



City of Jacksonville Beach

11 North Third Street
Jacksonville Beach, Florida

Special Meeting Agenda

Board of Adjustment

Tuesday, July 12, 2022

6:00 PM

Council Chambers

MEMORANDUM TO:

Members of the City of Jacksonville Beach Board of Adjustment

The following Agenda of Business has been prepared for consideration and action at a Special Meeting of the Board of Adjustment:

CALL TO ORDER

ROLL CALL

Alexi Gonzalez (Chairperson), Owen Curley (Vice-Chairperson), Dan Elmaleh, John Moreland, Jeff Truhlar

Alternates: Todd Smith, Jennifer Williams

APPROVAL OF MINUTES

CORRESPONDENCE

OLD BUSINESS

NEW BUSINESS

- A. Receive public comment, discuss, consider, and take action, as appropriate, on the Section 70.51 Special Magistrate's Report and Recommendation related to Oceanfront at 10th, LLC (for property addressed 22 10th Avenue South, RE# 176143-0000, legally described as Lot 1, Block 101, Pablo Beach South)

PLANNING DEPARTMENT REPORT

- A. The next scheduled meeting is Tuesday, July 19, 2022. There are four scheduled cases.

COURTESY OF THE FLOOR TO VISITORS

ADJOURNMENT

NOTICE

In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in this meeting should contact the City Clerk's Office at (904) 247-6299 no later than one business day before the meeting or by sending an e-mail to CityClerk@jaxbchfl.net.

cc: City Manager; City Attorney



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Staff Report and Recommendation, July 7, 2022

From the Planning and Development Department

On June 1, 2022, Terrence E. Schmidt, Esquire, Special Magistrate for the Section 70.51, Florida Statutes, proceeding requested by Oceanfront at 10th LLC (“Special Magistrate”) issued his “Report and Recommendation”, recommending that the BOA issue a new order approving Oceanfront at 10th, LLC’s (“Oceanfront”) request for a variance. A copy is attached. In making this recommendation, the Special Magistrate stated that the Board of Adjustment denial was unreasonable, unfairly burdened Oceanfront’s property at 22 10th Avenue South (the “Property”), and was not based upon the proper analysis of “all of the ‘5 Criteria’ in Section 34-286 of the Jacksonville Beach Land Development Code (“LDC”).

A special magistrate’s recommendation is not legally binding on the Board of Adjustment, and it does not carry any precedential value or weight (although it can serve as an indication of hardship). By law, this Board has several options: it can accept the recommendation and reverse its January 19, 2022 denial of the variance applications; it can reject the recommendation thereby



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leaving its earlier decision to remain unchanged; or it can modify the recommendation, if it determines that an alternative should be approved. In addition, the Board of Adjustment may also not take action on it all, and in the absence of any action, the Special Magistrate's recommendation is deemed rejected.

Staff recommends that the Board of Adjustment reject the Special Magistrate's Report and Recommendation on the grounds that (1) the Special Magistrate disregarded or misconstrued various provisions of Section 70.51, and the LDC criteria in finding that the Board of Adjustment's denial was based upon an improper analysis of the City's criteria for granting a variance; (2) the Board of Adjustment's denial of the variance was reasonable and did not unfairly burden the owner's use of its property; and (3) the variance requests do not meet the criteria set forth in Section 34-286 of the City's LDC.

In support of this recommendation to reject the Report and Recommendation, the following is provided.



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- I. **The Special Magistrate disregarded or misconstrued Section 70.51, and also the LDC criteria in finding that the Board of Adjustment’s denial was based on an improper analysis of the City’s criteria for granting a variance.**

A. Although the Special Magistrate correctly notes that a §70.51 special magistrate “does not act as an appellate court to determine whether the government’s action is the correct legal decision”, the Report and Recommendation is rife with evidence that shows that the Special Magistrate exceeded the statutory authority of his position to opine that the Board of Adjustment’s denial was *not* the correct legal decision. See Report and Recommendation at pages 19-22. In fact, no contrary inference can be drawn when the Recommendation section of the Report expressly opines that the denial was “not based on proper analysis...of the criteria. See page 22.

For example, in large part, the Special Magistrate’s recommendation heavily relies on two “similar” variances approved in the same zoning district—one 22 years earlier in 1999 and the other 17 years earlier in 2005. Yet the Criteria #4 set forth in Section 34-286 of the LDC does not suggest that if any similar variances have ever been granted, then a new variance application should/must



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also be granted. Rather, the express language is that the literal interpretation of the Code would deprive the owner of rights commonly enjoyed in the same zoning district (emphasis supplied). Two variance approvals for building setbacks from 17 and 22 years ago hardly constitute rights commonly enjoyed by others in the same zoning district.

Similarly, the Special Magistrate found in regards to Criteria #1 that the “narrow” width of the lot facing First Street is a special condition peculiar to the parcel which is not applicable to other parcels in the same zoning district because the LDC allows both multi-family and townhouse uses, but the owner cannot reasonably build five townhomes without the variance. The express finding in the Report states “(i.e. it is zoned for townhomes but cannot be used for townhomes without the requested variances while other parcels in the same zoning area can). (Criteria 1).” This reasoning is an astounding statement which would essentially gut any meaningful effect of nearly every requirement in the LDC. The test under Criteria #1 is not whether an owner can “practically” or “reasonably” build any of the uses authorized in a zoning district nor as many as desired, but rather whether some special condition or circumstance exists which is peculiar to the parcel and



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not applicable to other parcels in the same district. The width of the lot is not a special condition or circumstance that is “not applicable” to other parcels – the width of the lot is always applicable in every setting and situation, particularly impacting setback regulations, and always will determine whether a proposed building footprint may or may not need a variance. As the Special Magistrate notes on page 1 of the Report, if the parcel were just 27 feet wider, there would be no need for the variance and Mr. Johnston could build either townhomes or condominiums. But the parcel is not 27 feet wider. Moreover, the property is actually wider than most lots in the RM-2 zoning district, not narrower, and thus the width of the lot facing First Street is simply not a “special condition or circumstance peculiar to this parcel and not applicable to others in the same zoning district”.

At no point in the Report and Recommendation does it appear that the Special Magistrate describes the facts which constituted evidence that the Board of Adjustment’s denial was unreasonable or unfairly burdened the Owner’s property. Readers are left to infer that it was enough to simply state that the Owner wanted to develop townhomes rather condominiums.



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Indeed, the Special Magistrate attempted to justify his recommendation by saying that “granting the variance would not [cause] harm to the City”. This is not a standard for the issuance of a variance, nor is it a criterion by which the Board of Adjustment’s denial can be evaluated. More importantly, this is not “the call” the Special Magistrate is empowered to make.

Simply put, the Special Magistrate’s conclusion that Board of Adjustment’s denial was not based on “the proper analysis” of the criteria exceeded the authority conferred on the position by §70.51 and invades the authority of the court. Most importantly, the Special Magistrate misconstrued the LDC criteria, making his Report and Recommendation plainly incorrect.

For this reason, the Report and Recommendation should be rejected.

B. For the record, it must be added here that the Section 70.51 process laid out in the Florida Statutes was severely hampered when the Special Magistrate terminated the proceeding after only conducting the “mediation” portion of the process. At that time, the Special Magistrate advised the parties he had all the information he needed to write his report and recommendation. As a result, the “hearing” portion of the proceeding required under Section 70.51 never took place. In fact,



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however, the Special Magistrate requested substantial information from the parties through a series of email communications over the course of multiple days and weeks. From the City's perspective, this manner of gathering additional information from the parties and the failure by the Special Magistrate to reconvene the parties and hold a hearing did not comply with the requirements of Section 70.51, and negatively impacted the efficacy and fairness of the Section 70.51 proceeding itself, the parties' (as well as the citizen participants') opportunities to be heard and to provide testimony and other evidence in the hearing setting, and ultimately the Special Magistrate's report and recommendation.

II. The Board of Adjustment's denial of the variance was reasonable and did not unfairly burden the owner's use of its property.

Generally, a variance is considered a deviation from the land development regulations which would not be contrary to the public interest when, due to special circumstances or conditions, the literal enforcement of the LDC would result in undue and unnecessary hardship. See Section 34-281, LDC, Variances-Purpose. The Board's authority to grant variances is tied to several



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criteria. An applicant must meet these very specific criteria in order to be granted relief from the applicable regulations. The most important criteria for any variance, and most basic, is whether the need for the variance, i.e. the hardship that would result without the variance, results from actions of the applicant. A self-imposed or self-created circumstance or condition, i.e. hardship, is one where the actions of the applicant, not a condition of the property itself or some other peculiar characteristic of the subject parcel, is the reason the applicant cannot meet the local land development code.

The City of Jacksonville Beach has six specific criteria that any applicant for a variance must meet. Number two states the following:

"2) Special circumstances and conditions do not result from the actions of the applicant;"

This criterion is a simple restating of the general "self-imposed or self-created" language found in both state law and in many local regulations. This is the criterion on which the Board of Adjustment based its decision to deny the variance, finding that the applicant failed to meet criteria number 2. The applicant, at the beginning of the project, voluntarily chose to build the multifamily



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structure in such a way that the project could not be converted into townhomes without seeking a variance for setbacks. A desire to increase monetary gain, or creating a more marketable product for sale or seeking to avoid costly state regulatory requirements for condominium projects, as were presented at the January 19, 2022 hearing by the applicant, do not fall within the scope of the six criteria that the Board can take into consideration when choosing whether to allow someone relief from the Land Development Code. Only those six criteria in the LDC, and the evidence presented regarding those specific criteria should lawfully be considered. The decision to deny based on Criteria #2 was reasonable.

The subject property is located in the Residential Multifamily: RM-2 zoning district. The RM-2 zoning district authorizes a long list of permitted and conditional uses. In the case of this specific property, it could be utilized for many uses as outlined in the RM-2 zoning section of the Land Development Code. Specifically, the applicant chose to construct a multifamily structure, and was approved to do so, was issued a building permit, and has currently built a substantial portion of the structure. This clearly indicates the applicant has a reasonable use of the property. As a



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multifamily structure it can be used as apartments for rental property or even Short Term Vacation Rentals (STVRs), or could be sold as condominiums without any further action by the City. The applicant has, through its own action, achieved a reasonable use. Additionally there are a whole host of other uses allowed by right or by conditional approval that the applicant could have taken advantage of. The decision to deny the variance requests did not unfairly burden the owner's use of the property.

In consideration of a variance, each hearing constitutes a quasi-judicial proceeding and each decision must be determined on the merits of the specific application, the criteria set forth in Section 34-286 of the LDC, the circumstances of the property, and the competent substantial evidence presented during the hearing. The current Board has been consistent in their application of Criterion number two. If special circumstances and conditions result from the actions of the applicant, they do not or cannot overcome Criterion number two. Here, the subject property is not peculiar, and the issues related to the need for the variance were created by the applicant. Denial by the Board was reasonable, followed the Code requirements, was based on competent



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substantial evidence presented at the hearing, and does not unfairly burden the owner's use of the land. As a result, the Special Magistrate's Report and Recommendation should be rejected.

III. The Variance Requests Do Not Meet Criteria for Granting Variances

Because the Special Magistrate chose to address all of the criteria set forth in Section 34-286 of the LDC, Staff includes as part of this Staff Report, the following brief statement regarding the criteria.

For the reasons described previously in this Staff Report and further for the reasons as described in the Staff Report from the January 19, 2022 hearing, attached hereto, Staff is of the opinion that the variance requests do not meet the criteria set forth in Section 34-286, specifically (1) through (5).

As a result, **Staff recommends that the Special Magistrate's Report and Recommendation be rejected** and that the prior decision of the Board made at the hearing held on January 19, 2022, remain unchanged.

Section 70.51, Florida Statutes, Proceeding

Oceanfront at 10th, LLC

v.

City of Jacksonville Beach

Special Magistrate's Report and Recommendation In the Section 70.51, Florida Statutes, Proceeding Initiated by Oceanfront at 10th, LLC following the City of Jacksonville Beach's Board of Adjustment's Denial of its Application for a Variance City BOA #21-100193

INTRODUCTION

Pursuant to Section 70.51(15)(a), Florida Statutes, Terrance E. Schmidt, as special magistrate, held a hearing in this proceeding on Monday, May 9, 2022, after due notice to the parties and all substantially affected persons. The hearing was held for the purpose of determining whether Oceanfront at 10th, LLC ("Owner" or "Applicant") and the City of Jacksonville Beach, Florida, ("City") could resolve their differences arising out of the decision by the City's Board of Adjustment ("Board" or "BOA") to deny a variance application submitted by the Owner for oceanfront property located at 22 10th Avenue South, Jacksonville Beach, Florida ("Property").

In attendance at the May 9, 2022, hearing were Rick Johnston, Joseph J. Van Rooy, Esq., and Lee C. Kellison, Esq., on behalf of the Owner, and Heather Ireland, City Director of Planning and Development, Christian Popoli, Senior Planner, Sandra Robinson, Esq., City Attorney, and Brenna N. Durden, Esq., outside counsel for the City, and several members of the public.

