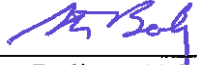


INDIAN RIVER COUNTY, FLORIDA  
M E M O R A N D U M

**TO:** Members of the Planning and Zoning Commission

DEPARTMENT HEAD CONCURRENCE:

  
Stan Boling, AICP; Community Development Director

**FROM:** John W. McCoy, AICP; Chief, Current Development 

**DATE:** May 10, 2017

**SUBJECT:** Request by Hal & Martha McAdams for a 5' Side Yard Setback Variance for a Pool Enclosure on Lot 3, Block 1, Diana Park Subdivision [VAR-17-05-01 / 92080125-78723]

It is requested that the data herein presented be given formal consideration by the Planning and Zoning Commission at its regular meeting of May 25, 2017.

**BACKGROUND, DESCRIPTION, & CONDITIONS**

Hal and Martha McAdam have submitted a request for a 5' side yard setback variance to construct a pool enclosure around an existing pool and deck (see attachment #1). The subject site is located on the east side of 61<sup>st</sup> Avenue just north of 4<sup>th</sup> Street at 540 61<sup>st</sup> Avenue (see attachment #2) and is zoned RS-3 (Residential Single-Family up to 3 units/acre).

The subject residential lot is within the Diana Park subdivision which was platted and developed in 1958. When the home on Lot 3 was constructed in 1984, the subject subdivision was zoned R-1 (Single-Family District) which had setbacks of 20' on the front, 15' on the rear, and 10' on the sides. Later in 1985, the subject subdivision as well as several other areas in the county were rezoned from R-1 to RS-3 which has greater setbacks (25' front and rear, 15' sides). The applicant indicates at the time the home was proposed in 1984, the owner chose to justify the home to the north side with a 10' side yard setback line in order to preserve large oak trees which exist on the southern portion of the lot.

When the pool and deck were constructed in 1992, the subject site including the surrounding parcels, had been rezoned to RS-3 (Residential Single-Family up to 3 units/acre). The sideyard setback in the RS-3 zoning district is 15' versus the previous 10' side yard in the R-1 zoning district. The pool was properly permitted and met the 15' setback to the pool. The deck was allowed to be constructed to within 5' of the side or rear property line as allowed by County code. The deck is constructed approximately 10' from the side property line; essentially in line with the side of the grandfathered-in home, and is consistent with current land development regulations which provides a reduce setback for pool decks.

Now, the applicant wishes to cover the entire deck footprint with a screen enclosure. The enclosure, however, is required to meet the 15' side yard setback. The applicant has indicated that locating the pool enclosure 15' from the side (north) property line would put the screen wall of the enclosure at the edge of the pool and join the house at the center of a window. The applicant is now seeking a 5' setback variance to locate the pool enclosure 10' from the side (north) property line.

For many years, setback variances such as the subject request were heard by the Board of Adjustment (BOA) which was a separate body appointed by the Board of County Commissioners with the sole responsibility of hearing zoning variance requests. Because zoning variance requests were rare, and were rarely granted due to the stringent variance review criteria common throughout the state and specified in the County LDRs (land development regulations), the BOA became largely inactive. In 2015, the BCC with the support of staff and no objection from the last BOA chairman, dissolved the BOA and assigned the PZC the responsibility of hearing variance requests (see attachment #5). This is the first variance request filed since 2015 and the first variance request to be heard by the PZC.

The PZC is now to consider the requested variance in light of the variance criteria in Chapter 902 and is to approve, approved with conditions, or deny the request.

## **ANALYSIS**

The subject subdivision, Diana Park, contains lots that range from 85' to 128' wide which conforms to the RS-3 minimum lot width of 80'. The subject property (Lot 3) has a width of 100'. Consequently, the subject lot and surrounding lots have the normal width to meet the application RS-3 setback requirements, including the 15' side yard setback required for pool enclosures throughout the RS-3 district.

The subject home, pool, and deck were properly permitted and constructed in accordance with the 1984 and 1992 approved permits. The result is a legally established non-conforming setback (site-related non-conformity) for the home at 10' from the north property line and a conforming pool and pool deck. The variance request is to allow construction of a pool enclosure to continue the line of the house at 10' from the side property line. The proposed new construction would constitute an addition to the non-conforming residence and as proposed would result in an expansion or extension of the existing non-conforming setback encroachment. Such an expansion of a non-conformity is not consistent with land development regulation section 904.05 (see attachment #4) and would set a precedent for extending and expanding numerous existing non-conformities in the RS-3 district contrary to 904.05.

