION POINT

THE INFORMATION SHOWN HEREON MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

BY:
ALAN FRANKLIN GLASS
FLORIDA REGISTERED SURVEYOR
MAPPER CERTIFICATE NO. 5712

GLASS LAND SURVEYING, LLC

GLASS LAND SURVEYING, LLC
23884 CRESCENT PARK COURT, FERNANDINA BEACH, FLORIDA 32034
(904) 261-0128 • CELL (904) 370-0318
LICENSE BUSINESS NO. LB 8359

SCALE: 1"=30'
DATE: 02-22-22
DRN BY: TN
CKD BY: AG
JOB NO: 22-45
F.B. NO: DC
PAGE NO: DC



BOARD OF ADJUSTMENTS STAFF REPORT
BOA 2024-0004
SEPTEMBER 18,2024

Owner/Applicant:	Oaks of Amelia, LLC/ Agent: Marty and Tina Smith
Property Address:	Amelia Road
Parcel Number:	00-00-30-044B-0030-0020
Requested action:	VARIANCE from LDC Sections: LDC Table 4.02.01(J) Design Standards for Lots to create lots less than 75 feet in width at 74.42 feet
Current zoning:	R-1
FLUM land use category:	Low Density Residential (LDR)
Existing uses on the site:	Vacant

All required application materials have been received. All fees have been paid. All required notices have been made.



SUMMARY OF REQUEST AND BACKGROUND INFORMATION:

- Subject Property:

Approx. 1.34 acre parcel
- Proposed Project:

Subdivide Land to create two (2) 74.42 ft lots with 300+ft depths for residential use.
- Consistency:

Detached single family homes are permissible within the zoning district.
- The applicant is requesting relief from this LDC section 4.02.01 (J) to create two lots that measure less than the currently required 75 ft by 3.36 inches at 74.72 feet.

[illegible]

NOW OR FORMERLY LANDS DESCRIBED
IN O.R.B. 1920, PAGE 252

(BASIS OF BEARING)
S89°17'43"E

401.55' (DEED)
397.30' (MEAS)

PARCEL 1
NOW OR FORMERLY LANDS DESCRIBED
IN O.R.B. 2705, PAGE 917
AREA
SQUARE FEET
ACRES +/-

PARCEL 2
NOW OR FORMERLY LANDS DESCRIBED
IN O.R.B. 2705, PAGE 917
AREA
27,598 SQUARE FEET
0.64 ACRES +/-

ANELLIA ROAD
(50' RIGHT-OF-WAY)

SITE BENCHMARK
PILING CONC. MONUMENT
AND DECK, STAMPED U 144
ELEVATION = 13.25 NAVD 88

The map displays a residential area with a subject property highlighted in red. The subject property is a 1.06 AC lot, zoned R-1, located between Santa Maria Drive and Santa Maria Drive. The map shows surrounding lots with various sizes and numbers, and a street named Santa Maria Drive.

CITY OF FERNANDINA BEACH LAND DEVELOPMENT CODE:

CITY OF FERNANDINA BEACH COMPREHENSIVE PLAN:

- Policy 1.02.07 - The City shall implement the Fernandina Beach Comprehensive Plan in a manner that acknowledges private property rights.

In order for an application for a variance to be approved or approved with conditions, the BOA shall make a positive finding with regard to each of the following provisions:

Consistent with Criteria? All questions must be answered in the affirmative in order for staff to recommend approval of a variance. Negative answers must be addressed in the findings.

Criteria	Applicant's Response	Staff Analysis	Meets Criteria
1. Special Conditions <i>Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district. Special conditions or circumstances do not result from actions of the applicant and are not based on a desire to reduce development costs.</i>	When we purchased the parcel, the legal description for the parcel included a deeded lot frontage of 150 feet along the right-of-way of Amelia Road and 1.388 acres of lot area. However, when we had the surveyed, the survey reflected that the lot only has a frontage of 149.43 feet and only 1.32 acres of lot area.	Yes. Special conditions and circumstances <u>do exist</u> which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district. The subject property contains an unusual lot size with a depth of 300+ feet. The Amelia Road frontage appears to reflect 150 feet although the survey documents it to be just under that amount at 149.33 feet.	☒ Yes ☐ No
2. Special Privilege <i>Granting the variance does not confer upon the applicant a special privilege that is denied by the Land Development Code to other lands, structures, or buildings in the same zoning district.</i>	We are only requesting a minimal variance of 3.36 inches that would result in the lot being able to be divided into two (2) lots that would still be much larger in size than the contiguous R-1 zoned lots, therefore, the granting of the variance would not confer any special privilege that is denied to other lands, structures, or buildings in the same zoning district.	Yes. Granting the variance <u>does not confer</u> upon the applicant a special privilege that is denied by the Land Development Code to other lands, structures, or buildings in the same zoning district. Any similarly situated property owner within this zoning district has the right to request relief from LDC Section 4.02.01 (J).	☒ Yes ☐ No
3. Literal Interpretation <i>Literal interpretation of the provisions of the Land Development Code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district.</i>	The contiguous lots located in the R-1 zoning district are approximately .19 acres in size. Should the variance consisting of only several inches of relief in the lot width not be granted, the lot would not be able to be divided and would be required to remain approximately seven (7) times the size of the adjacent lots in the same zoning district. Therefore, the lot would be deprived of the rights commonly enjoyed by other properties in the same zoning district.	Yes. Literal interpretation of the Land Development Code <u>would deprive</u> the applicant of rights enjoyed by others in the same zoning district. Similar properties exist within the immediate area that total much less than the resulting lot sizes created by this request.	☒ Yes ☐ No
4. Minimum Variance <i>The variance requested is the minimum variance needed that will make possible the reasonable use of the land, structure, or building.</i>	The variance of 3.36 inches to the lot width is a minimal request that would allow for the 1.32-acre parcel to be split into two (2) parcels within the R-1 zoning district that allows a gross density of up to four (4) dwelling units per acre or in the case of the current lot, would allow the lot to be divided into five (5) lots	Yes. The variance requested <u>is the minimum</u> variance needed to make possible the reasonable use of the land, structure, or building. Relief from this section is the only request	☒ Yes ☐ No