The proceeding began with the mediation portion of the proceeding during which the parties separated into breakout rooms and discussed (i) the history of the Owner's purchase of the Property, (ii) its application for a building permit to construct a 5-unit condominium, (iii) the Owner's almost immediate subsequent application for a variance to convert the condominium to a town home development which required setback variances of 20' on the south side and 7' on the north side of the building, and (iii) the BOA's denial of the variance application on the grounds that the special circumstances alleged by the Owner as the basis for the application resulted from the actions of the

Applicant. The Owner offered to impose deed restrictions on the townhomes that might meet some of the objections that the townhomes would not be maintained to the same standards and consistency as would apply to condominiums. The City was not amenable to the Owner's offer. No other offers were made by either side. Accordingly, the hearing did not result in an agreement between the parties.

Subsequent to the hearing, the special magistrate watched the video of the BOA meeting and reviewed information furnished to him by both parties, including several e-mails regarding the dimensions and characteristics of the three townhomes that City Staff reported as a 3-townhome design alternative available to the Owner, and letters and e-mails sent to the special magistrate by contiguous property owners and interested persons. The special magistrate also reviewed the Zillow listing for the Property as a 5-unit townhome development with a rendering of the development, photographs of the partially constructed building and adjacent high-rise condominiums to the south and north, and a sales listing for a 3-story (including ground-floor 2-car garage), 4,000 gross sq. ft., 2,516 net sq. ft. 3 BR, 4 BA townhome with rooftop deck unit and a listing price of \$3.75M.

The special magistrate has to begin by saying that when he left the hearing, he had a firm belief that he would ultimately recommend that the BOA decision be upheld on the grounds that the Owner knew it would need the requested variances when it bought the property, wrongfully permitted the condominium structure, and then sought the variance after-the-fact. However, after watching the video, reviewing the parties' submissions and e-mail exchanges, and analyzing the entire process in more detail, the special magistrate has ultimately concluded that this is a unique situation in which granting the variance would not only cause no harm to the City or the surrounding neighbors, it would be consistent with the criteria by which the BOA is to judge variance applications and has judged them in the past.

This report and the special magistrate's recommendation is based on the information submitted to and reviewed by him and legal research conducted by him with respect to the issues raised by the parties as discussed in detail below.

THE SECTION 70.51 PROCESS

Section 70.51, Florida Statutes, is entitled Land Use and Environmental Dispute Resolution. Under the statute, if an owner believes that a governmental development order (specifically including an order denying a variance) is unreasonable or unfairly burdens the use of the owner's property, the owner may apply for relief under the statute. Section 70.51(2)(a) and (3).

Under Section 70.51, the special magistrate does not act as an appellate court to determine whether the government's decision is the correct legal decision. Nor does the process create a separate legal cause of action for the owner. Section 70.51(24). Rather, Section 70.51 tolls the time for the owner to bring judicial action so that the special magistrate can assist the government and the owner in determining if there is some mutually agreeable accommodation that can be reached that will avoid costly litigation between them.

The statute requires the special magistrate to first conduct a mediation at a public hearing. "The object of the hearing is to focus attention on the impact of the government action giving rise to the request for relief and to explore alternatives to the development order...." Section 70.51(17)(a)

Section 70.51(17) specifically provides that the special magistrate's "first responsibility is to facilitate a resolution of the conflict between the owner and governmental entities to the end that some modification of the owner's proposed use of the property or adjustment in the development order ... may be reached." Section 70.51(17)(a) However, if the parties cannot reach an acceptable resolution, "the special magistrate shall consider the facts and circumstances set forth in the request for relief and any responses and any other information produced at the hearing in order to determine whether the action by the governmental entity ... is unreasonable or unfairly burdens the real property." Section 70.51(17)(b)(emphasis added)

Section 70.51 specifically authorizes the special magistrate to consider, among other things:

- (a) The history of the real property, including when it was purchased, where it is located, ... and how it was initially used.

* * *

- (c) The history of ... land use controls [on the property]
- (d) The present nature and extent of the real property, including its natural ... characteristics.
- (e) The reasonable expectations of the owner at the time of acquisition ... under the regulations then in effect....
- (f) The public purpose sought to be achieved by the development order ...; whether the development order ... is necessary to the achievement of the public purpose; and whether there are alternative development orders that would achieve the public purpose and allow for reduced restrictions on the use of the property.

* * *

(g) Any other information determined relevant by the special magistrate.”

Section 70.51(19) provides that the special magistrate may, subject to the owner’s consent, “recommend one or more alternatives that protect the public interest served by the development order ... but allow for reduced restraints on the use of the owner’s real property, including but not limited to :

1. An adjustment of land development ... standards.
2. Increases or modifications in the density, intensity or use of areas of development.

* * *

9. Issuance of ... a variance, special exception, or other extraordinary relief” (emphasis added)

The special master’s recommendation is not binding on the parties; however, regardless of whether the governmental entity or owner accepts or rejects the special magistrate’s recommendation, the special magistrate’s determination that “the development order ... is unreasonable or unfairly burdens the use of the owner’s property may serve as an indication of sufficient hardship to support ... variances, or special exceptions to the application of ... [the] ordinances to the subject property” in a subsequent judicial proceeding. Section 70.51(25)(emphasis added); See also Bentley, *Understanding the Florida Land Use and Environmental Dispute Resolution Act*, 37 Stetson L. Rev. 381, 417-18 (2008).

Findings of Fact

Based on the evidence described above, the special magistrate makes the following findings of fact:

1. The Owner bought the Property on November 2, 2020, for \$1.4 million.
2. Prior to purchasing the property, the Owner requested information from William C. Mann, the City’s then Planning & Development Director, who sent a letter dated October 14, 2020, to the Owner, stating in relevant part:
 1. “The subject property is located in a *Residential, multiple family: RM-2* zoning district. A copy of Land Development Code (LDC) Sec. 34-340, our RM-2 district zoning standards is attached for reference.
 2. The permitted uses for the subject property are listed in the attached Sec. 34-340 *RM-2* district standards.”

4. On August 18, 2021, the Owner, Fire Marshall, Public Works Director, Beaches Energy representative, and Mr. Popoli met for a pre-development meeting and reviewed the Owner's proposed development plan. The Owner concedes there was no discussion of converting the project to townhomes at the meeting but contends that he had individually made it known to all of the attendees except Mr. Popoli that he intended to convert the building to townhomes after the building permit was issued. The Owner also contends that Mr. Mann understood that was the Owner's intention. However, the Owner knew none of the individuals at the meeting had the authority individually to approve a conversion of the project from a condominium to a townhome development and that could only be done through a variance application.

5. On September 21, 2021, the Planning Department approved the Owner's Development Plan for the construction of a 3-story multifamily 5-unit condominium on the Property technically fronting on 1st Street under the LDC although the front doors and garage doors of all of the units except for the first unit would front on 10th Avenue South and have 10th Avenue South street addresses. As planned, the building met all of the dimensional requirements of the City's Land Development Code ("LDC") and required no variances. In other words, as a condominium, the building was perfectly suited to the lot under the LDC.

6. On October 21, 2021, the City issued a building permit to construct the proposed 5-unit condominium. A copy of the site plan is attached as Exhibit A.

7. On November 3, 2021, the Owner submitted an Application for Variance, describing the requested variance as:

"[A]s a prerequisite to platting 5 fee simple townhome lots, landowner does request the following:

Front Yard Set Back 13' and Rear Yard Set Back 10'."

The minimum front yard and rear yard setback requirements for townhomes under the LDC were 20' and 30', respectively under LDC §34-340(e)(4) c.1 and §34-340(e)(4) c.3. Thus, the Owner sought to reduce the front yard setback from 20' to 13' and the back yard setback from 30' to 10'.

8. The variance request did not change anything about the Property or the building being constructed on the Property. The need for the variance arose solely because the conversion of the building from a condominium to townhomes changed the "front" of the building under the LDC provisions from 1st Street for the condominium to 10th Avenue south for the townhomes. As a result, the north and south setbacks for the building were designated as 10' side yard setbacks for the building as a condominium

“front” of the building under the LDC provisions from 1st Street for the condominium to 10th Avenue south for the townhomes. As a result, the north and south setbacks for the building were designated as 10’ side yard setbacks for the building as a condominium and, without a variance, 20’ front and 30’ back yard setbacks for the building as townhomes. But whether the building was designated a condominium or townhomes, four of the five units’ front doors and garages would front on 10th Avenue South.

9. Other than having front yards designated under the LDC as being the north side for the building platted as individual townhomes instead of the west side if built as a condominium, the building itself has the same footprint, design and construction elements whether it is built as condominium or a townhome project.¹

10. Accordingly, approval of the variance request would have no other effect than to permit the Owner to sell the units as townhomes and not condominiums.

11. The six Standards Applicable to All Variances under LDC Section 34-286 are as follows:

“In order to authorize any variance from the terms of this Code, the board of adjustment must find that:

(1) Special conditions and circumstances exist which are peculiar to the parcel of land, building or structure, which are not applicable to other parcels of land, structures or buildings in the same zoning district;

(2) Special circumstances and conditions do not result from the actions of the applicant;

(3) Granting the variance will not confer upon the applicant any special privilege denied by the Comprehensive Plan and this Code to other parcels of land, buildings, or structures, in the same zoning district;

(4) Literal interpretation and enforcement of the terms and provisions of this Code would deprive the applicant of rights commonly enjoyed by other parcels of land in the same zoning district, and would work an unnecessary and undue hardship;

¹ The only difference noted by either party was that the electrical line to the condominium would have one central location from which power would be distributed to the 5 individual condominium units while power to the townhomes would be distributed to each unit separately. However, the Owner stated that if the variance were granted, Beaches Energy would approve distributing the power to the individual townhomes from the central location on the plans. Both parties agreed that if the variance were approved, the Owner would have to submit a new development plan for a condominium with revised plans for the electrical distribution to the City.

(5) Grant of variance is the minimum variance that will make possible the reasonable use of the parcel of land, building or structure; and

(6) Grant of variance will be generally consistent with the purposes, goals, objectives, and policies of the Comprehensive Plan and this Code and will not adversely affect adjacent land.

(Ord. No. 7500, § 6.6(F), 8-19-91; Ord. No. 2001-7810, § 1, 7-16-01)”

12. With its application for a variance, the Owner filed Owner’s Statement of Justification and Legal Sufficiency of Variance in which the Owner described its satisfaction of the six standards for approval of a variance in relevant part as follows:

1. “The special condition affecting the Property is the narrow size of the lot.
2. The applicant did not create the shape of the lot.
3. The applicant will not receive any special privileges. In fact, the building and its use will not change at all, only the paperwork filed in the public records and type of ownership conferred on the homeowners will be changed.
4. This is the rare application where no physical change to a structure, its density, height, location or use is being sought . . . We only seek to change what the city recognizes as the front, rear and sides of the building which we would not need to seek if the site was wider. . . .
5. This variance is the minimum variance to avoid the otherwise necessary burden of forever operating a small condominium residence and comply with the increased administrative burden and insurance costs associated therewith as opposed to townhome ownership. . . .
6. As there is no change to the Property, the location of any structure, height, access or use, this variance is consistent with the Comprehensive Plan and Code and will not adversely impact adjacent land.”

13. The Application for Variance was scheduled for a hearing before the Board of Adjustment (“BOA”) on January 19, 2021.

14. Prior to the hearing, the City Staff submitted to the Owner and the BOA a report that discussed the request, the existing conditions of the property, the Staff’s

analysis of the application, and its review of the criteria described below, stating in relevant part as follows”

“Staff Analysis

. . . As noted under the standards below, the requirements for multifamily and townhomes are substantially different. This is due to the fact that multifamily condominiums are not a form of single-family housing, and do not transfer land with ownership. ***When fee simple is included in the design, the code requires different setbacks to accommodate yards and accessory uses typically associated with single family homes, including townhomes.*** As noted in the provided site plans, ***the future owners of these structures, if converted to townhomes, will be close to or exceed maximum lot coverage for each individual lot, and given the exceptionally small yards in the rear and front, practically could not build any form of patio without further variances.***

* * *

. . . While a variance may have been required to build townhomes had the applicant faced the structure towards 1st Street South, the criteria for evaluating a variance request is whether it is the minimum variance required. ***For townhomes to be constructed on this property facing west, a minimum side reduction to the north property line may have been required. Since the under-construction building is facing west, the proposed variance to convert from multifamily to fee simple townhomes is substantially larger in scope and degree of relief.***

Additionally, once subdivided, the proposed townhomes, as designed, would immediately be substandard non-conforming lots for each new owner.

* * *

Review of Criteria

1. . . . Staff does not find that there are circumstances unique to the subject parcel of land. The subject property is a platted lot of record. . . . **There is nothing unique about the lot**, and the structure is under-construction and could have been designed by the applicant differently to accommodate the new proposed use of fee simple townhomes.