The applicant is requesting to use an existing grandfathered-in condition, which was properly permitted and legally established, to justify a variance for new construction. If granted, the variance would apply the side yard setback of the previous R-1 zoning district, allow extension of a structure to within 10' of the side property line, expand the degree of the non-conformity, and apply old zoning rules that were changed in 1985 and that are not applicable to other RS-3 property owners.

Please see attachment #1 for related information provided by the applicant to support the variance request. In summary, the applicant has indicated that meeting the 15' RS-3 side yard requirement for the screen enclosure is a hardship and makes enclosing the pool and deck unfeasible placing the desired enclosure at the pool edge rather than at the edge of the existing pool deck.

To grant the variance requested, the PZC must conclude that the circumstances and conditions related to the proposed setback encroachment are unique to the subject property. Such conclusions must be guided by findings based upon review of the request in light of the eight variance criteria contained in section 902.09(6)(a) of the land development regulations (LDRs). No variance may be granted unless the Board finds that the request satisfies all eight of the following criteria.

1. **Special Condition.** The 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;
2. **Action of applicant.** That the special conditions and circumstances do not result from the actions of the applicant or illegal acts of previous property owners.
3. **Special Privilege.** That granting the variance requested will not confer on the applicant any special privilege that is denied by the regulation to other lands, buildings, or structures in the same zoning district;
4. **Unnecessary Hardship.** That literal interpretation of the provisions of the regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the regulations and would constitute an unnecessary and undue hardship upon the applicant;
5. **Minimum Variance Necessary.** That the variance granted is the minimum necessary in order to make possible the reasonable use of the land, building, or structure;
6. **Purpose and Intent Compliance.** That the granting of the variance will be in harmony with the general purpose and intent of these zoning regulations and the Indian River County comprehensive plan;
7. **Detriment to Public Welfare.** That such variance will not be injurious to the surrounding area or otherwise be detrimental to the public welfare; and
8. **Reasonable Use.** That the property cannot be put to a reasonable use which fully complies with the requirements of this ordinance.

It is staff's position that most of the eight criteria are not satisfied by the request. Staff's evaluation is as follows:

1. **Special Condition.** The existing home is considered a legally established non-conformity with a 10' rather than a 15' side yard setback. To allow the screen enclosure to be constructed within a 10' side setback will expand the degree of setback non-conformity on the lot. While the property contains a structure (the residence) that is legally non-conforming, that structure does not constitute a special condition unique to the subject property. Staff is aware of numerous legal non-conforming residential structures on RS-3 zoned lots and the presence of such non-conforming structures is not a factor in applying the current setback standards. Therefore, no special condition exists that is unique to the subject property that justifies the requested variance.

2. **Action of applicant.** While the action of the applicant in 1984 did contribute to the location of the home being 10' from the side property line, the action was consistent with the code at the time. That past legal action, however, does not provide a justification for the applicant to continue using 1984 regulations (see item #3 below).
3. **Special Privilege.** Granting the variance would convey a special privilege to the applicant denied other owners of RS-3 zoned lots by allowing a structure closer to the property line than others in the same zoning district. In fact, granting the variance would set a precedent contrary to long-standing regulations on non-conforming structures. There are a number of older structures in the County that have setback non-conformities. The criteria for what can be done to those structures is specifically stated in Chapter 904 (see attachment #4). That section specifically states that additions to non-conforming structures, such as the proposed pool enclosure, may be permitted **"...provided that such additions are in conformance with all applicable laws and ordinances of the county, do not create non-conforming uses or structures, and do not increase the degree of the existing site-related non-conformity."** Granting the required variance would create an additional non-conformity and expand the degree of an existing non-conformity. Therefore, granting the requested variance would grant a special privilege to the applicant not allowed per Chapter 904 for other RS-3 properties with non-conformities and does not meet the "special privilege" criterion. Thus, the "special privilege" criterion is not met.
4. **Unnecessary Hardship.** The provision of a screen enclosure does not rise to the level of an unnecessary hardship. The proposed screen enclosure could be built to meet the 15' setback (see attachment #6). Although the enclosure location is not preferred by the owner, the option to meet the 15' setback like other RS-3 lot owners is available. Therefore, there is no unnecessary hardship to justify granting the requested variance.
5. **Minimum Variance Necessary.** The applicant is requesting a variance of 5' which is the difference between the 10' and 15' side yard setbacks, so the entire existing deck can be enclosed. It is possible that the screen enclosure could be built without the requested 5' variance, as noted above. Therefore, no variance is necessary for construction of a screen enclosure and the "minimum variance necessary" criterion is not met.
6. **Purpose and Intent Compliance.** The request is not consistent with the proposed intent of the RS-3 zoning district criteria which is to have larger side yard setbacks (15' minimum) and greater separation between homes on lots wider than 80' as compared to the old R-1 district regulations which allowed 10' side yard setbacks. The subject lot is 100' wide and can accommodate new structures and additions that conform to normal RS-3 requirements. Also, as outline above, the variance is contrary to specific provisions of Chapter 904. Therefore, the "purpose and intent compliance" criterion is not met.
7. **Detriment to Public Welfare.** The variance request does not appear to be generally detrimental to the Public Welfare, although if granted will visually impact an adjacent property in perpetuity.
8. **Reasonable Use.** The property can be reasonably used in its current condition or with a conforming screen enclosure, as previously detailed above. Thus, the "reasonable use" criterion is not met.