	based on the current lot size, therefore, the variance would make possible the reasonable use of the land.	necessary to make use of the property.	
5. General Harmony <i>Granting the variance will be in harmony with the general intent and purpose of the Land Development Code and Comprehensive Plan.</i>	The granting of the variance would be in harmony with the general intent and purpose of the Land Development Code and Comprehensive Plan as the proposed lots would not exceed the maximum number of dwelling units allowed per the Comprehensive Plan for the R-1 zoning district, and while the two (2) lots would still be much larger than the contiguous R-1 zoned lots, the lots would be more consistent in size to other lots fronting along Ameila Road that are in Nassau County's jurisdiction.	Yes. Granting the variance will be in harmony with the general intent and purpose of the Land Development Code and Comprehensive Plan. Lot sizes within the same zoning category are often less total square footage although their frontage on a public roadway equals the minimum 75-ft. These resulting lots are much larger in total size and, if granted, would be general harmony with the surrounding area developed patterns.	☒ Yes ☐ No
6. Public Interest <i>Granting the variance is compatible with surrounding properties, will not cause injury to the area involved, or otherwise be detrimental to the public health, safety, welfare or environment.</i>	The proposed lots would be compatible with other properties along Amelia Road that contain varying lot widths that are both greater than and lesser than the width of the proposed lots, therefore, the granting of the variance would not cause any injury to the area, or otherwise be detrimental to the public health, safety, welfare or environment.	Yes. Granting the variance is compatible with the surrounding properties, will not cause injury to the area involved, or otherwise be detrimental to the public health, safety, welfare, or environment.	☒ Yes ☐ No

STAFF RECOMMENDATION:

The variance requested is consistent/inconsistent with the criteria for granting a variance as follows:

	Consistent	Inconsistent
1. Special Conditions	X	
2. Special Privilege	X	
3. Literal Interpretations	X	
4. Minimum Variance	X	
5. General Harmony	X	
6. Public Interest	X	

The requested variance is consistent with all 6 criteria for granting of a variance.

Staff recommends: APPROVAL of BOA 2024-0004.

MOTION TO CONSIDER

I move to **approve or deny** BOA case number 2024-0004;

AND I move that the BOA make the following findings of fact and conclusions of law part of the record:

That BOA case 2024-0004, item, as presented, **is or is not** substantially compliant with the Comprehensive Plan and Land Development Code to warrant approval at this time;

AND that BOA case number 2024-0004 **meets or does not meet** the following criteria for granting a variance:

Respectfully Submitted,

Kelly N. Gibson, AICP

FLORIDA LAW REGARDING VARIANCES

A Continuing Legal Education (CLE) Program presentation by

Updated by Ralf Brookes, Attorney Cape Coral Florida and
Henry Lee Morgenstern, Attorney, Gainesville Florida (2004)

A. Introduction to Variances

A variance is, generally, permission for a landowner to go outside the limits of the zoning code, and to build something which would otherwise be illegal under the terms of the zoning code or land development regulations.

The reason or rationale behind the law allowing variances at all is that in some situations, the literal application of the zoning code would create such a "hardship", that it would not allow any use of certain parcels of property whatsoever.

Without the flexibility to allow some reasonable use of the property, such totally prohibitive zoning would constitute inverse condemnation, subjecting the zoning authority to liability for a "taking". Askew v. Gables-by-the-Sea, Inc., 333 So.2d 56 (1 DCA 1976). Thus, the legal justifications for variances, and the threshold criteria for determination of a "taking", are closely related. (See, below, criteria for granting variances, when is it a taking not to allow a variance).

A variance is sometimes mistakenly believed to be simply a tool for allowing a more intense use than would otherwise be allowed. As such, it needs to be distinguished from a special exception or conditional use.