2. Staff does find that the circumstances are [a result of actions of] the Applicant. . . . The desire of the applicant to change the use, and sell the property as fee simple lots for townhomes is the reason for the request, not any hardship associated with the land or structure. Staff was unable to find any comparable past variance on oceanfront lots for this type of conversion.
3. Staff finds the proposed variance will confer special privileges. The Owner has the ability to use the property for its intended purpose. Additionally, **they have not demonstrated that they have a hardship. Granting this variance in absence of a hardship would be a special privilege** not extended to other properties in the zoning district.
4. Staff does not find that the literal interpretation of the code would deprive the Applicant of rights and privileges. . . . the applicant can and is using their property under the current zoning. . . . The desire to have more units is not a right.
5. Staff does not find that the requested variances are the minimum variance needed to accommodate the new home. The applicant could do three townhomes, fronting on First Street with a very minimal variance for side yard setbacks. The proposed variance is more substantial, and is unnecessary for the reasonable use of the land, as evidenced by the conforming 5-unit multifamily building under construction.
6. Staff does find that the request is consistent with the comprehensive plan.” (underlined emphasis is in the original, ***bold italicized*** emphasis is added)

15. At the January 19, 2021, hearing, the Owner acknowledged it had designed the building as a “hybrid project” which could be immediately permitted for construction as a condominium and then converted to townhomes under the variance it was seeking and argued to the Board that the variance should be granted primarily because (i) the building would not change in any material physical respect, and the only difference would be the form of unit ownership, (ii) the administrative burdens, insurance costs, and financing obstacles for purchasers would be greater under condominium ownership, (iii) the Owner could have built 10 significantly smaller condominium units within the existing zoning, (iv) the Owner disclosed its intention to build the “hybrid project” to City officials, including the fire marshal, public works department and building official before it was permitted, and (v) the Staff report erroneously stated that the townhome lots would immediately become substandard non-conforming lots.

16. Several contiguous landowners and/or substantially affected persons spoke in opposition to the application. They objected primarily because the Owner had obtained a building permit for a condominium development which did not require any variances knowing he was going to seek to convert the project to townhomes after construction was commenced and knowing that the conversion would require the variances which were the subject of the hearing.²

17. After the chair closed further discussion from the Applicant and the public, she questioned the Senior Planner about the dimensions of the townhomes if the variance was approved and whether the Staff statement that the townhome lots would immediately become substandard non-conforming lots if the variance was granted was accurate. The Senior Planner confirmed that the building would meet all dimension requirements; however, he then stated that a "structural difference" would be that the individual homeowners would be responsible for townhome maintenance and an association would be responsible for condominium maintenance. The chair stated that she did not have as much an issue with "the change" [presumably the conversion from condominium to townhome development], but she did have an issue that would affect her vote if approval of the variance request would create substandard non-conforming lots. (Hearing transcript 2:01 et seq). The Senior Planner did some additional calculations and reported that the statement in the Staff Report was not accurate, and the townhome lots would be conforming lots if the variance was granted.

18. After further discussion among the board members, a motion was made that the application be denied on the grounds that it did not meet the requirements of criteria 2 because the "special circumstances resulted from the actions of the Applicant." The motion was seconded, and the BOA voted 3-2 to deny the application.

19. Thereafter, the Owner filed his written request to institute this Section 70.51 proceeding, asserting the following grounds for relief under the statute:

- (i) The requested variance would not change in any way the construction of the building or its location on the Property;
- (ii) The requested variance would only effect unit owners' form of ownership from owning a condominium unit managed by a condominium

² The most vociferous objector mistakenly believed that the permitted use of the property for "multifamily" use limited that use to the construction of apartments and did not permit the construction of a condominium under that zoning classification. He appeared to want the City to revoke the permit and prohibit the Owner from completing construction of the partially completed condominium building. The chair later clarified that multifamily included both condominiums and apartments, and the building under construction was code-compliant.

association to fee simple ownership of a townhome managed by a homeowner's association;

- (iii) The BOA's denial of the variance application on the grounds that "the circumstances were the result of Applicant's actions" was inconsistent with prior BOA decisions on variance requests;
- (iv) The denial, therefore, violated general principals of the rule of law and specific equal protection clauses of the Florida and Federal Constitutions; and
- (v) Actions taken by the Planning Director in this case, including the drafting of the Staff Report, were unusual, inappropriate, and constituted a violation of the Applicant's due process rights.

20. In support of its request, the Owner alleged the following:

- (i) Two of the six other variance applications presented to the BOA were for swimming pools that could not be built without a variance, and the BOA approved the applications even though the need for the variances arose out of the "actions of the applicants" in deciding to build a swimming pool;
- (ii) It was unreasonable for the Staff and BOA to determine that the lack of a swimming pool was a "hardship" but the requirement that the Applicant follow the administrative procedures to create a condominium was not;
- (iii) It was unreasonable for the Staff and BOA to determine that the Applicant's requested setback variances would confer "special privileges" on the Applicant's Property when townhomes directly across the street had been granted front and rear setback variances at least as great as those sought by the Applicant;
- (iv) The Planning Director was new to the office in March 2021 and unreasonably delayed approving the Applicant's development and/or building permit applications, contended that the variance application was illegal, threatened to shut down construction of the project, wrote the Staff Reports for the January 19, 2022, BOA hearing herself, and included recommendations to "Approve" the other applications but "Disapprove" the Owner's application when previous Staff Reports had not included recommendations from the Staff;

- (v) The statement in the Staff Report that “the proposed townhomes as designed, would immediately be substandard non-conforming lots for each new owner” was untrue and although acknowledged to be wrong at the end of the BOA hearing by the Senior Planner, some of the board members were already set to deny the application; and
- (vi) The statement in the Staff Report that the Staff “was unable to find any past variances on oceanfront lots for this type of conversion” may have been technically true, but it ignored the fact that the LDC doesn’t distinguish between oceanfront lots and non-oceanfront lots.

21. The City’s response essentially argued that the conclusions and recommendations in the Staff Report and the decision by the BOA were all consistent with the LDC and the law. It also contended that each variance application was required to be viewed on its own merits, so that variances granted in years past to properties across the street under the special circumstances considered at the time they were approved did not mean the BOA was required to grant Owner’s request.

THE MEDIATION PORTION OF THE 70.51 PROCESS

At the commencement of the Section 70.51 hearing, the Owner stated that it understood the primary concern of the City and many of the objectors was that individual townhome unit owners might not maintain their units in the same consistent manner that condominium unit owners would be required to do under the statutory requirements applicable to condominiums under Chapter 718, Florida Statutes. Accordingly, it offered to discuss the imposition of deed restrictions on the townhome lots that might satisfy the City and the objectors’ concerns that the building would not be maintained to the same standards that would apply if it were to stay a condominium. The Owner also noted that the townhomes were listed for sale at a purchase price of over \$3.0 million which should satisfy the City and the objectors that the purchasers would be persons of means who would not let the building deteriorate.

The City was not amenable to the Owner’s proposed resolution and essentially took the position that the Owner was not entitled to its requested variances for the reasons stated in the Staff report.

THE DETERMINATION AND RECOMMENDATION PORTION OF THE 70.51 PROCESS

As noted above, Section 70.51 gives the special magistrate broad authority to consider multiple factors relating to the property and development order that are the subject of the proceeding and broad power to determine whether the governmental action is “unreasonable or unfairly burdens the property” and to recommend alternatives to the disputed development order, specifically including the authority to recommend the issuance of a variance or other extraordinary relief. **The special magistrate is not required or directed to act as an appellate authority. He is not charged with the duty of merely determining if the government action is sustainable under the law although he may consider the law as a factor in making his final recommendation. He is specifically charged with the duty of determining if the governmental action is either “unreasonable” or “unfairly burdens the property” under all of the facts and circumstances.** If he finds it is unreasonable or unfairly burdens the property, his duty is to suggest alternatives to the Owner and the government that might lead to an acceptable resolution that avoids time consuming and costly litigation. If he finds it is not unreasonable and does not unfairly burden the property, he must recommend that the development order remain undisturbed, and the proceeding ends, subject to the owner’s right to take action against the governmental entity.

Although the Owner, the City, and the objectors each contend that the special master’s decision in their favor is the only possible reasonable outcome of this proceeding, the decision is not as easy as any contends for the reasons stated below.

POSITIONS OF THE PARTIES

The special magistrate has specifically considered the following positions of the parties to this process in considering all of the facts and circumstances applicable to the Owner’s variance request.

The Owner’s Position

The Owner’s basic position is simple: Converting the building from a condominium with no required variances to a townhome development with the requested variances will, as a practical matter, make no difference because the building will be exactly the same in either event, and the only difference will be the form of ownership of the individual units (i.e., condominium unit ownership vs. fee simple townhome ownership). More specifically and additionally, it is the Owner’s position that its variance request should have been approved because

(i) it made its intent to build a “hybrid project” known to the previous Planning Director, the fire marshal, public works director, and chief building official after it bought the Property but before it submitted its building permit application;

(ii) the 66' X 201' lot dimensions made it a uniquely difficult lot on which to build a townhome development permitted by the zoning code without the requested variances;

(iii) the City has approved greater front yard and back yard variances for townhomes located directly across 1st Street from the Property;

(iv) the BOA approved two setbacks for swimming pools to be constructed in setback areas for "hardships" caused solely by the owners' desire to install a pool in a setback area at the same hearing at which it disapproved the Owner's application for having created the hardship based on its desire to convert the existing condominium building to a townhome development;

(v) the Owner voluntarily permitted a 5-unit condominium to be converted to a 5-townhome development when it could have built a 10-unit condominium without any variances;

(vi) the Staff Report erroneously stated that if the variance request was approved, the townhome lots would immediately become substandard non-conforming lots, and the error was only corrected at the very end of the BOA hearing after discussion had ended and just before the vote;

(vii) the building under construction would not change in any material respect if it were built and units were sold as townhomes instead of condominium units;

(viii) the administrative burdens, insurance costs, and financing obstacles would be significantly less for purchasers of townhomes to be regulated by a homeowners' association than for condominium owners to be regulated by a condominium association; and

(ix) the Planning Director was new to the office in March 2021 and unreasonably delayed approving the Applicant's development and/or building permit applications, contended that the variance application was illegal, threatened to shut down construction of the project, wrote the Staff Reports for the January 19, 2022, BOA hearing herself, and included recommendations to "Approve" the other applications but "Disapprove" the Owner's application when previous Staff Reports had not included recommendations from the Staff.

The Owner contends that for all of the foregoing reasons, the disapproval of its application violated general principles of law and the Owner's equal protection and due process rights under the Florida and Federal Constitution and, more to the point of this proceeding, was unreasonable and unfairly burdened its property.

The City's Position

The City's position is equally simple: For the reasons stated in the Staff Report, the Owner's variance application does not meet the requirements for approval of the application. More specifically and additionally, the City argues that the Owner's

application failed to meet five of the six criteria for approval of a variance request for the following reasons (numbered to correspond to the six criteria):

(i) the lot was platted in 1909, is not unique, and **could have accommodated three townhomes without the need for a variance;**

(ii) **the Owner's purported "special conditions and circumstances" resulted from its own actions** because its desire to covert the condominium to townhomes did not result from any hardship associated with the land, and the Staff was unable to find any comparable past variances on oceanfront lots;

(iii) because **the Owner** can use the land for its original intended purpose (i.e., to build a condominium), it **has not demonstrated any hardship**, and **granting the variance would confer a special privilege to the Owner** not extended to other properties in the zoning district;

(iv) **a literal interpretation of the code does not deprive the Owner of any rights or privileges because he can still build the permitted 5-unit condominium** under the current zoning applicable to the property;

(v) **the Owner could have built three townhomes fronting on First Street with no or minimal side yard setback variances, so the requested variance is not the minimum variance necessary to permit reasonable use of the land.**

The Staff Report did concede that the request met the sixth criteria because it was consistent with the Comprehensive Plan.

At the BOA hearing and at the 70.51 hearing, the City also argued that if the variance were approved, **the individual townhome owners could file individual variance applications in the future to construct patios in the 10' backyard (south side) setback area which would further narrow the setback.** The special magistrate's notes from the unreported hearing reflect that the City's position then was that the maintenance issue raised by the objectors was not a consideration in the BOA's decision or the City's present position. Because the special magistrate had not yet viewed the video of the BOA hearing, he did not know that the Senior Planner had pointed out to the BOA the difference in maintenance responsibilities between condominium ownership and individual townhome ownership.

For all of the foregoing reasons, it is the City's position that the BOA action was legally justified and neither unreasonable nor an unfair burden on the Owner's property.

Finally, the City rejected the Owner's compromise offer to place deed restrictions on the townhomes to meet the consistency and maintenance requirements because the City has no authority or responsibility to enforce private deed restrictions and no desire to do so.

Positions of the Objectors

At the BOA hearing and by the letters or e-mails sent to the special magistrate prior to the 70.51 hearing, contiguous property owners and interested persons who had appeared at the BOA hearing raised the following objections to the variance application:

- (i) because the Owner acknowledged that it intended to seek a variance to build a 5-unit townhome development at the time it applied for a building permit to build a 5-unit condominium, its building permit application was a duplicitous ploy, an intentional bait-and-switch tactic, an underhanded application, an attempt to bamboozle the City and the neighbors, an effort by the developer to have his cake and eat it to, and a deliberate deceitful attempt to circumvent the permitting process;
- (ii) the townhome development would block the ocean view of objectors who lived across 1st Street;
- (iii) the Owner should have requested the variance before he began construction;
- (iv) the multi-family zoning required the Owner to build apartments and not a condominium or townhomes;
- (v) approval of the application would lead others to request similar variances, including the objector who raised this objection;
- (vi) the Owner was simply seeking to increase its profit and sales ability and decrease its expenses by avoiding the costs of complying with the condominium statutes and permitting townhome owners to pay lower townhome association fees;
- (vii) the townhomes might not be maintained to the same standards and uniformity that would be required if the building were a condominium; and
- (viii) the Owner's contention that properties across 1st Street had been granted similar setback variances was a gross misrepresentation of the facts because non-oceanfront properties had nothing to do with the Property.