Because the requested variance does not meet the Chapter 904 prohibition on expanding non-conforming structures, and because it does not meet several of the eight mandatory criteria that must be satisfied in order for the variance to be granted, the request needs to be denied.

### **RECOMMENDATION**

Staff recommends that the Planning and Zoning Commission not grant the following variance.

### **ATTACHMENTS**

1. Application and Related Material
2. Location Map
3. Sketch of Proposed Enclosure
4. Excerpt from Chapter 904
5. Excerpts from Chapter 902
6. Potential Location of Conforming Enclosure

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

BY

  
DYLAN REINGOLD  
COUNTY ATTORNEY

P10 # 92080125-78723

VAR-17-05-01

APPLICATION FOR VARIANCE CONSIDERATION  
INDIAN RIVER COUNTY  
BOARD OF ADJUSTMENT AND APPEALS



NAME: Hal + Martha McAdams DATE: Jan. 16, 2017

ADDRESS: 540 161st Ave Vero Beach FL 32968

TELEPHONE: 772-569-7739 FAX #: \_\_\_\_\_

E-MAIL ADDRESS: Citrusman100@yahoo.com

LEGAL DESCRIPTION: Diana Park Sub., Block 1, Lot 3

In being considered for a variance, the Board of Adjustment and Appeals is required by law, (LDR Section 902.09) to consider the following questions as criteria for granting a variance:

1. Is your situation due to unique circumstances not created by you or illegal acts of previous owners? Explain such circumstances:

See printed page

2. Do special conditions and circumstances exist which are peculiar to your land or structure and which are not applicable to other lands or structures in the same zoning district? Explain such conditions or circumstances:

See printed page

3. Would literal interpretation of the provisions of the Ordinance deprive you of rights commonly enjoyed by other property owners in the same zoning district? Explain such rights:

See printed page

### **Answers to Questions for Variance Consideration**

**Question 1.** When I set out to build my home at this location, we decided to set our home structure at the furthest allowable location on the North side of our property. By locating our home this way we were able to save a 100+ year old Live Oak tree, two Laurel Oaks and a native Palm tree that are still standing and growing today. Had we centered our homes location we would have lost those trees and possibly damaged the roots of an existing 300+ year old Live Oak tree located on the south side of our property. Located on our lot at this time are 13 Oak trees, 9 Palm trees and 1 Pine tree.

**Question 2.** If only allowed to comply with the existing set back, it would not be feasible for the pool to be enclosed. With the existing set back, an enclosure on the north side of the pool would have to stop at the edge of the North side of the pool structure itself instead of the North side of the pool deck. A difference of 5'. This would also have the screened enclosure terminate into the middle of the bedroom window instead of the edge of the home structure.

**Question 3.** We would like to have the right to enclose our pool and decking so that we can enjoy our pool during the warm climates and not have to contend with biting insects, especially those that have the ability to transmit diseases. This is especially important for my wife since she had foot surgery and swimming is the only exercise that doesn't cause pain to her foot. She has 5 pins in her foot that limit her mobility.

4. A variance, as requested, will not permit, establish or enlarge any use or structure which is not permitted in the district. Does your request meet this requirement?

Yes

5. Is the variance the minimum necessary to make possible the reasonable use of land, building, or structure? Explain how the minimum was determined.

Yes. By allowing the variance, we would be able to enclose our entire pool deck and terminate the screen enclosure at the edge of our home structure.

6. How would granting the variance request be in harmony with the comprehensive plan and land development regulations?

There would be a uniformity of structures between our home and the requested new screen enclosure.