A "special exception" or conditional use is specifically authorized in that zone, but will be allowed only if specific, listed criteria for that special exception or conditional use are met. A variance is specifically prohibited in that zone, but will be allowed only if necessary to prevent a "taking", i.e., if no authorized use is reasonably possible in its place.

Boards of adjustment have sometimes been unclear on this distinction, granting variances as a convenient expedient to avoiding the zoning and land development regulations. The criteria for obtaining variances are theoretically very strict, and the grounds for overturning illegal variances relatively easy to prove if sufficient facts and discussion of a legal hardship is not placed in the record.

An Applicant's variance request must be reviewed on its own merits, rather than on the basis of previously approved variances in the jurisdiction. See City of Jacksonville v. Taylor, 721 So.2d 1212 (Fla. 1st DCA 1998). Previously issued variances do not establish controlling precedent or constitute a basis to sustain other variance applications.

B. Criteria for Granting Variances - Generally

Ordinances authorizing variances may be worded in different ways, and you should always read your specific language carefully. The standards must be definite, City of Miami v. Save Brickell Ave., 426 So.2d 1100 (3 DCA 1983), and the criteria must be mandatory, and not permissive (i.e., "shall consider criteria" means "must comply with criteria"), id.; Drexel v. City of Miami Beach, 64 So.2d 317 (Fla. 1953).

In 1985, local governments were given express authority to adopt variance criteria in their codes (most City's and County's adopted codifications of the existing law of variances with slight modifications in each locality). The repeal and replacement of Florida's standard zoning enabling act in 1985 when Florida's Growth Management Act of 1985 was adopted¹ did not diminish or substantially change the authority of local government or Florida law regarding variances, in fact previous Florida Law was codified in many local governments by ordinance. Both before and after 1985, the courts have followed long-established Florida law that a variance cannot be granted for self-created actions – and this requirement is codified in most city and county codes in Florida. Even after 1985, the courts have been very strict in their review of the hardship required to obtain a variance.

Generally, a variance is authorized if due to circumstances **unique to the applicant's property itself** and not shared by other property in the area, there exists an undue and unnecessary hardship created by the zoning regulations

1. The hardship cannot have been self-created.

The hardship criteria found in variance provisions has a long line of cases and has been strictly construed by the courts. Josephson v. Autrey, 96 So.2d 784 (Fla. 1957).

The criteria has been interpreted to mean three things:

a. A mere economic disadvantage due to the owner's preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance. Burger King v. Metropolitan Dade County, 349 So.2d 210 (3 DCA 1977); Metropolitan Dade County v. Reineng, 399 So.2d 379 (3 DCA 1981); Nance, supra; Crossroads Lounge v. City of Miami, 195 So.2d 232 (DCA 1967). If, however, the only allowable uses are economically impossible, then a variance would be allowed. Nance II.

b. Neither purchase of property with zoning restrictions on it, nor reliance that zoning will not change, will constitute a hardship. Friedland v. Hollywood, 130 So.2d 306 (DCA 1961); Elwyn v. Miami, 113 So.2d 849 (3 DCA 1959).

c. If a purchaser buys land with a condition creating a hardship upon it, the owner

is only entitled to such variance as his predecessor in title was entitled. If the owner participated in an affirmative act which created the hardship (such as by purchasing only a substandard piece of a larger lot), then the hardship should be ruled self-created. Coral Gables v. Geary, 383 So.2d 1127 (3 DCA 1980).

The requirement that a variance hardship cannot be self-created is required by most codes and Florida case law. In Re Kellogg, 197 F. 3rd 1116, 1121 (11th Cir. 1999). Josephson v. Autrey, 96 So.2d 784 (Fla. 1957) (superceded by statute *on other grounds* in Grace v. Town of Palm Beach 656 So.2d 945 (Fla. DCA 1995); Town of Ponce Inlet v Rancourt, 627 So.2d 586, 588 (Fla. DCA 1993).

Case law, as well as the Land Development Regulations control the degree of showing needed to support the approval of a variance from the express requirements of local regulations. The days of the “weeping variance” have been replaced by strict interpretation of what is required to show entitlement to a variance from local Code provisions under the case law. Town of Indialantic v. Nance, 400 So.2d 37 (5 DCA 1981), *affd.* 419 So.2d 1041; appealed again at 485 So.2d 1318 (5 DCA 1986), *rev. den.* 494 So.2d 1152.

Post 1985, the First District Court of Appeals in City of Jacksonville v. Taylor, 721 So.2d 1212 (Fla. 1st DCA 1998) Bernard v. Town Council of Palm Beach, 569 So.2d 853 (Fla. 4th DCA, 1990); Metropolitan Dade County v. Betancourt, 559 So. 2d 1237; Town of Indiatlantic v. Nance, 485 So.2d 1318 (Fla. 5th DCA 1986), and Town of Indiatlantic v. Nance (“Nance I”), 400 So.2d 2137 (Fla. 5th DCA 1981); Maturo v. City of Coral Gables, 619 So.2d 455 (Fla. 3rd DCA 1993); Herrara v. City of Miami, 600 So.2d 561 (Fla 3rd DCA 1992) *rev. denied* 613 So.2d 2 (Fla. 3rd DCA 1992). In Re Kellogg, 197 F. 3d 1116, 1121 (11th Cir. 1999).