SPECIAL MAGISTRATE'S REPORT AND RECOMMENDATION

It is important to note up front that in this case, if the lot were 27' wider (which it isn't), the fact that the LDC makes the condominium front on 1st Street and the townhomes front on 10th Avenue would have no impact on the Owner's ability to build the structure now under construction. And not a single objection raised by the City or the objectors to the variance request would prevent the Owner from starting construction of the building as a condominium and converting it to a townhome development. So, as the Owner argues, granting the requested variances would not physically alter the building in any

material respect or otherwise adversely affect the City, the neighborhood, or the objectors in any material respect.

Frankly, the special magistrate was initially put off by the Owner's decision to do a "hybrid development" by applying for a building permit to build a condominium, knowing that once the permit was issued, the Owner would immediately file a variance application to change the building into a townhome development. The special magistrate viewed that as a form of "better to ask forgiveness than permission" development approach. However, ultimately, like the BOA chair, the special magistrate determined that despite the bad optics, the timing of the Owner's variance application was not determinative of its right to approval. If the Owner would have been entitled to a variance if it had applied for one before it applied for a building permit, it should be entitled to one after it applied for a building permit. Nevertheless, the decision to begin construction did narrow the options for compromise that might have otherwise existed and made the special magistrate's work more difficult under the first phase of this Section 70.51 process.

The special magistrate was similarly unimpressed by the Owner's contention that it made its intentions known to the various City officials from the beginning and reasonably relied on their failure to object to his plan. The Owner does not contend that the BOA or the City is estopped from denying it the variances it seeks, and the law would not support such a contention. The Owner simply had no right to rely on acquiescence by any City official to whatever it said to any of them since none of them had any authority to authorize or approve the requested variances on their own.

The legal effect of the BOA having granted similar variances to townhomes and individual homes across 1st Street from the Property is more troubling to the special magistrate. The controlling general law in this District is that a reviewing court may not consider whether other property owners have obtained similar variances. City of Jacksonville v. Taylor, 721 So.2d 1212 (Fla. 1st DCA 1998) However, the court there held that the trial court improperly considered similar variances granted to the applicants' neighbors because that was not a factor to be considered under the City of Jacksonville ordinance code. In this case, Criteria 4 of Section 34-286 of the LDC requires a finding by the BOA that "[l]iteral interpretation and enforcement of the terms and provisions of this Code would deprive the applicant of rights commonly enjoyed by other parcels of land in the same zoning district . . ." (emphasis added) That provision was not in the City of Jacksonville ordinance considered by the court in Taylor. Thus, although the oft-quoted holding in Taylor may appear to make variances granted to others irrelevant, the actual holding based on the facts of the case would appear to support the Owner's contention

that the City Staff and the BOA should have given consideration to the variances granted the townhomes and individual homes across 1st Street under Criteria 4.³

The Owner's voluntary decision to construct a 5-unit condominium/townhome development instead of a 10-unit condominium would appear to have been the correct economic decision, but it eliminated a concession the Owner could have made if the Section 70.51 proceeding had been conducted before the building was under construction. For purposes of this proceeding, it is essentially irrelevant.

Similarly, the Owner's desire to avoid administrative burdens, insurance costs, and financing obstacles for future owners isn't persuasive to the special magistrate. With the price of the units over \$3 million, it is hard for the special magistrate to believe the incidental costs for administration, insurance, and financing are significant factors for buyers looking for oceanfront properties in that price range. And even if the building is developed as townhomes, it will have a homeowners' association to deal with matters such as roof repair or replacement, exterior painting, election processes, covenant enforcement, dispute resolution, etc. See Section 720.301, Florida Statutes. In any event, those expense factors are not material to the special magistrate's decision.

The special magistrate has also not given any consideration to the problems the Owner allegedly had with the Planning Director or Staff. The special magistrate is not basing his decision on assertions of improper motives of anyone, including the Owner, the City Staff, or the BOA. He is simply considering the objective factors presented by the parties.

The objectors' objections were all either misplaced, irrelevant, or speculative. The most repeated objection was that the developer had pulled a fast one or a bait-and-switch on the City by getting the building permit to build the condominium, knowing that it wanted the end product to be townhomes after it obtained the requested variance. But, as noted above and by the chair at the BOA hearing, the timing of the application (or "change" as she described it) is irrelevant to whether the variance should have been granted because timing of the application is not a factor under Section 34-286. And this finding is confirmed by the fact that the City does not contend that the Owner was estopped from submitting its application just because it had already begun construction of the condominium.

³ The swimming pool variances are not the same as the setback variances for the neighboring homes and townhomes. But as applied strictly to the issue of whether the "special circumstances and conditions do not result from the actions of the applicant" under Criteria 2 of Section 34-286, it is true that those owners' decisions to install a pool in a setback area resulted from the applicants' own after-the-fact decision to construct an improvement that could not be constructed without a variance. Accordingly, the BOA's finding that those owners met Criteria 2 but the Owner did not is to some extent inconsistent.

The second most-repeated objection that the building would obstruct the ocean view of the objectors was totally misplaced. The building would cause no more obstruction as townhomes than it will for the permitted condominium.

The objections that the Owner must be just trying to make more money selling the units as townhomes instead of condominiums is also speculative and irrelevant. If the Owner can make more money selling the units as townhomes, it is entitled to do that.

The objection by the objectors, and possibly the City at the BOA hearing, that the townhomes might not be maintained as well as they would be if the building were a condominium (see discussion above) is purely speculative and borderline frivolous. The special magistrate simply rejects the notion that owners of \$3 million units in a 5-unit townhome development won't maintain them as well as they would if it were a 5-unit condominium development.⁴

The City's Staff Report suggests that a possible reason for rejecting the variance application was that there would be too little backyard area on the south side of the Property for individual townhome owners to construct a patio without coming back to the BOA for another variance in the future. The special magistrate is not persuaded by that argument because it would appear that the condominium association could also seek a variance for the same purpose in the same area. Additionally, that objection is simply speculative, and any future variance application would still be subject to BOA determination based on the applicable criteria.

Finally, if the special magistrate goes further and focuses on the legal issue of whether the Owner met the legal requirements for approval of a variance request under LDC Section 34-286, he finds that it did for the reasons stated below.⁵

The very introduction to the Staff Analysis states that "the code requires different setbacks [from multifamily condominiums] to accommodate yards and accessory uses typically associated with single family homes, including townhomes." But the structure on the Property is not a "typical single family home." It is a single three story building with no yards or space between the individual units which have only front yards and back yards.. So, to evaluate the variance application against setbacks for "typical family homes" simply ignores the reality that the owners of units in this building will use them for the same

⁴ And although this fact cuts both ways, only condominiums with more than 20 units are required to file and deliver to a prospective buyer a prospectus meeting the requirements of the Florida Condominium Act under Section 718.504, although other provisions of the act may apply to smaller condominiums.

⁵ There may be an argument that because the BOA's vote to disapprove the Owner's application was based on a motion limited to Criteria 2 ("special circumstances resulted from the actions of the Applicant"), the City has waived any argument that the application failed to meet any of the any other criteria. However, the special magistrate does not so find and, accordingly, has considered the application under all of the criteria of LDC Section 34-286.

purpose and to the same effect whether they own a condominium unit or a townhome when it comes to the small yards that will inevitably be associated with this building.

The Staff Analysis also states that “the under-construction building is facing west.” That statement may be technically correct because the building is permitted as a condominium, but in the real world four of the five units in the building are facing north whether it is permitted as a condominium or a townhome development because that is where the front door and garage door for each of those units faces.

More glaringly, the Staff Report states at page 2 and under Criteria 5, and the City argues in this proceeding, that the Owner could have built three townhomes that would front on 1st Street without seeking a variance or seeking only a nominal one. After reviewing a series of clarifying e-mails from counsel for the parties and the Owner, it is the special magistrate’s understanding and finding that the interior of the three townhome units would each be less than 15’ wide (after taking into account the outside and interior demising firewall thicknesses) and 151’ long. And even worse, the middle townhome would have no windows on either of the 151’ side walls because it would be sandwiched in between the two outside units.

The City points out that there are existing platted lots in the City with permitted residences only 15’ wide, and the Owner points out that those are small square footage off-ocean homes that are not comparable in the least to its condominiums/townhomes. No one has pointed to any of those houses that have no doors or windows on the long sides. Irrespective of which side is right about those other residences, the special magistrate has no difficulty determining that the three-townhome alternative suggested by the City Staff several times in its report is neither economically feasible nor a reasonable or practical alternative use for the Owner’s Property. And that fact is significant to the special magistrate’s analysis of the Staff’s objections to the variance request for the reasons stated below.

The fact is that even though the Property is zoned RM-2 which permits the construction of both townhomes and multifamily, it cannot be practically used for townhomes without the variance requested by the Owner. So, in actual fact, the lot’s narrow width is a “special condition ... which [is] peculiar to the parcel of land, ... which [is] not applicable to other parcels of land, ... in the same zoning district” (i.e., it is zoned for townhomes but cannot be used for townhomes without the requested variances while other parcels in the same zoning area can).(Criteria 1)(emphasis added)

And if the lot’s narrow width is a special condition which justifies consideration for a variance, that “condition” did not result from “actions of the applicant.” (Criteria 2)

Similarly, if the narrow lot is a special condition that did not result from actions of the applicant, the BOA's granting of the variance would not have "confer[red] upon the applicant any special privilege denied by the Comprehensive Plan and this Code to other parcels of land ... in the same zoning district." (Criteria 3)(emphasis added)

The Owner pointed to similar variances granted to other townhome developments or single-family homes across 1st Street, reducing (i) a front setback from 20' to 9.7' and back setback from 30' to 10', (ii) a front setback from 20' to 10' and back setback from 30' to 0', and (iii) side lots less than 10' and rear lots less than 30'. The City does not dispute that those variances were granted but contends they were granted between 1999 and 2005 and would not be granted today.

The Staff Report states that Staff could find no similar variance requests granted for oceanfront property. However, the properties that were granted the above variances all appear to be in the same RM-2 zoning district as the subject property. That zoning district includes both oceanfront and non-oceanfront properties without differentiating between the two. Accordingly, the "interpretation and enforcement of the terms and provisions of this Code would deprive the applicant of rights commonly enjoyed by other parcels of land in the same zoning district." (Criteria 4)(emphasis added).

The question remains under Criteria 4 whether the City Staff's interpretation and, by inference, the BOA's interpretation and enforcement of LDC Section 34-286 (4) works an "unnecessary and undue hardship" on the Owner. The City contends it does not because the Owner may still complete and sell the building units as condominiums. The Owner contends it does because it restricts and prevents the Owner from having the final decision as to whether the units can be sold as condominiums or fee simple townhomes in a zoning district that permits the Owner to build either. Both the Owner and the City focus solely on the word "hardship", but the special magistrate focuses on the words "unnecessary" and "undue" and finds that it is an unnecessary and undue hardship on the Owner for the City to dictate that he must build a condominium in a zoning district that also allows for townhomes.

As to Criteria 5, the City argues that the Owner's requested variance is not the "minimum variance that will make possible the reasonable use of the parcel of land" because the Owner could build the three-townhome development discussed above with a lesser variance or possibly no variance at all. For the reasons stated above, the special magistrate rejects this argument.

Finally, the special magistrate determines that the public interest will be fully served by the approval of the Owner's Request for Variance because there will be no material difference in the physical structure or its effect on the immediate neighborhood and no practical difference between the building constructed as a townhome

development or a condominium, and the City should have no greater right to compel the owner to construct and sell the units as condominium units under the unique facts of this case than it would have if the Property were of a sufficient width to permit the Owner to build either a condominium or a townhome development.

RECOMMENDATION

Based on all of the foregoing, the special magistrate concludes that the BOA's development order disapproving the Owner's Application for Variance was not based on a proper analysis of either Criteria 2 alone (if the BOA is limited to the grounds stated in the motion to disapprove the Application) or all of the 5 Criteria for which disapproval was recommended by the City Staff and was unreasonable and unfairly burdens the Owner's Property by depriving the Owner of the right to determine whether the building can be developed and marketed as a townhome development rather than a condominium. Accordingly, the special magistrate recommends that the City or the BOA, as appropriate, reconsider the BOA decision disapproving the Owner's Variance Application and enter a new development order, approving the variance request to reduce the front yard/north setback from 20' to 13' and the back yard/south setback from 30' to 10'.

Pursuant to Sections 70.51(19) and (21), this recommendation is subject to the Owner's consent and approval by the City.