7. Would granting the variance be injurious to the surrounding area or be detrimental to the public welfare? Explain.

It would not be injurious or detrimental to the surrounding area. I have questioned my neighbors and no one that I have spoken to has an objection to screened enclosure being built to the edge of the pool deck.

8. Can the property be put to a reasonable use without the granting of the variance? Explain.

Yes, but we would be limited to the use and pleasure of our pool during times when conditions, i.e., biting insects, prohibit us from doing so.

If you can clearly answer yes to the above questions, you are eligible to be considered for a variance and you may submit the application.



The variance request is as follows: to allow for a screened pool enclosure to be built to the edge of the existing pool deck which is at the 10' set back from the property line.

The variance is necessary for the following reasons: to allow the complete pool deck to be utilized with a screen enclosure. Without a variance it is not feasible to enclose the pool area.

Four copies of the plot plan of the lot and variance requested shall be attached to the application and shall include the criteria listed below:

- a. Exact dimensions and locations of existing buildings and structures.
- b. Exact Dimensions and locations of all proposed additions.
- c. Required setbacks
- d. Location of all existing easements
- e. Clearly delineate the specific variances requested

The plot plan shall be on 24" X 36" sheet unless a previous plan has been filed with the Zoning Department.

Please provide names and addresses of all property owners abutting your property:

Mrs Judy Orzechowski 550 61st Ave. Vero Beach 32968  
Mr+Mrs B. Scher 530 61st Ave Vero Beach 32968  
Imagine Schools at South Vero 6000 4th Street V.B. 32968

An \$800.00 fee shall accompany this application.

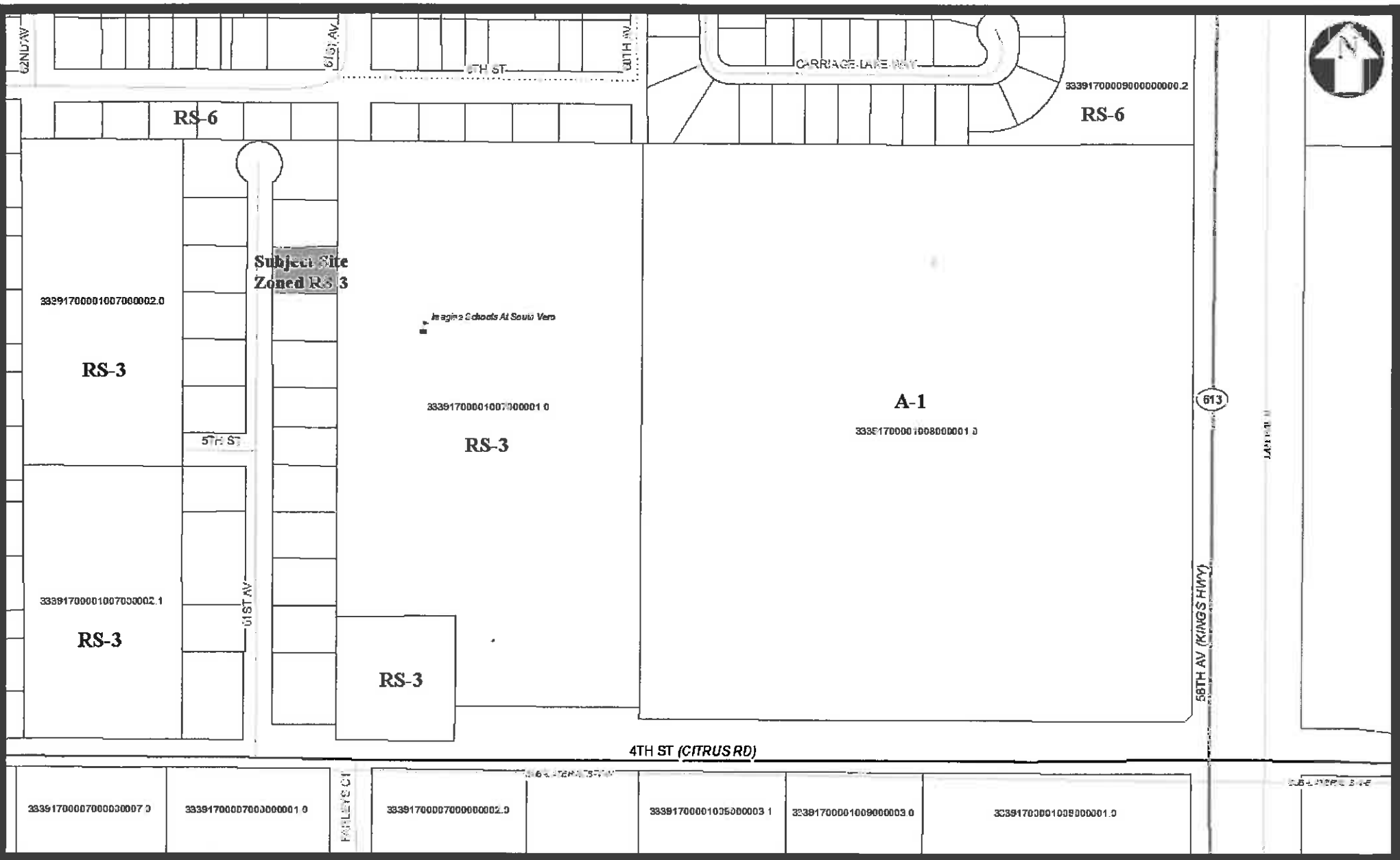
I certify that there are stakes in the ground showing the corners of the structure for which the variance is requested (if applicable).