Pre 1985 cases had similar holdings and include Blount v. City of Coral Gables, 312 So. 2d 208 (Fla. 3rd DCA 1975) (“Nor are the Blounts entitled to a variance from the above zoning ordinance...as the hardship was self-created because they knew of the restricted zoning ordinance.”)(*citing other Florida cases on this issue*); Clarke v. Morgan, 327 So.2d 769 (Fla. 1975); Friedland v. Hollywood, 130 So.2d 306 (DCA 1961); Elwyn v. Miami, 113 So.2d 849 (3 DCA 1959); Coral Gables v. Geary, 383 So.2d 1127 (3 DCA 1980).

The purchase of property with zoning restrictions on the property will normally not constitute a hardship. Friedland v. Hollywood, 130 So.2d 306 (DCA 1961); Elwyn v. Miami, 113 So.2d 849 (3 DCA 1959). Namon v. DER 558 So. 2d 504 (Fla 3rd DCA 1990) and the cases cited therein address cases where property is purchased AFTER adoption of prohibitory regulations. The court in Namon recognized such pre-existing notice as applied to takings analysis in Florida cases, as follows:

“Appellants are deemed to purchase the property with constructive knowledge of the applicable land use regulations. Appellants bought unimproved property. A subjective expectation that the land could be developed is no more than an expectancy and does not

translate into a vested right to develop the subject property. See *Graham v. Estuary Properties, Inc.*, 399 So.2d 1374, 1382, 1383 (Fla.), cert. denied sub nom. *Taylor v. Graham*, 454 U.S. 1083, 102 S. Ct. 640, 70 L. Ed. 2d 618 (1981)

'...[a]n owner of land has no absolute and unlimited right to change the essential natural character of his land so as to use it for a purpose for which it was unsuited in its natural state and which [injures] the rights of others." *Namon* at 505, (original citation omitted) see also *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1005, 104 S. Ct. 2862, 2874, 81 L.E.2d 815, 834 (1984).

"A 'reasonable investment-backed expectation' must be more than a 'unilateral expectation or an abstract need'; *Namon* citing *Claridge v. New Hampshire Wetlands Board*, 125 N.H. 745, 485 A.2d 287, 291 (1984)

"A person who purchases land with notice of statutory impediments to the right to develop that land can justify few, if any, legitimate investment-backed expectations of development rights which rise to the level of constitutionally protected property rights"; cf. *Elwyn v. City of Miami*, 113 So.2d 849, 852 (Fla. 3d DCA) "One who purchases property while it is in a certain known zoning classification, ordinarily will not be heard to claim as a hardship a factor or factors which existed at the time he acquired the property.", cert. denied, 116 849 (Fla. 1959).

Case law also indicates that a mere economic "disadvantage" or the owner's mere preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance. *Burger King v. Metropolitan Dade County*, 349 So.2d 210 (3 DCA 1977); *Metropolitan Dade County v. Reineng*, 399 So.2d 379 (3 DCA 1981); *Crossroads Lounge v. City of Miami*, 195 So.2d 232 (DCA 1967).

Neither purchase of property with zoning restrictions on it, nor reliance that zoning will not change, will constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (3 DCA 1959).

If the owner participated in an affirmative act which created the hardship (such as by purchasing a substandard size lot), then the hardship should be ruled self-created. *Coral Gables v. Geary*, 383 So.2d 1127 (3 DCA 1980).

2. Consistency with neighborhood and scheme of regulations.

Granting the variance must not adversely affect the zoning scheme as a whole. Granting of a variance is illegal, and beyond the authority of any local administrative body, where the proposed variance is not shown to be in harmony with, and not "in derogation of the spirit, intent, purpose, or general plan of [the zoning] regulations." *Troup v. Bird*, 53 So.2d 717 (Fla. 1951).

"A variance should not be granted where the use to be authorized thereby will alter the essential character of the locality, or interfere with the zoning plan for the area and with rights of owners of other property."

Elwyn v. City of Miami, 113 So.2d 849 (Fla. 3rd DCA 1959).

3. No reasonable legal use can be made of the property without the variance.

Some cases go so far as to say no variance can be granted if the property can still be used without the variance. This approach incorporates, to some extent, the law of taking of property without just compensation, i.e., a variance can be granted and will not be overturned if no other reasonable use can be made of the property without a variance.

"The requisite hardship may not be found unless there is a showing that under present zoning, no reasonable use can be made of the property." Thompson v. Planning Commission, 464 So.2d 1231 (1 DCA 1985). Herrera v. Miami, 600 So.2d 561 (3DCA 1992).