Dated: June 1, 2022



TERRANCE E. SCHMIDT, ESQ.
SPECIAL MAGISTRATE
1200 Riverplace Blvd.
Suite 850
Jacksonville, Florida 32207

State of Florida
Department of Legal Affairs
The Capitol PL-01
Tallahassee, Florida 32399-1050

"10TH S. MULTI-FAMILY" 22 TENTH AVE. SOUTH JACKSONVILLE BEACH, FL 32250

ISSUED FOR PERMIT AND
CONSTRUCTION
08.20.2021
82263461.000005

- 1. ALL DIMENSIONS ARE IN FEET AND INCHES.
- 2. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
- 3. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
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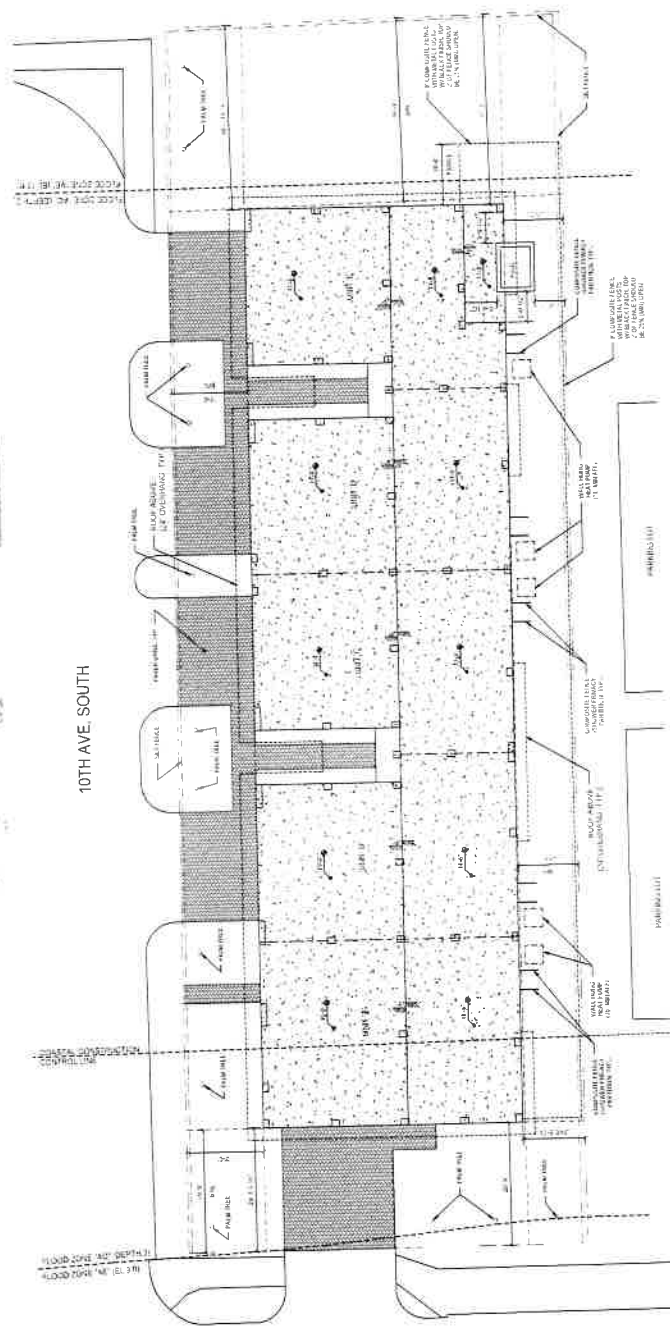
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EX. A

SHEET LIST	
NO.	DESCRIPTION
1	10TH SOUTH MULTI-FAMILY
2	10TH SOUTH MULTI-FAMILY
3	10TH SOUTH MULTI-FAMILY
4	10TH SOUTH MULTI-FAMILY
5	10TH SOUTH MULTI-FAMILY
6	10TH SOUTH MULTI-FAMILY
7	10TH SOUTH MULTI-FAMILY
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100	10TH SOUTH MULTI-FAMILY



COLLIN SPELTZ
ARCHITECTURE
(904) 980-1133
10000 W. 10TH AVE. SOUTH, SUITE 100
JACKSONVILLE BEACH, FL 32250
www.speltzarchitect.com

Project Number	82263461.000005
Date	AUG 20, 2021
Author	Colin Speltz
Checker	Colin Speltz
Scale	As indicated

10TH SOUTH MULTI-FAMILY

TITLE SHEET

A 100



City of Jacksonville Beach • 11 North Third Street • Jacksonville Beach FL 32250

BOA#21-100185

Zoning: RM-2
RE: 176143-0000
Legal: Lot 1, Block 101, Lands Laying East of the Bulkhead, Pablo Beach South.
Address: 22 10th Avenue South.

Request

Section(s): 34-340(e)(4)c.1 for a front yard setback of 13 feet in lieu of 20 feet minimum; and 34-340 (e)(4)c.3, for a rear yard setback of 10 feet in lieu of 30 feet minimum to allow for the conversion of a 5 multi-family structure units into fee simple townhomes

Exiting Conditions

The Subject property is an existing lot of records (circa 1909) adjacent to the ocean bulkhead, located in the Residential Medium Density future land use category, and currently zoned Residential Multifamily: RM-2. The property measures 66 feet in width and 201 feet in depth along the north property line and 202 feet in depth along the south property line. The lot area is noted on the provided survey as 13,268 square feet.

The property is currently under construction as 5 multifamily units, permitted in 2021, as multifamily in the RM-2 zoning district. As a multifamily structure it meets all the dimensional standards for RM-2, as noted further in the report. The multifamily standard is different than that of the fee simple townhouse standards. The property is adjacent to the ocean, which does place some restrictions on the ocean side of the property with regards to setbacks and structures that can be built within 30 feet of the Coastal Construction Line as defined by the state Department of Environment Protection and FEMA. Additionally, Per Sec. 34-340(e)(3)(c)3 of the Land Development Code, Multifamily structures on oceanfront lots are required to designate the easterly yard as their rear yard.

Previous Variances: No previous variances found.

Staff Analysis

As noted previously, the subject property is currently permitted and in construction as a 5 unit conforming multifamily structure. The structure currently meets the requirements for the dimensional standards under the RM-2 zoning district. As noted under the standards below, the requirements for multifamily and townhouses



City of Jacksonville Beach • 11 North Third Street • Jacksonville Beach FL 32250

are substantially different. This is due to the fact that multifamily condominiums are not a form of single family housing, and does not transfer land with ownership. When fee simple land is included in the design, the code requires different setbacks to accommodate yards and accessory uses typically associated with single family homes, including townhomes. As noted in the provided site plans, future owners of these structures, if converted to townhomes will be close to or exceed for maximum lot coverage for each individual lot, and given the exceptionally small yards in the rear and front, practically could not build any form of patio without further variances.

In the case of a typical single family zoning, such as the RS-2 zoning district, the range of allowable uses are limited to those associated with single family and accessory uses. This is the highest and best use of the property. In the case of the RM-2 zoning district, there are a wide range of uses allowed, as demonstrated by the fact that the current approvals for the building under construction did not require any rezoning, variance or conditional use approval.

While it is true the existing partial building, as designed, would need relief under the code to allow the conversion into 5 fee simple townhouses, the current multifamily use and structure did not. While a variance may have been required to build townhomes had the applicant faced the structure towards 1st Street South, the criteria for evaluating a variance request is whether it is the minimum variance required. For townhouses to be constructed on this property facing west, a minimum side yard reduction on the north property line may have been required. Since the under-construction building is facing west, the proposed variance to convert from multifamily to fee simple townhomes is substantially larger in scope and degree of relief.

Additionally, once subdivided, the proposed townhomes, as designed, would immediately be substandard non-conforming lots for each new owner.

Minimum Dimensional Standards

Multifamily:

- Minimum lot area: Five thousand (5,000) square feet, plus one thousand (1,000) square feet for each unit in excess of two (2), except that the gross density shall not exceed forty (40) units an acre.
- Minimum lot width: Seventy-five (75) feet at the building line and a minimum of thirty-five (35) feet at the street.
- Minimum yards:
 - Front yard: Twenty (20) feet.



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- Side yard: Ten (10) feet for each side yard, except when the lot is a corner lot. For a corner lot, the side yard on the corner shall be twenty (20) percent of the lot width or ten (10) feet, whichever is greater, except the side yard is never required to exceed twenty (20) feet.
 - **Rear yard: Thirty (30) feet. For oceanfront lots, the rear yard shall be the yard adjacent to the ocean, or the easterly yard, and the front yard shall be the westerly yard, or yard opposite the rear yard.**
- Floor area: Multiple family dwelling unit shall contain the following minimum square feet of conditioned living area excluding garages, carports and breezeways.
 - One bedroom unit—Seven hundred (700) square feet.
 - Two bedroom unit—Nine hundred (900) square feet.
 - Three bedroom unit—One thousand one hundred (1,100) square feet.
 - This square footage requirement shall also apply to units sold as condominiums.
- Maximum lot coverage: Sixty-five (65) percent.
- Height: Thirty-five (35) feet.

Townhouses:

- Minimum lot area:
 - Interior: One thousand five hundred (1,500) feet.
 - Exterior: Two thousand five hundred (2,500) feet.
- Minimum lot width:
 - Interior: Fifteen (15) feet.
 - Exterior: Twenty-five (25) feet.
- Minimum yards:
 - Front yard: Twenty (20) feet.
 - Side yard:
 - Interior: None.
 - Exterior: Ten (10) feet.
 - Corner: The side yard on a corner lot shall be twenty (20) percent of the lot width or ten (10) feet, whichever is greater, except the side yard is never required to exceed twenty (20) feet.
 - Rear yard: Thirty (30) feet.
- Floor area: Townhouse units shall contain the following minimum square feet of conditioned living area, excluding garages, carports and breezeways.
 - One bedroom unit—Seven hundred (700) square feet.
 - Two bedroom unit—Nine hundred (900) square feet.



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- Three bedroom unit—One thousand one hundred (1,100) square feet.
 - This square footage requirement shall also apply to units sold as condominiums.
- Maximum lot coverage: Sixty-five (65) percent.
- Height: Thirty-five (35) feet.
- Separation. No more than six (6) townhouse units shall be constructed contiguous to each other without an open space separation of at least twenty (20) feet between structures.

Review of Criteria

1. **Special conditions and circumstances exist which are peculiar to the parcel of land, building or structure, which are not applicable to other parcels of land, structures or buildings in the same zoning district;**

Staff does not find that there are circumstances unique to the subject parcel of land. The subject property is a platted lot of record. Its current dimensions allow for the use of the property under the RM-2 zoning district to construct a wide ranges of structures and uses. There is nothing unique about the lot, and the structure is under-construction and could have been designed by the applicant differently to accommodate his new proposed use of fee simple townhomes.

2. **Special circumstances and conditions do not result from the actions of the applicant**

Staff does find that circumstances are a result of the applicant. The subject property is not a substandard lot under the RM-2 zoning district. The current structure is a conforming structure under the RM-2 zoning district, as a multifamily structure, which it was designed and permitted as. The desire of the applicant to change the use, and sell the property as fee simple lots for townhomes is the reason for the request, not any hardship associated with the land or structure. Staff was unable to find any comparable pat variance on oceanfront lots for this type of conversion.

3. **Granting the variance will not confer upon the applicant any special privilege denied by the comprehensive plan and this Code to other parcels of land, buildings, or structures, in the same zoning district**

Staff finds that the proposed variance will confer special privileges. The owner has the ability to use the property for its intended purpose. Additionally they



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have not demonstrated that they have a hardship. Granting this variance, in absence of a hardship, would be a special privilege not extended to other properties in the zoning district.

4. Literal interpretation and enforcement of the terms and provisions of this Code would deprive the applicant of rights commonly enjoyed by other parcels of land in the same zoning district, and would work an unnecessary and undue hardship

Staff does not find that literal interpretation of the code would deprive the applicant of rights and privileges. As demonstrated by the current building under construction, the applicant can and is using their property under the current zoning. The desire to have more units is not a right. Practical limitations exist on all property, and the owner is not denied the rights to build and use their property in any number of ways outlined under the RM-2 zoning district.

Based on the provided application and analysis stated in this report, it is the recommendation of the Planning and Development Department that Variance 21-100185 be approved.

5. Grant of variance is the minimum variance that will make possible the reasonable use of the parcel of land, building or structure

Staff does not find that the requested variances are the minimum variance needed to accommodate the proposed new home. As previously mentioned in the staff analysis. The applicant could do three townhomes, fronting on first street, with a very minimal variance for side yard setbacks. The proposed variance is more substantial, and is unnecessary for the reasonable use of the land, as evidenced by the conforming 5 unit multifamily building under construction.

6. Grant of variance will be generally consistent with the purposes, goals, objectives, and policies of the comprehensive plan and this Code and will not adversely affect adjacent land.

Staff does find that the request is consistent with the comprehensive plan. The applicant is not requesting any deviations from the established future land use designation policies and is consistent with the Goals Objectives and Policies of the adopted comprehensive plan.