Copy of a deed or other proof of ownership of the property for which the variance is requested shall accompany this application.

I certify that the statements in this application are true to the best of my knowledge

Hal McAdams  
(Applicant)

_____ Legal Check	_____ Plot Plan Complete	_____ Property Owners Check
_____ Agent Authorization	_____ Dimensions Field Check	_____ Eligibility, Hardship Etc.
_____ Fee Paid	_____ Stakes	





**Section 904.05. Expansion, increase, or change of nonconformities.**

- (1) *Generally.* No nonconformity shall be enlarged, increased, or changed to a different nonconformity, except upon a determination by the director of community development or his designee that the change results in lessening of the degree of the nonconformity.
- (2) *Additions to nonconforming structures.* Additions to nonconforming structures containing conforming uses shall be permitted, if the additions to the structure(s) comply fully with setback and other applicable site-related regulations.
- (3) *Additions to, and development or re-development of, establishments with site-related nonconformities.* Additions to, and development or redevelopment of, structures on property with site-related nonconformities, where the structural additions and associated improvements do not warrant the submittal of a major site plan, may be permitted provided that such additions are in conformance with all applicable laws and ordinances of the county, do not create nonconforming uses or structures, and do not increase the degree of the existing site-related nonconformity. Where an addition or redevelopment proposal warrants the submittal of a major site plan application, all site-related nonconformities shall be terminated and brought into compliance with all applicable regulations of the county, with the following exceptions:
  - (a) Site-related nonconformities pertaining to building encroachments into required setback areas, and
  - (b) Site-related nonconformities created by public right-of-way acquisition.
- (4) *Verifying post right-of-way acquisition status.* Nonconformities, including nonconformities on single-family residential sites, created or increased in degree on a site by public right-of-way acquisition may be authorized by the community development director or his designee upon issuance of a letter verifying the post-acquisition legal nonconformity status of the site.
- (5) *Cure plan required for commercial and multi-family sites where impacts of nonconformities created by right-of-way acquisition require mitigation.* Where right-of-way acquisition by a governmental agency such as Indian River County or the State of Florida from a commercial (includes multi-family) site will result in a nonconformity related to setbacks, open space, stormwater management, parking, landscaping, or buffer width, or will result in an increase in the degree of such a nonconformity that existed prior to the acquisition, such nonconformity or increase in the degree of nonconformity shall be allowed upon approval of a "cure plan" site plan.
  - (a) A cure plan site plan shall identify the following:
    1. Site design changes and site improvements necessary to accommodate the right-of-way acquisition and reduce the degree of or mitigate the impacts of nonconformities. Such design changes and improvements may include but are not limited to parking and driveway additions and modifications, pedestrian and hardscape improvements, landscape and buffer plantings, sign relocations and modifications, and stormwater management system changes.
    2. The parties responsible for installing the cure plan improvements, along with timeframes for completion of the changes and improvements.
  - (b) The cure plan site plan shall be accompanied by a document, in a form approved by the county attorney's office, providing written acknowledgment of cure plan related responsibilities by the parties involved in the acquisition.
  - (c) The community development director or his designee is authorized to approve cure plan site plans and may attach approval conditions to reduce the degree of or mitigate the impacts of nonconformities and/or ensure implementation of the cure plan site plan.

These regulations are intended to authorize non-conformities resulting from right-of-way acquisitions and provide for cure plans used in conjunction with the right-of-way acquisition process. These regulations are not intended to create any obligations beyond those obligations addressed in the right-of-way acquisition process.