The hardship must be such that it "renders it virtually impossible to use that land for the purpose or in the manner for which it is zoned." Hemisphere Equity v. Key Biscayne, 369 So.2d 996 (3 DCA 1979).

It is the land, and not the nature of the project, which must be unique and create a hardship. Nance, supra; Ft. Lauderdale v. Nash, 425 So.2d 578 (4 DCA 1982) (many other common violations in the neighborhood do not constitute a hardship); City of Miami v. Franklin Leslie, 179 So.2d 622 (3 DCA 1965).

When is Denial of a Variance a Taking?

A reasonable use of the property under existing zoning, requiring a denial of the variance, does not mean the owner's preferred use, or a use that will bring the owner an economic return. All that is required is a use beneficial to the owner and consistent with the zone. Metropolitan Dade Co. v. Betancourt, 559 So.2d 1237 (3 DCA 1990).

An extensive discussion of similar coastal setback beach ordinances and denial of a variance for construction seaward of such a setback appears under two, separate McNulty takings cases – the federal takings case of McNulty v. Town of Indialantic, 727 F Supp 604 (M.D. Fla. 1989) and the state court takings case of Town of Indialantic v McNulty, 400 So. 2d 1227 (Fla. 5th DCA 1981). The cases share common facts, the Town of Indialantic denied McNulty a variance for a 12-unit condominium on the beach under a similar coastal setback provision to the

line at bar resulting in both state and federal review.

"[A] diminution of property value does not, by itself, establish a taking Inability to use the property for production of an income stream or to make the highest and best use does not render the property without economically viable use". 727 F Supp 611.

The court found that when regulations seek to protect natural resources, the court should "hesitate to find a taking", comparing such regulations to "restraining... [a] public nuisance". 727 F Supp 614.

The McNulty state court decision noted that the "harm to be prevented [by beachfront construction] is substantial" and held that McNulty made an insufficient showing that a taking would occur if he were denied the variance. 400 So.2d 1227. In discussing the harm to be prevented, the state appellate court noted that:

"Through sad experience Florida has learned the importance of the barrier sand dunes which face its "high energy" beaches. The 'high energy beach' is a shore fronting the open ocean and dominated by sand and dunal features." Maloney and O'Donnell, *Drawing the Line at the Oceanfront*, 30 *Fla. L. Rev.* 383, 385 n.19 (1978). Sand beaches and dunes comprise a very small and unstable part of Florida's coastal zone.

Forming a narrow band along the shores of the Atlantic Ocean and the Gulf of Mexico, they offer some of the state's most attractive and most hazardous locations for real estate development. Without adequate controls on construction and excavation, oceanfront development could destroy not only man-made structures but also beaches and dunes. Maloney and O'Donnell, *Drawing the Line at the Oceanfront*, 30 *Fla. L. Rev.* 383, 389 (1978).

Various local communities, like Indialantic, have adopted similar set back ordinances to protect the dunes, bluffs and natural vegetation of their beaches, and Chapter 161, Florida Statutes (1979), the "Beach and Shore Preservation Act," has as one of its stated purposes the protection and preservation of the "beach dune system. The "construction line" drawn pursuant to this State law was west or landward of the setback line of the Town as applied to McNulty's land. In any event, the State law contemplated that cities and counties could establish stricter setback lines than those set by the State. Sections 161.052(2)(b), 161.053(4), Fla. Stat. (1979). See § 163.3177(6)(d), (f) and (g), Fla. Stat. (1979).

There can no longer be any question that the "police power" may be exercised to protect and preserve the environment. Florida's Constitution expressly provides: It shall be the policy of the State to conserve and protect its natural resources and scenic beauty. Adequate provisions shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise. Art. V, § 7, Fla. Const. Other jurisdictions have reached a similar conclusion, without the benefit of an express constitutional provision.

The wetlands and coastal areas are places of critical concern because of their important role in protecting the inland regions against flooding and storm danger.”

The leading case on regulatory takings for environmental purposes is Graham v Estuary Properties, Inc., 399 So.2d 1374 (Fla. 1981). It states six criteria for considering “[w]hether a regulation is a valid exercise of the police power or a taking”, and specifically holds that protection of the environment is a legitimate use of the police power. 399 So.2d at 1380-1381.

Graham has recently been applied in Lee County v Morales, 557 So.2d 652, 655-656 (2 DCA 1990) (rezoning not a taking unless no beneficial and reasonable uses remain); and Namon v DER, 558 So.2d 504 (3 DCA 1990) (no taking where owner was aware of development restrictions [fill permit], even if no construction or economic use can be made of the property; “if you bought a swamp you must have wanted a swamp”).

4. **Other Code criteria.** Various codes may also include the following criteria (See, e.g., prior F.S. 163.170(8), repealed 1985):

- a. The granting of the variance will not accord applicant any special privileges;
- b. The variance is the minimum one for the reasonable use of the applicant's land;
- c. The grant of the variance will be harmonious and noninjurious to the surrounding land; and
- d. The variance will not be contrary to the public interest.