City of Jacksonville Beach • 11 North Third Street • Jacksonville Beach FL 32250

Staff Recommendation

Per Section 34-282 of the Land Development Code; based on the provided application and analysis stated in this report, The Planning and Development Department recommends **DENIAL of BOA#21-100193**

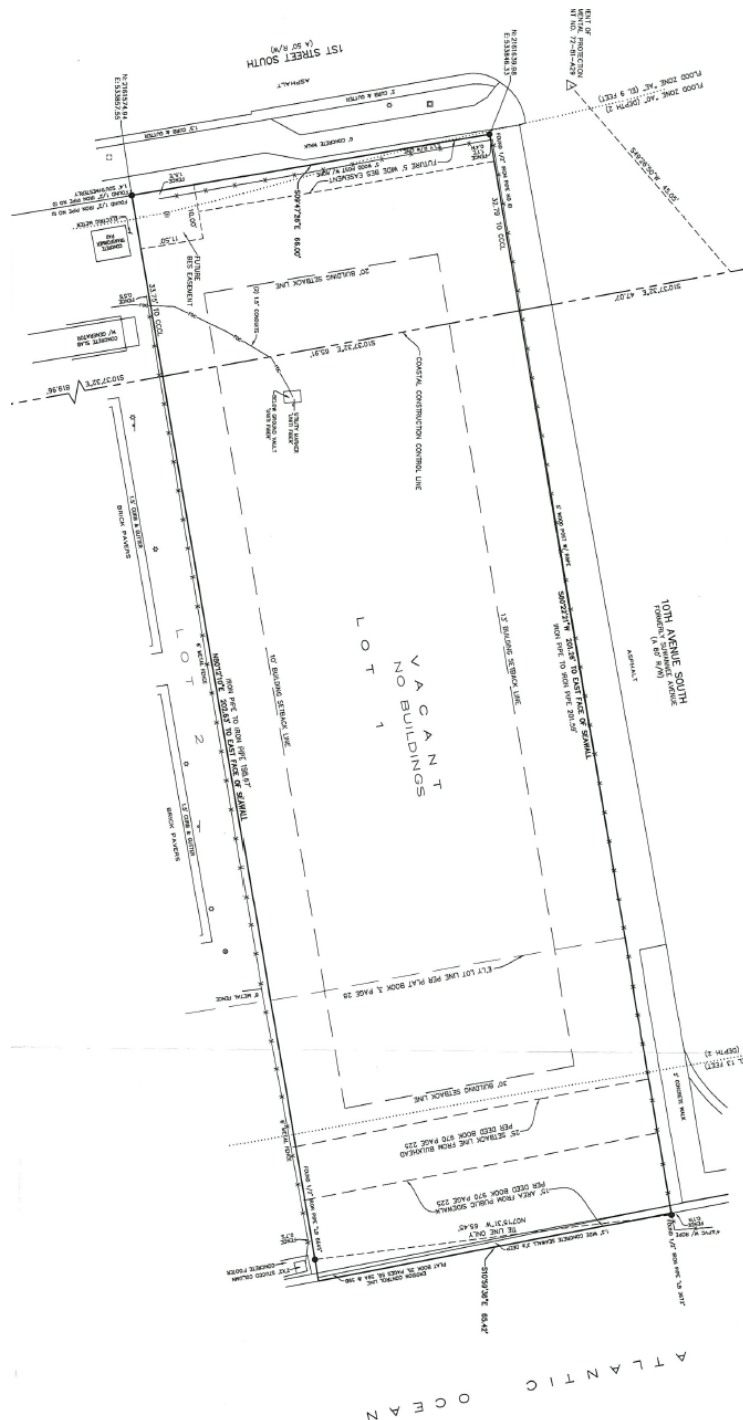
Location Map (property boundaries are reprehensive only)





City of Jacksonville Beach • 11 North Third Street • Jacksonville Beach FL 32250

Existing Survey





APPLICATION FOR VARIANCE

BOA No. 21-100193
HEARING DATE 1-19-22

This form is intended for submittal, along with the required documents, for all requests for variances from the requirements of the City of Jacksonville Beach Land Development Code, Article 6, Section 6.6 Variances. The Planning and Development Director will evaluate an application for a variance for sufficiency within five (5) days of receipt. If the application is found to be complete, the Jacksonville Beach Board of Adjustment at their earliest meeting following appropriate public notice of the request will schedule it for review, public hearing and a decision.

REQUIRED DOCUMENTATION

1. Accurate, to-scale boundary survey prepared by a registered land surveyor that shows the location of all existing improvements.
2. Survey, plat or new site plan showing all proposed additions and/or improvements added to the drawing, to scale (on 11" x 17" paper or smaller).
3. Proof of ownership (copy of deed or current property tax notification).
4. Copy of any previous variance and/or conditional use approval letters.
5. If applicant is not owner, notarized written authorization from owner is required.
6. Non-refundable processing fee of \$500.00 (due at the time of application submittal).
7. Completed application.

RECEIVED
09:15
NOV - 4 2021

APPLICANT INFORMATION

PLANNING & DEVELOPMENT

Applicant Name: Oceanfront @ 10th LLC **Telephone:** (904) 219-5003
Mailing Address: 9741 Baymeadows Rd #103 **E-Mail:** rjohnston.mec@gmail.com
Jacksonville Florida 32256
Agent Name: Rick Johnston **Telephone:** _____
Mailing Address: 9741 Baymeadows Rd #103 **E-Mail:** _____
Jacksonville Florida 32256
Landowner Name: Oceanfront @ 10th LLC **Telephone:** (904) 219-5003
Mailing Address: 9741 Baymeadows Rd #103 **E-Mail:** rjohnston.mec@gmail.com
Jacksonville Florida 32256

Please provide the name, address and telephone number for any other land use, environmental, engineering architectural, economic or other professionals assisting in the application on a separate sheet of paper.

VARIANCE DATA

Street address of property and Real Estate Number: 22 10th Ave S, Jacksonville Beach 32250
Legal description of property (Attach copy of deed): see attached 176143-0000
Description of requested variance (example: front yard setback of 17ft in lieu of 20ft, lot coverage, reduce required off-street parking spaces, etc.) (Attach a separate sheet if necessary).
as a prerequisite to platting 5 fee simple townhome lots, landowner does request the following:
Front Yard Set Back 13' and Rear Yard Set Back 10'

AFFIDAVIT

I, Rick Johnston, being first duly sworn, attest that I am applying for a variance pursuant to Article 6, Section 6.6 of the Jacksonville Beach Land Development Code for the property described above; that all answers to questions in this application, the submitted boundary survey and other supplementary documents attached to and made part of this application are true and accurate to the best of my knowledge and belief. Furthermore, I understand that failure to submit accurate information as requested above may be grounds for denial of my request and/or subsequent building permit applications.

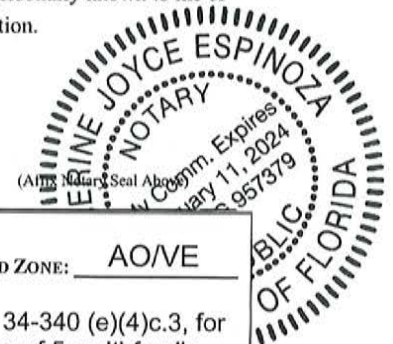
Rick Johnston Oceanfront @ 10th / Rick Johnston Mgr
APPLICANT SIGNATURE PRINT APPLICANT NAME

11/3/21
DATE

STATE OF FLORIDA, COUNTY OF DUVAL:

This instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 03 day of November, 20 21, by Rick Johnston, who is personally known to me or produced FLORIDA DRIVER LICENSE as identification.

Katherine Joyce Espinoza
NOTARY PUBLIC SIGNATURE
PRINT NOTARY NAME



THIS BOX FOR OFFICE USE ONLY, GO TO NEXT PAGE

CURRENT ZONING CLASSIFICATION: RM-2 FLOOD ZONE: AO/VE
CODE SECTION (s):
34-340(e)(4)c.1 for a front yard setback of 13 feet in lieu of 20 feet minimum; and 34-340 (e)(4)c.3, for a rear yard setback of 10 feet in lieu of 30 feet minimum to allow for the conversion of 5 multi-family units into townhomes

VARIANCE APPLICATION STANDARDS AND CONDITIONSBOA No. 21-100193

Section 34-281 Purpose. Variances are deviations from the terms of the LDC, which would not be contrary to the public interest when owing to special circumstances or conditions; the literal enforcement of the provisions of the LDC would result in undue and unnecessary hardship.

DEC 15 2021

Section 34-286. Standards applicable to all variances. In order to authorize any variance from the terms of this code, the Board of Adjustment must find that the following criteria have been met. To assist the Board in making this finding, please complete the blanks on the form below.

Standard	Applies? Yes/No	Circumstances/ Explanation
Special conditions and circumstances exist which are peculiar to the parcel of land building or structure, which are not applicable to other parcels of land, structures or buildings in the same zoning district.	yes	see Attached
Special circumstances and conditions do not result from the actions of the applicant.	yes	see Attached
Granting the variance will not confer upon the applicant any special privileges denied by the comprehensive plan and this code to other parcels of land, buildings, or structures, in the same zoning district.	yes	see Attached
Literal interpretation and enforcement of the terms and provisions of this code would deprive the applicant of rights commonly enjoyed by other parcels of land in the same zoning district, and would work an unnecessary hardship.	yes	see Attached
Grant of variance is the minimum variance that will make possible the reasonable use of the parcel of land, building or structure.	yes	see Attached
Grant of variance will be generally consistent with the purposes, goals, objectives, and policies of the comprehensive plan and this Code and will not adversely affect adjacent land.	yes	see Attached

**STATEMENT OF JUSTIFICATION AND
LEGAL SUFFICIENCY OF VARIANCE**

RECEIVED
21-100193
DEC 15 2021

The property (the "Property") subject to this application is long and narrow, being 65.5 feet wide, located in the RM-2 district between the thirteen story Costa Verano high rise condominium to the South, 10th Street and the twelve story Marabella high rise condominium to the North, the ocean to the East, and 1st Street to the West. A five (5) unit permitted and code compliant multi-family building is currently being constructed on the Property.

Without any change to the building being constructed, its height, access or use, this variance would allow residential units to be sold as townhomes rather than condominiums. The building being constructed complies with the code setbacks, but if the individual units were to be recognized as a townhome project without this variance, the twenty-foot (20') front setback and thirty-foot (30') rear setback would apply to what is now side yards and leave only fifteen feet (15') for the building. By adjusting the setbacks as requested, there will be no change to the physical structure being built, the use or access, this variance would simply reduce the administrative burden of future residents living in the five (5) units of complying with condominium regulations, lower insurance costs and increase opportunities for financing the units - all without any change to the physical structure, use or access.

1. The special condition affecting this Property is the narrow size of the lot. It is 65.5 feet wide. The building, as being constructed, complies with the code. This variance to front and rear yard setbacks does not change any physical feature of the building but allows the city to recognize 10th Street rather than 1st Street as the front yard and allows the units to be sold as townhomes which will save the owners administrative and insurance costs.

2. The applicant did not create the shape of the lot, such being the special circumstance being addressed herein.

3. The applicant will not receive any special privileges, in fact the building and its use will not change at all, only the paperwork filed in the public records and type of ownership conferred to the homeowners will be changed.

4. This is the rare application where no physical change to a structure, its density, height, location or use is being sought. The exact same building will be constructed, with the same access, density, height and use. We only seek to change what the city recognizes as the front, rear and sides of the building which we would not need to seek if the site was wider. The literal enforcement will cause applicant hardship that would be avoided if the site were wider.

5. This variance is the minimum variance to avoid the otherwise necessary burden of forever operating a small condominium residence and comply with the increased administrative burdens and insurance costs associated therewith as opposed to townhome ownership – all without

change to the structure being built, the location on the Property, use or access. It is simply a change to the paperwork that will improve the lives of the future residents.

6. As there is no change to the Property, the location of any structure, height, access or use, this variance is consistent with the Comprehensive Plan and Code and will not adversely impact adjacent land.

RECEIVED
21-100193
DEC 15 2021

PLANNING & DEVELOPMENT

21-100193

THIS DOCUMENT PREPARED
BY AND RETURN TO:

JOSEPH J. VAN ROOY, ESQUIRE
JOSEPH J. VAN ROOY, P.L.
9471 BAYMEADOWS ROAD, SUITE 103
JACKSONVILLE, FL 32256

Doc Stamps \$9,800.00

CORPORATE WARRANTY DEED

THIS CORPORATE WARRANTY DEED is made as of the 2nd day of November 2020, by **ECKSTEIN INVESTMENTS LLC**, a Delaware limited liability company, whose address is 2660 West Park Drive, Suite #2, Paducah, Kentucky 42001, hereinafter called "Grantor", to **OCEANFRONT AT 10TH, LLC**, a Florida limited liability company, whose address is 9471 Baymeadows Road, Suite 103, Jacksonville, Florida 32256, hereinafter called "Grantee" (Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of organizations).

W I T N E S S E T H:

Grantor, in consideration of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration paid by Grantee, the receipt and sufficiency being hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargains, sells, aliens, remises, releases, conveys and confirms to Grantee, Grantee's heirs and assigns, as appropriate, forever, the property situate in Duval County, Florida, described herein (the "Property").

Lot 1, Block 101, Pablo Beach South, according to the map or plat thereof, as recorded in Plat Book 3, Page(s) 28, of the Public Records of Duval County, Florida, together with all of that certain parcel of land lying immediately to the East of said Lot 1 as shown on said plat and extending easterly from said Lot 1 to the easterly extremity of the concrete bulkhead or seawall heretofore constructed by the City of Jacksonville Beach, Florida along the shore of the Atlantic Ocean as may be embraced between the easterly prolongation of the North and South boundary lines of said Lot 1, if extended easterly to intersect with said seawall.

(22 South 10th Avenue, Jacksonville Beach, Florida 32250 – RE# 176143-0000)

SUBJECT, however to all covenants, conditions, restrictions, reservations, limitations, easements, taxes for the current year and all subsequent years, and to all applicable zoning ordinances and/or restrictions and prohibitions imposed by governmental authorities, if any.

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

AND, Grantor hereby covenants with said Grantee that Grantor is lawfully seized of said land in fee simple; that Grantor has good right and lawful authority to sell and convey said land, and hereby specially warrants the title to said land and will defend the same against the lawful claims of all persons claiming by, through or under Grantor.