**Section 902.05. Role of planning and zoning commission in planning and development.**

- (1) The planning and zoning commission shall act as the designated local planning agency.
- (2) The planning and zoning commission of Indian River County shall have the power to recommend to the board of county commissioners land development regulations, ordinances, and amendments to land development regulations which are designed to promote orderly development and implement the Indian River County Comprehensive Plan.
- (3) The planning and zoning commission shall consider whether or not any proposed amendments to the Indian River County Comprehensive Plan are consistent with the overall growth management goals and objectives of the county, and shall make recommendations regarding all such amendments to the board of county commissioners.
- (4) The planning and zoning commission shall consider whether or not any proposed rezoning requests are consistent with the Indian River County Comprehensive Plan and make recommendations regarding all rezonings to the board of county commissioners.
- (5) The planning and zoning commission shall consider whether or not specific proposed developments conform to the principles and requirements of the county's land development regulations and the comprehensive plan, shall make decisions on development applications, and shall make recommendations to the board of county commissioners based thereon.
- (6) The planning and zoning commission shall keep the board of county commissioners and the general public informed and advised on matters relating to planning and development.
- (7) The planning and zoning commission shall conduct such public hearings as may be required to gather such information for the drafting, establishment and maintenance of the various components of the comprehensive plan, and such additional public hearings as are specified under the provisions of these land development regulations.
- (8) The planning and zoning commission shall review and make decisions regarding applications for preliminary plat and site plan approval.
- (9) The planning and zoning commission shall receive petitions for special exception uses; review these petitions pursuant to the applicable special exception use criteria; receive input at an advertised public hearing; and recommend approval, approval with conditions, or denial of the petitions to the board of county commissioners.
- (10) The planning and zoning commission shall consider whether proposed administrative permit uses requiring planning and zoning commission review and approval conform to the specific use requirements and make decisions related thereto.
- (11) The planning and zoning commission may recommend that the board of county commissioners direct the planning staff to undertake special studies on the location, condition and adequacy of specific facilities. These may include, but are not limited to, studies on housing, commercial and industrial facilities, parks, playgrounds, beaches and other recreational facilities, public buildings, public and private utilities, transportation, parking, and development of regional impact (DRI) applications.
- (12) The planning and zoning commission of Indian River County shall have the power to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of these land development regulations. The decision of the planning and zoning commission is final unless appealed to the board of county commissioners.
- (13) The planning and zoning commission shall interpret these land development regulations at the request of the community development director.
- (14) The planning and zoning commission shall perform any other duties which may be lawfully assigned to it.
- (15) The commission shall have and exercise the powers of the airport zoning commission as specified in F.S. § 333.05, under rules consistent with said section and with the Code of Indian River County.

- (16) The commission shall have and exercise the powers of the board of adjustment, in accordance with sections 902.08 and 902.09.

**Section 902.08. Role of board of adjustment.**

- (1) The board of adjustment shall receive and consider applications for variances from the terms of the county's land development regulations and shall grant such variances as will not be contrary to the public interest, pursuant to the procedures and requirements of the variance section of the land development regulations, section 902.09.
- (2) The board shall have and exercise the powers specified in F.S. § 333.10, relating to airport zoning regulations, under rules consistent with said section and with the Code of Indian River County.
- (3) The planning and zoning commission shall act as the board of adjustment.

**Section 902.09. Variances.**

- (1) *Purpose and intent.* This section is established to provide procedures for reviewing variances by the board of adjustment. A variance runs with the land and is a departure from the dimensional or numerical or other technical requirements of the land development regulations where such variance will not be contrary to the public interest and where owing to conditions peculiar to the property and not the result of the actions of the applicant or his predecessors in title, a literal enforcement of the land development regulations would result in an unnecessary and undue hardship.
- (2) *Approving authority.* The board of adjustment is hereby authorized to grant variances in accordance with the provisions of this section and can attach conditions to variances granted.
- (3) *Type of variance to be allowed.* The board of adjustment shall have the authority to grant the following variances:
  - (a) A variance from the yard area requirements of any zoning district where there are unusual and practical difficulties in carrying out these provisions due to an irregular shape of the lot, topography, or other conditions, provided such variation will not seriously impact any adjoining property or the general welfare.
  - (b) Other technical variances that occur when an owner or authorized agent can show that a strict application of the terms of the land development regulations relating to the use of the land will impose unusual and unique difficulties, but not loss of monetary value alone.
  - (c) De-minimus setback variance. A de-minimus setback variance can be granted automatically at the staff level, under certain circumstances, without board approval. This applies in the following circumstances where the setback variance:
    1. Is for a structure properly permitted where no form-board survey was required;
    2. Is for 0.5 feet or less from the setback required at the time the structure was constructed or erected on the site; and
    3. Is from property line(s) which have not been altered so as to cause or increase the nonconformity.
- (4) *When variances are not allowed.*
  - (a) No variance shall be granted which would permit the establishment or expansion of a use in a zone or district in which such use is not permitted by these land development regulations, or any use expressly or by implication prohibited by the terms of these land development regulations for said district.
  - (b) No variances shall be granted which would permit the establishment or expansion of a special exception use in any zoning district without the approval required in the special exception section, and including specific land use criteria.
  - (c) No variance shall be granted which would permit the establishment or expansion of a use requiring an administrative permit in any zoning district without the approval required in the administrative permit section, and including specific land use criteria.