Most court cases have focused on the hardship (whether it is the result of unique physical characteristics of the land in question or whether it is really an impermissible self-created hardship). However, all variance standards must be met. The standards themselves must be definite, City of Miami v. Save Brickell Ave., 426 So.2d 1100 (3 DCA 1983), and the criteria must be mandatory, and not permissive (i.e., “shall consider criteria” means “must comply with criteria”), id.; Drexel v. City of Miami Beach, 64 So.2d 317 (Fla. 1953).

5. **Police Power Limits.** One case says that under the “arbitrary and unreasonable” test, where there is “no reasonably debatable relation to public health, safety or welfare” the court may be required to compel that a variance be granted. Metropolitan Dade County v. Reineng, 399 So.2d 379 (3 DCA 1981). The case's reasoning, moreover, is at odds with the clear holding of the Supreme Court one year later:

The “fairly debatable” test should be used to review legislative-type zoning enactments, while a variance seeker must demonstrate a “unique hardship” in order

to qualify for a variance."

Nance v. Town of Indialantic, 419 So.2d 1041 (Fla. 1982).

Amendments to Regulations that no longer make sense.

If the land development regulation no longer has a valid public purpose, or should be changed, the proper method is to *amend the zoning code or land development regulations* rather than grant numerous variances from the offending provision. Therefore, in some instances amending (or a recommendation to amend) the code may be more appropriate than granting variances each time the issue comes up.

6. Consistency with Comprehensive Plan.

Granting of a variance is illegal, and beyond the authority of any local administrative body, where the proposed variance is not shown to be in harmony with, and not "in derogation of the spirit, intent, purpose, or general plan of [the zoning] regulations." Troup v. Bird, 53 So.2d 717 (Fla. 1951). All development orders, including variances, must be consistent with duly adopted Comprehensive Plan policies, objectives and goals under Florida Statutes 163.3215 (which also establishes procedures to challenge variances on the grounds of consistency with comprehensive plan policies). Machado v. Musgrove, 519 So. 629 (Fla. 3rd DCA 1987). And the remedy awarded by courts if a development order is found to be inconsistent with a comprehensive plan policy can include demolition of offending structures. Pinecrest Lakes v Shidel, 795 So. 2d 191 (Fla. 4th DCA).

C. Use-Variances vs. Non-Use Variances

Some codes distinguish between "use" variances, and "non-use" or "area" variances. A "use" variance would be one where application was made for a non-permitted use, while "non-use" or "area" variances would apply to a permitted use, but allow laxity of a height, setback, lot size, or other dimensional rule.

Use variances are often expressly disallowed by code.

Use-Variances

The Florida Supreme Court, sitting en-banc, clearly set the limits on use variances in Josephson v. Autrey, 96 So.2d 784 (Fla. 1957). The court held that, while zoning boards could make adjustments in height, setback, side lot, and other area problems unique to the parcel, use variances would be improper if they created a wholly inconsistent use in the zone:

"To endow such a board with the authority to amend the zoning ordinance in particular instances by authorizing a use of property prohibited by the ordinance

itself would be to convey to the appeals board the authority to enact legislation, nullify the decision of the municipal legislative body, and in effect destroy the beneficial results to be obtained by comprehensive zoning. When circumscribed by reasonable bounds the appeals board serves a valid and useful purpose. If granted unrestricted power to amend the zoning ordinance by changing completely the authorized uses of the particular land, the effect would be to transfer the legislative powers of the municipality to this non-legislative administrative agency."

Although the strictness of this position was questioned in Clarke v. Morgan, 327 So.2d 769,772 (Fla. 1975), Josephson still is good law. See Walgreen v. Polk, 524 So.2d 1119 (2 DCA 88).

The cases which have allowed use variances have abided by the Josephson admonition. In addition to other variance criteria applicable to all variances (discussed below), an applicant for a use variance must also show that the proposed use is basically consistent with the neighboring uses in the area. Troup v. Bird, 53 So.2d 717 (Fla. 1951) (a lake in a residential area did not change the residential character of the area); Josephson v. Autrey, 96 So.2d 784 (Fla. 1957) (filling station not a consistent use in a motel zone); Metropolitan Dade Co v. Reineng Corp, 399 So.2d 379 (3 DCA 1981) (liquor store would "harmonize" with neighborhood); Monterey Development Co. v. Stuart Marine Center, Inc., 305 So.2d 245 (4 DCA 1974) (dry-dock boat storage consistent with marine area); Dade Co. v. Pepper, 168 So.2d 198 (3 DCA 1964) (junkyard consistent with industrial area).

II - THE ADMINISTRATIVE PROCEEDINGS BEFORE LOCAL GOVERNMENT

Typically, the applicant land owner will fill out a variance application. It will be reviewed by staff, and set for a hearing before whatever body is empowered to grant or deny variances in that jurisdiction, usually a Board of Adjustment.