21-100193

IN WITNESS WHEREOF, Grantor has executed this Corporate Warranty Deed as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

Witness 1 Sign: [Signature]
Witness 1 Print: David E. Lawri

ECKSTEIN INVESTMENTS LLC, a
Delaware limited liability company

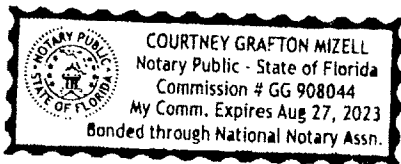
Witness 2 Sign: [Signature]
Witness 2 Print: KARLEEN CURTIS

By: [Signature]
John P. Eckstein, Manager

STATE OF FLORIDA)
COUNTY OF DUVAL)

The foregoing instrument was acknowledged before me by means of (check one) ☒ physical presence or ☐ online notarization, this 2 day of November 2020, by John P. Eckstein, the Manager of Eckstein Investments LLC, a Delaware limited liability company, on behalf of the company. He (check one) ☐ is personally known to me, or ☒ produced FL Driver License as identification.

[NOTARIAL SEAL]



Notary: Courtney Mizell
Print Name: Courtney Mizell
Notary Public, State of Florida
My commission expires: Aug. 27, 2023

OCEANFRONT AT 10TH LLC
9471 BAYMEADOWS RD STE 103
JACKSONVILLE, FL 32256

Primary Site Address
22 S 10TH AVE
Jacksonville Beach FL 32250

Official Record Book/Page
19441-01941

22 S 10TH AVE

Property Detail

RE #	176143-0000
Tax District	USD2A
Property Use	0000 Vacant Res < 20 Acres
# of Buildings	0
Legal Desc.	For full legal description see Land & Legal section below
Subdivision	03201 PABLO BEACH SOUTH
Total Area	13786

The sale of this property may result in higher property taxes. For more information go to [Save Our Homes](#) and our [Property Tax Estimator](#). 'In Progress' property values, exemptions and other supporting information on this page are part of the working tax roll and are subject to change. Certified values listed in the Value Summary are those certified in October, but may include any official changes made after certification. [Learn how the Property Appraiser's Office values property.](#)

Value Summary

Value Description	2021 Certified	2022 In Progress
Value Method	CAMA	CAMA
Total Building Value	\$0.00	\$0.00
Extra Feature Value	\$0.00	\$0.00
Land Value (Market)	\$1,193,010.00	\$1,193,010.00
Land Value (Agric.)	\$0.00	\$0.00
Just (Market) Value	\$1,193,010.00	\$1,193,010.00
Assessed Value	\$1,193,010.00	\$1,193,010.00
Cap Diff/Portability Amt	\$0.00 / \$0.00	\$0.00 / \$0.00
Exemptions	\$0.00	See below
Taxable Value	\$1,193,010.00	See below

Taxable Values and Exemptions – In Progress

If there are no exemptions applicable to a taxing authority, the Taxable Value is the same as the Assessed Value listed above in the Value Summary box.

County/Municipal Taxable Value
No applicable exemptions

SJRWMD/FIND Taxable Value
No applicable exemptions

School Taxable Value
No applicable exemptions

Sales History

Book/Page	Sale Date	Sale Price	Deed Instrument Type Code	Qualified/Unqualified	Vacant/Improved
19441-01941	11/2/2020	\$1,400,000.00	WD - Warranty Deed	Qualified	Vacant
15871-01059	2/29/2012	\$850,000.00	SW - Special Warranty	Unqualified	Vacant
15304-00899	7/8/2010	\$100.00	WD - Warranty Deed	Unqualified	Vacant
12416-01298	3/30/2005	\$2,750,000.00	WD - Warranty Deed	Qualified	Improved
06708-02146	5/25/1989	\$100.00	WD - Warranty Deed	Unqualified	Improved
06199-02280	9/9/1986	\$100.00	WD - Warranty Deed	Unqualified	Improved
05382-00650	7/27/1981	\$100.00	WD - Warranty Deed	Unqualified	Improved

Extra Features

No data found for this section

Land & Legal

Land

LN	Code	Use Description	Zoning Assessment	Front	Depth	Category	Land Units	Land Type	Land Value
1	0142	RES OCEAN HD 20-60 UNITS PER AC	JRM-2	65.00	208.00	Common	65.00	Front Footage	\$1,193,010.00

Legal

LN	Legal Description
1	3-28 04-35-29E .3
2	PABLO BEACH SOUTH
3	LOT 1 BLK 101,
4	LANDS LYING E THEREOF TO BULKHEAD

Buildings

No data found for this section

2021 Notice of Proposed Property Taxes Notice (TRIM Notice)

Taxing District	Assessed Value	Exemptions	Taxable Value	Last Year	Proposed	Rolled-back
Gen Govt Beaches	\$1,193,010.00	\$0.00	\$1,193,010.00	\$9,639.90	\$9,724.46	\$9,277.44
Public Schools: By State Law	\$1,193,010.00	\$0.00	\$1,193,010.00	\$4,324.90	\$4,247.12	\$4,174.10
By Local Board	\$1,193,010.00	\$0.00	\$1,193,010.00	\$2,658.57	\$2,681.89	\$2,565.93
FL Inland Navigation Dist.	\$1,193,010.00	\$0.00	\$1,193,010.00	\$37.84	\$38.18	\$36.51
Jax Bch USD2A	\$1,193,010.00	\$0.00	\$1,193,010.00	\$0.00	\$0.00	\$0.00
Jax Beach	\$1,193,010.00	\$0.00	\$1,193,010.00	\$4,724.28	\$4,765.72	\$4,558.37
Water Mgmt Dist. SJRWMD	\$1,193,010.00	\$0.00	\$1,193,010.00	\$270.47	\$272.84	\$261.15
Urban Service Dist2	\$1,193,010.00	\$0.00	\$1,193,010.00	\$0.00	\$0.00	\$0.00
			Totals	\$21,655.96	\$21,730.21	\$20,873.50
Description	Just Value	Assessed Value	Exemptions	Taxable Value		
Last Year	\$1,182,636.00	\$1,182,636.00	\$0.00	\$1,182,636.00		
Current Year	\$1,193,010.00	\$1,193,010.00	\$0.00	\$1,193,010.00		

2021 TRIM Property Record Card (PRC)

This PRC reflects property details and values at the time of the original mailing of the Notices of Proposed Property Taxes (TRIM Notices) in August.

Property Record Card (PRC)

The PRC accessed below reflects property details and values at the time of Tax Roll Certification in October of the year listed.

2021**2020****2019****2018****2017****2016****2015****2014**

- To obtain a historic Property Record Card (PRC) from the Property Appraiser's Office, submit your request here: 

More Information

[Contact Us](#) | [Parcel Tax Record](#) | [GIS Map](#) | [Map this property on Google Maps](#) | [City Fees Record](#)

21-100193

[Department of State](#) / [Division of Corporations](#) / [Search Records](#) / [Search by Entity Name](#) /

Detail by Entity Name

Florida Limited Liability Company
OCEANFRONT AT 10TH, LLC

Filing Information

Document Number L20000329482
FEI/EIN Number 85-3756154
Date Filed 10/23/2020
State FL
Status ACTIVE

Principal Address

9471 BAYMEADOWS ROAD, SUITE 103
JACKSONVILLE, FL 32256

Mailing Address

9471 BAYMEADOWS ROAD, SUITE 103
JACKSONVILLE, FL 32256

Registered Agent Name & Address

VAN ROOY, JOSEPH J
9471 BAYMEADOWS ROAD, SUITE 103
JACKSONVILLE, FL 32256

Authorized Person(s) Detail

Name & Address

Title MGR

JOHNSON, RICHARD J
9471 BAYMEADOWS ROAD, SUITE 103
JACKSONVILLE, FL 32256

Annual Reports

Report Year	Filed Date
2021	04/08/2021

Document Images

04/08/2021 -- ANNUAL REPORT	View image in PDF format
10/23/2020 -- Florida Limited Liability	View image in PDF format

CITY OF JACKSONVILLE BEACH
Application Tracking Action Log Maintenance1/06/22
10:20:12

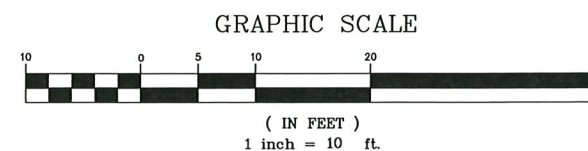
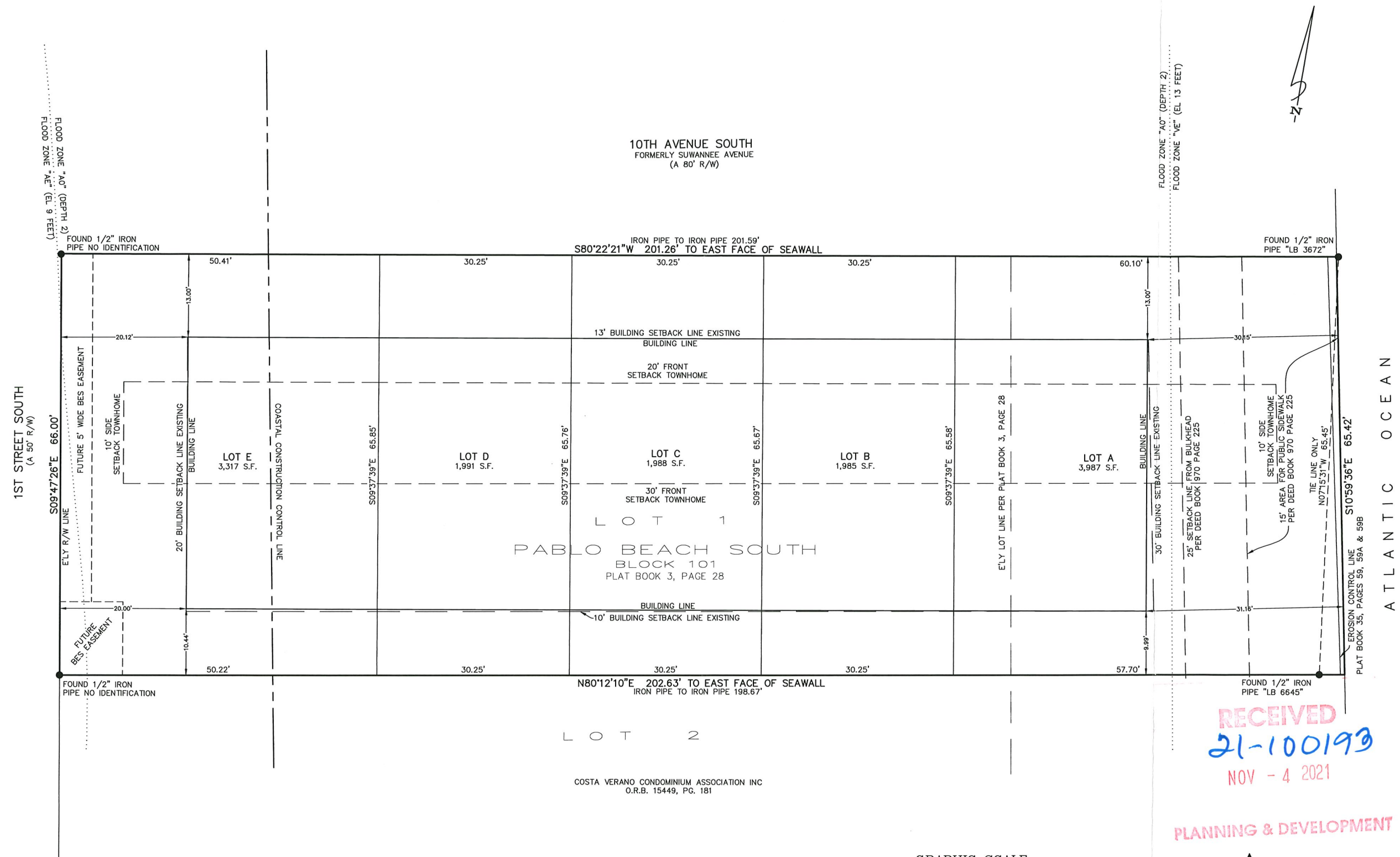
Application number : 21 00100139
Application type : SITE DEVELOPMENT PLAN REVIEW
Address : 22 S 10TH AVE
Revision/Path/Step/Seq/Agency: E 01 00 PLANNING 247-6231
Type information, press Enter.