- (d) No variance shall be granted which relates in any way to a nonconforming use, except as allowed in the nonconformities section.
- (e) No variance shall be granted which modifies any definitions contained within these land development regulations.
- (f) No variance shall be granted which would in any way result in any increase in density above that permitted in the applicable zoning district regulations.

(5) *Procedures.*

- (a) Any property owner may apply for a variance after a decision by the community development director that an existing property condition or a development proposal of such property owner does not comply with the provisions of these land development regulations.
- (b) The applicant must file an application for a variance along with the appropriate fee payable to Indian River County with the planning division. The application shall be in a form approved by the community development director and shall contain the following information:
  - 1. Identification of the specific provisions of these land development regulations from which a variance is sought.
  - 2. The nature and extent of the variance sought; an explanation why it is necessary; and the basis for the variance under section 902.09(3)(a) or (b).
  - 3. The grounds relied upon to justify the proposed variance.
  - 4. A legal description of the property, a copy of the warranty deed for the property, and a detailed plot plan of the property.
- (c) On all proceedings held before the board of adjustment, the staff of the planning division shall review the application and file a recommendation on each item. Such recommendation shall be transmitted to the board of adjustment prior to final action on any item before the board of adjustment, and shall be part of the record of the application.
- (d) Notice of the variance, in writing, shall be mailed by the planning division to the owners of all land which abuts the property upon which a variance is sought, at least seven (7) days prior to the hearing. The property appraiser's address for said owners shall be used in sending all such notices. The notice shall contain the name of the applicant for the variance, a description of the land sufficient to identify it, a description of the variance requested, as well as the date, time and place of the hearing.

(6) *Review by the board of adjustment.*

- (a) In order to authorize any variance from the terms of these land development regulations, the board of adjustment shall determine that the application for variance is complete, that the public hearing has been held with the required notice and that the opportunity has been given for the aggrieved parties to appear and be heard in person or be represented by an attorney at law, or other authorized representatives. The board of adjustment shall also find that all of the following facts exist before granting a variance:
  - 1. That 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.
  - 2. That the special conditions and circumstances do not result from the actions of the applicant or illegal acts of previous property owners.
  - 3. That granting the variance requested will not confer on the applicant any special privilege that is denied by the regulation to other lands, buildings, or structures in the same zoning district.
  - 4. That literal interpretation of the provisions of the regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the regulations and would constitute an unnecessary and undue hardship upon the applicant.
  - 5. That the variance granted is the minimum necessary in order to make possible the reasonable use of the land, building, or structure.

6. That the granting of the variance will be in harmony with the general purpose and intent of the land development regulations, and the Indian River County Comprehensive Plan.
7. That such variance will not be injurious to the surrounding area or otherwise be detrimental to public welfare.
8. That the property cannot be put to a reasonable use in a manner which fully complies with the requirements of these land development regulations.

(b) The following regulations also apply to the authorization of a variance:

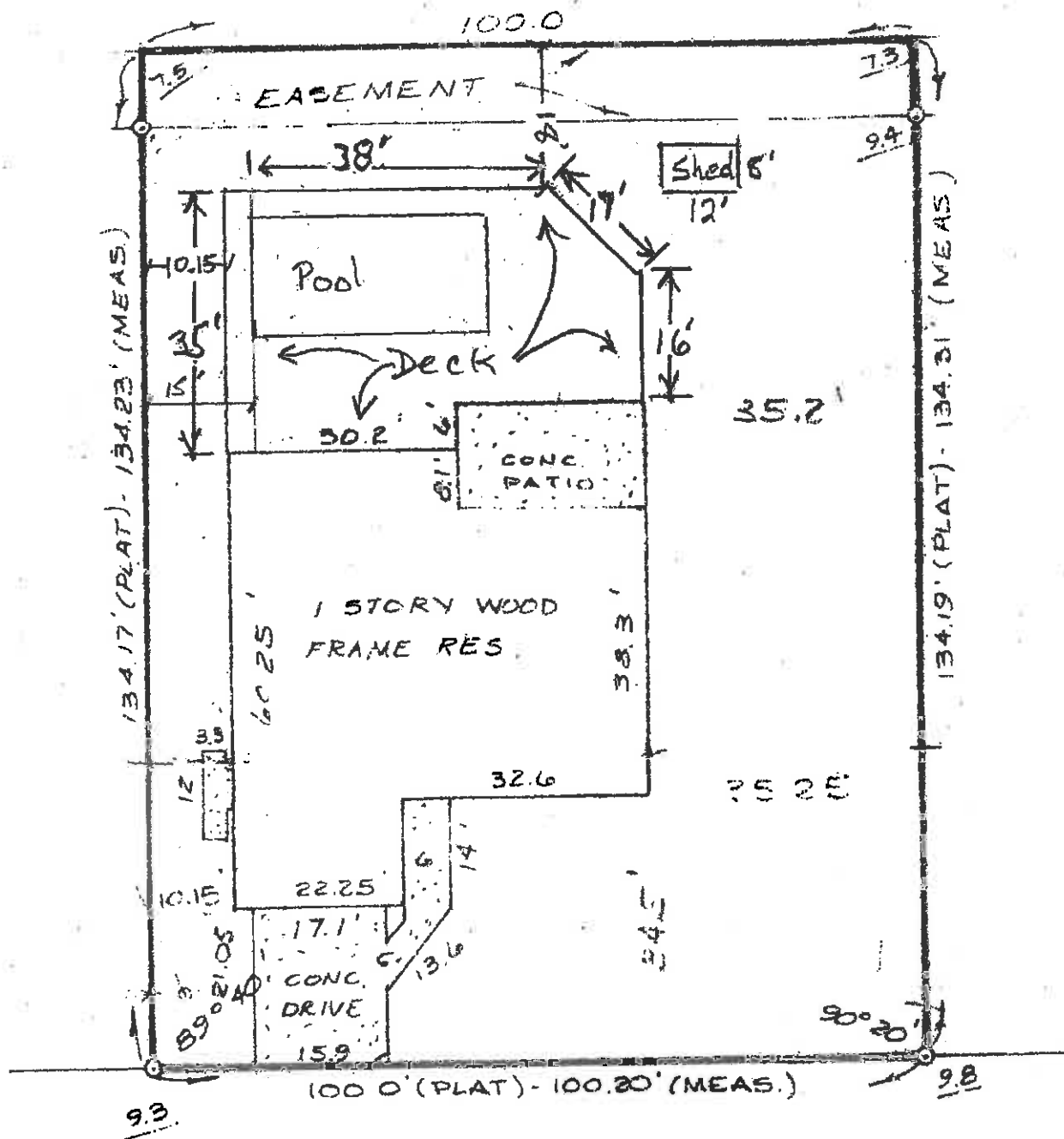
1. No nonconforming use of neighboring lands, structures, or buildings in the same zoning district and non-permitted use of lands, structures, or buildings in other zoning districts shall be considered grounds for the authorization of a variance.
2. No application or request may be reheard or reconsidered unless otherwise directed by a court of competent jurisdiction, or unless new circumstances or information can be presented with a new application.

(c) In granting any variance, the board of adjustment may make the authorization of the variance conditional upon such alternate and additional restrictions, stipulations and safeguards as it may deem necessary to ensure compliance with the purpose and intent of this chapter and consistency with the Indian River County Comprehensive Plan. Violation of such conditions, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter.

Such conditions restrictions, stipulations, and safeguards may include, but are not limited to, time within which the action for which the variance is sought shall be begun or completed or both; the establishment of screening and/or buffering techniques; and provision for extensions or renewals.

- (7) *Decision.* The board of adjustment shall approve, approve with conditions, or deny the application, furnishing the applicant a written statement of the reasons for any denial. A decision of the board of adjustment may be appealed to the board of county commissioners as provided in section 902.07(5).





ASSUMED ELEV. = 100'

61<sup>ST</sup> AVENUE - 60'

ATTACHMENT

6

Lot 3, Block 1, DIANA PARK, accord  
 Plat Book 5 page 62 Public Record