A. Exhaustion of Administrative Remedies. To challenge a variance, someone with standing needs to appear and object, not only at the hearing on the variance application, but, if the variance is granted and being appealed, they must also object and use every "extra-judicial and administrative remedy which may provide the relief sought", or the later judicial appeal may be dismissed for failure to exhaust administrative remedies. City of Miami v. F.O.P., 378 So.2d 20 (3 DCA 1980).

Even parties with standing will lose their right to appeal if they do not personally appear and object at the administrative hearing. Battaglia Fruit Co. v. City of Maitland, 530 So.2d 940 (5 DCA 1988). A written objection entered into the record should suffice.

The Applicant must also exhaust his administrative remedies by asking for a variance

before claiming a taking. Mackay v DER. Under Herrera, this should mean that the owner needs to prove that he has been denied the minimum economically viable use.

. Burden of Proof. The burden to prove the existence of the required hardship and unique conditions is always on the applicant. Gomez v. City of St. Petersburg, 550 So.2d 7 (2 DCA 1989). Therefore, if the owner presents no evidence that the property cannot be used without the variance, there must be a denial. Herrera v. Miami, 600 So.2d 561 (3DCA 1992). The burden is more extensive than for a party seeking a permissible use by special exception. Cf. Gomez with Pollard v. Palm Beach City, 560 So.2d 1358 (4DCA 1990).

III- JUDICIAL REVIEW OF VARIANCE DECISIONS

A. Jurisdiction.

The Circuit Court has jurisdiction to review the action of the Board of Adjustment under the authority of Florida Constitution 1968, Article V, Section 5; Florida Rules of Appellate Procedure 9.030(c)(3) and 9.100; and Florida Rules of Civil Procedure 1.630.

B. Procedure.

A petition is filed under RAP 9.100 and RCP 1.630, within 30 days of the "rendition of the matter sought to be reviewed". "Rendition" is the date of the filing of the order of the zoning board in which it makes its findings, not the date of the hearing. RAP 9.020(g)

1. Petition. The Petition should contain:

- a. Statement of Jurisdiction
- b. Statement of Standing
- c. Statement of facts, all of which must be in the record
- d. Grounds of Objection
- e. All authorities and arguments of law
- f. Statement of relief sought

g. An appendix containing the record under Rule of Appellate Procedure 9.220 or the Rules of Civil Procedure 1.630 must be attached

2. Appendix. Must include everything from the record on which you will

refer or rely. Nothing outside the record presented at the hearing may be included.

A challenger should also provide the Court with copies of all ordinances on which the ruling was based. The Court cannot take judicial notice of ordinances or of amendments which were not brought before the zoning board. Nichols v. FIDC, 315 So.2d 238 (4 DCA 1975). F.S. 90.202(10) allows the court to take judicial notice of ordinances, but they must be published or first presented to the zoning board. Hill v State, 471 So.2d 567 (1 DCA 1985).

3. Filing. The petition and appendix are simply filed with the Court, no hearing or notice is required. Submit along with it a Motion for Summons in Certiorari and Order to Show Cause and proposed order (see sample forms, *infra*). If the Court finds you have made a prima facie case, it will issue what RCP 1.630(d) calls "a summons in certiorari", or RAP 9.100 calls an "order to show cause", giving the zoning board a reasonable time to respond. Oral argument may be requested under RAP 9.100(d)(3), but it is not required.

Since this is an appeal, and not a new proceeding, there is no discovery. The Court will only review the record created below.

4. Briefs. RAP 9.100 provides for a response by the board, and then a reply by the appellant, with a supplemental index if desired.

C. Standards for Judicial Review.

1. Circuit Court. The circuit court's certiorari review of an administrative action reviews 3 components:

a. Whether procedural due process was followed;

b. Whether the essential requirements of the law have been followed;

c. Whether the decision was supported by competent substantial evidence. City of Deerfield Beach v. Vaillant, 419 So.2d 624 (Fla. 1982) However, the circuit court, like any other appellate court, may not reweigh the evidence or substitute its judgment for the administrative board's. If any competent substantial evidence was presented the decision must stand. Martin v. First Apostolic Church, 321 So.2d 471 (4 DCA 1975) [special exception to build church denied].

2. Court of Appeals. Vaillant holds that when the Court of Appeals reviews the circuit court (RAP 9.030(b)(2)(B)), it only may review the first two criteria. (a and b, above). The Court of Appeals theoretically may not reverse a circuit court on the basis of whether there was or was not competent evidence presented, so long as due process and the essential rules of law are followed. Gomez v. City of St. Petersburg, 550 So.2d 7 (2 DCA 1989).

3. Comprehensive Plan consistency. A challenge to a variance decision based on an alleged inconsistency with a particular comprehensive plan policy must be brought within 30 days pursuant to the statutory procedures set forth in Florida Statutes 163.3215. Comprehensive Plan inconsistency cases are held to different statutory procedures and a strict scrutiny standard.

e. Standing to seek judicial review of a variance in court

A person seeking to challenge a variance needs to show that the variance will have some effect on him different from the effect on the community at large, even if no different than upon others in his neighborhood. Carlos Estates v. Dade Co., 426 So.2d 1167 (3 DCA 1983). This has generally been held to mean landowners in the immediate neighborhood of the project. Hemisphere Equity v. Key Biscayne, 369 So.2d 996 (3 DCA 1979) (objectors have standing if they reside in "proximity" of project); Allapattah Community v. City of Miami, 379 So.2d 387 (3 DCA 1980) ("neighborhood" sufficient), but anyone in the same zoning district would seem to meet the Carlos Estates test.

Carlos Estates describes two subgroups in the Renard v. Dade County, 261 So.2d 832 (Fla. 1972) category 1 "special injury" classification (for standing to challenge violations of an existing zoning ordinance). Objections to variances (and special exceptions) follow the above rule. Objections to code violations by neighbors, however, according to Carlos Estates, requires "an impact unique to [the objector's] property". This distinction does not appear in Renard.

There is no rule that only landowners may object, thus a long term lease might suffice, but economic injury from business competition alone is not sufficient to create standing. Skaggs-Albertson v. Michels Pharmacy, Inc., 332 So.2d 113 (2 DCA 1976). But where the business is strictly regulated, such as with a liquor license, the economic injury does rise to the level of conferring standing. Skaggs-Albertson's v ABC Liquors, 363 So.2d 1082 (Fla. 1978).

The fact that someone is in the area required for notice is not conclusive as to standing. Battaglia Fruit v. Maitland, 530 So.2d 940 (5 DCA 1988).

Note that if you can find any grounds to challenge the variance as "void because not properly enacted", then any affected resident or citizen of the government unit has standing. Renard v. Dade County, 261 So.2d 832 (Fla. 1972); Upper Keys Citizens Coalition v. Wedel, 341 So.2d 1062 (3 DCA 1987); Save Brickell Ave., Inc. v City of Miami, 393 So.2d 1197 (3 DCA 1981).

Standing of Environmental and Citizens Groups.

In general, representative organizations have standing if they meet the criteria laid out in Florida Home Builders v. Dept of Labor, 412 So.2d 351, 353 (Fla. 1982):

- a. a "substantial number of its members, although not necessarily a majority"

would have standing in their own right,

- b. the interests it seeks to protect are genuine to the organization's purpose, and
- c. neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.
- d. The organization must have a “special injury” to a special interest that exceeds in degree the general interest in community good shared by the general public (i.e., inquire into what are the organizations special interests and what are the special impacts to those interests).

Upper Keys Citizens Assoc. v. Monroe Co., 467 So.2d 1018 (3 DCA 1985); Chabau v Dade County, 385 So.2d 129 (3 DCA 1980). An organization is often felt to be unable to meet the "special injury" requirement, which must still be followed. U.S. Steel Corp v. Save Sand Key, Inc., 303 So.2d 9 (Fla. 1974). See Friends of the Everglades, 595 So.2d 186; Sailboat Key, 306 So.2d 616; Exchange Investments, 481 So.2d 1223.

Challenges to variances based on an alleged inconsistency with a specific Comprehensive Plan policy in circuit court must demonstrate a basis under the statutory standing requirements of Florida Statutes 163.3215. Putnam County Environmental Council v. Putnam County, 757 So. 2d 590(Fla. 5th DCA 2000).

-----ENDNOTES-----

¹ In 1985, the entire zoning enabling act was repealed (not just variances). Chapter 85-55 Laws of Florida, p. 235 Section 20 acknowledges that the Growth Management Act of 1985 repealed §§163.160 through 163.315, Florida Statutes and replaced it with §§ 163.3161 and 163.3215, Florida Statutes (making comprehensive plan consistency and concurrency requirements more stringent), but did not remove any of the previous zoning enabling authority:

“Section 20. It is the intent of the legislature that the repeal of the sections 163.160 through 163.315, Florida Statutes, by this act shall not be interpreted to limit or restrict the powers of ...county officials, but shall be interpreted as a recognition of their broad statutory and constitutional powers to plan for and regulate the use of land. It is further the intent of the legislature to reconfirm that sections 163.3161 and 163.3215, Florida Statutes, have provided and do provide the necessary statutory direction and basis for municipal and county officials to carry out their comprehensive planning and land development regulation powers duties and responsibilities.”

The basic Florida Law of variances has not changed, as criteria for variances similar to Florida case law requirements has been incorporated into local Codes establishing similar variance criteria to be applied through slightly different procedures (Hearing Examiners v. Boards of Adjustment) for each County. But the ability to review and grant or deny variances, as well as the basic Florida law of variances, remains the same before and after 1985. *See, post-1985 cases cited above.* Since 1985, All development orders, including variances, must be consistent with duly adopted Comprehensive Plan policies, objectives and goals under the Growth Management Act of 1985, Florida Statutes 163.3215.