Action date : 9/21/21
Action by : CP POPOLI, CHRISTIAN
Action code : ASP APPROVED SENIOR PLANNER
Time spent (hours) : .00
Correction report item . . : Y Y=Yes, N=No
1=Add new comment 2=Change comment 4=Delete comment

Opt	Seq	Comments	Print
-	1.000	Development Plan approved. Property may not be subdivided in the future. Overall height limited to 35 feet, as determined by the Building Official.	-
-	2.000		-
-	3.000		-
-	4.000		-

F3=Exit F9=Add standard comment F12=Cancel

Reference BOA 21-100193

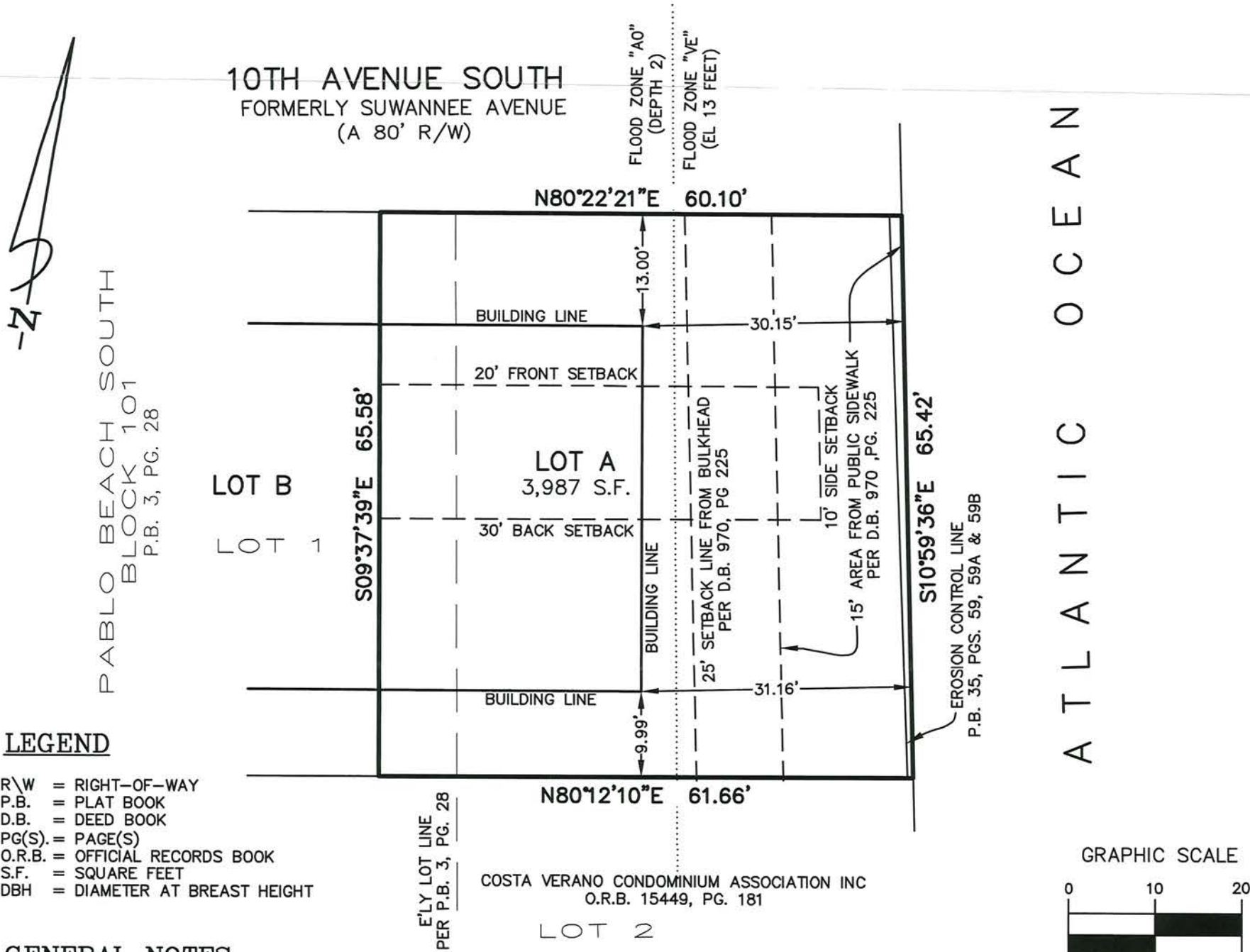


PROPOSED LOT A

MAP SHOWING A PLOT PLAN

LOT A, OCEANFRONT AT 10TH

A PORTION OF LOT 1, BLOCK 101, AS SHOWN ON THE PLAT OF PABLO BEACH SOUTH, RECORDED IN PLAT BOOK 3, PAGE 28 OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, TOGETHER WITH A PORTION OF SECTION 4, TOWNSHIP 3 SOUTH, RANGE 29 EAST, CITY OF JACKSONVILLE, DUVAL COUNTY, FLORIDA.



LOT A

JOB NO. 2021-945 LOT A

DRAFTER EJC

DATE 10/14/21

SCALE 1"=20'

CHECKED BY: MICHAEL J. COLLIGAN, P.S.M. CERT. NO. 6788

THIS MAP OR SURVEY MEETS THE STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES, UNLESS OTHERWISE SHOWN AND STATED HEREON.

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Clary&Associates
PROFESSIONAL SURVEYORS & MAPPERS
LB NO. 3731
3830 CROWN POINT ROAD
JACKSONVILLE, FLORIDA 32257
(904) 260-2703
WWW.CLARYASSOC.COM

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NOV - 4 2021

PLANNING & DEVELOPMENT

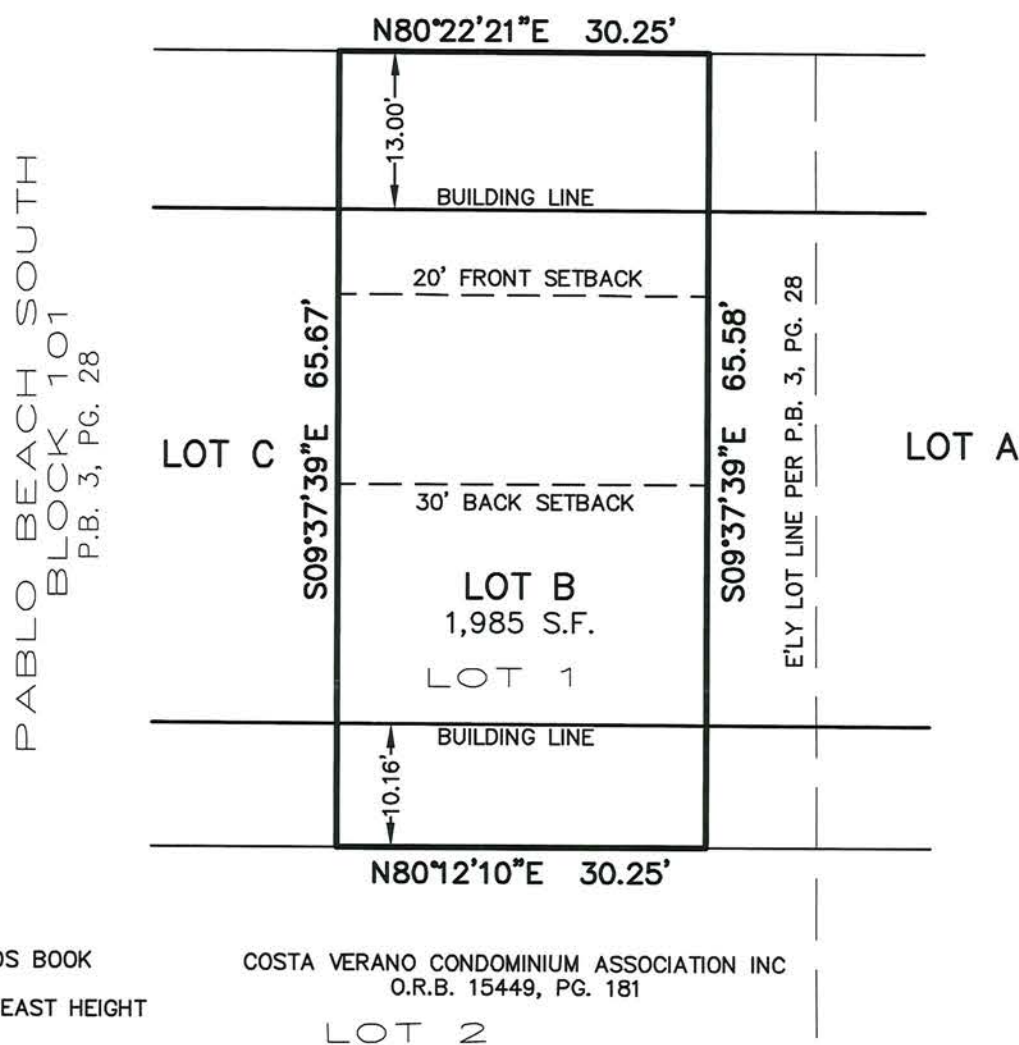
PROPOSED LOT B

MAP SHOWING A PLOT PLAN

LOT B, OCEANFRONT AT 10TH

A PORTION OF LOT 1, BLOCK 101, AS SHOWN ON THE PLAT OF PABLO BEACH SOUTH, RECORDED IN PLAT BOOK 3, PAGE 28 OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, LYING IN SECTION 4, TOWNSHIP 3 SOUTH, RANGE 29 EAST, CITY OF JACKSONVILLE, DUVAL COUNTY, FLORIDA.

10TH AVENUE SOUTH
FORMERLY SUWANNEE AVENUE
(A 80' R/W)



LEGEND

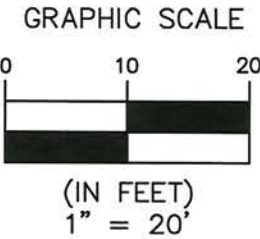
R\W = RIGHT-OF-WAY
P.B. = PLAT BOOK
D.B. = DEED BOOK
PG(S). = PAGE(S)
O.R.B. = OFFICIAL RECORDS BOOK
S.F. = SQUARE FEET
DBH = DIAMETER AT BREAST HEIGHT

GENERAL NOTES

1. BEARINGS SHOWN HEREON ARE BASED ON THE EASTERLY R/W LINE OF 1ST STREET SOUTH AS N 13°27'39\" W. (STATE PLANE COORDINATE SYSTEM, FLORIDA EAST ZONE NAD 1927.
2. THIS MAP DOES NOT REPRESENT A BOUNDARY SURVEY.
3. THIS DRAWING MAY HAVE BEEN ENLARGED OR REDUCED FROM THE ORIGINAL. UTILIZE THE GRAPHIC SCALE AS SHOWN.
4. THIS SURVEY WAS MADE WITHOUT THE BENEFIT OF A TITLE COMMITMENT.
5. CROSS REFERENCE: SURVEY BY CLARY & ASSOC. FILE NO. SP-3481.

ZONING REGULATIONS:

ZONED: RM-2
FRONT YARD: 20'
SIDE YARD: 10' (CORNER LOT MIN. 20% =13')
REAR YARD: 30'
MAXIMUM LOT COVERAGE: 65%
BUILDING HEIGHT: 35'
TREES: 1 SHADE TREE (OR 3 PALM TREES) PER 3000 S.F. LOT
-(2\" DBH & 10' TALL OR 8' TALL TO BASE OF PALM FRONDS)



LOT B

JOB NO. 2021-945 LOT B
DRAFTER EJC
DATE 10/14/21
SCALE 1\"=20'

THIS MAP OR SURVEY MEETS THE STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES, UNLESS OTHERWISE SHOWN AND STATED HEREON.
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CHECKED BY: MICHAEL J. COLLIGAN, P.S.M. CERT. NO. 6788

RECEIVED
21-100193
NOV - 4 2021

PROPOSED LOT C

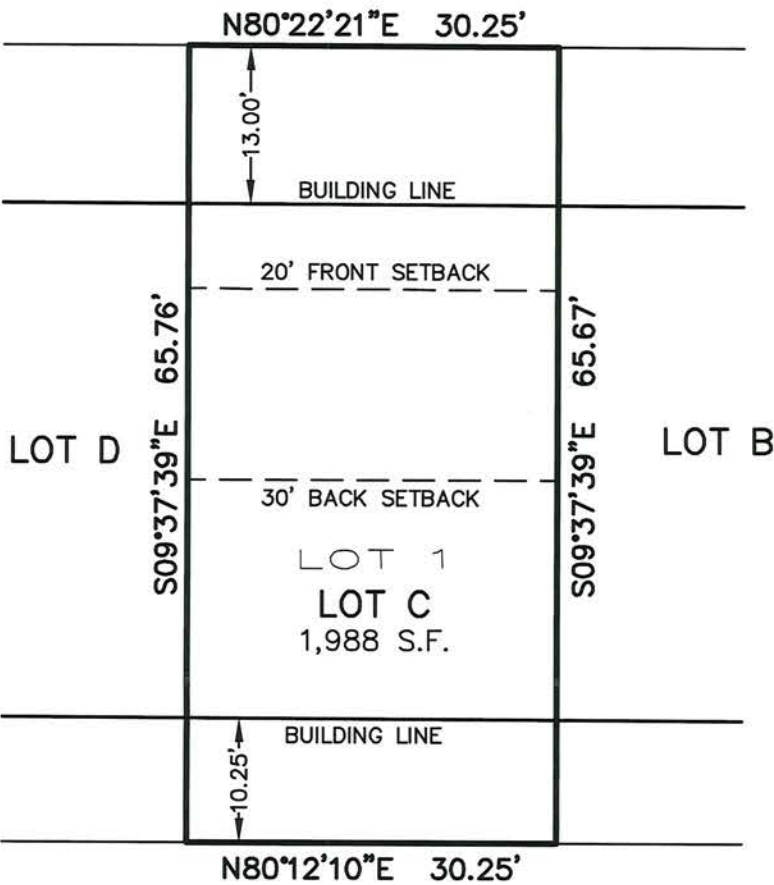
MAP SHOWING A PLOT PLAN

LOT C, OCEANFRONT AT 10TH

A PORTION OF LOT 1, BLOCK 101, AS SHOWN ON THE PLAT OF PABLO BEACH SOUTH, RECORDED IN PLAT BOOK 3, PAGE 28 OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, LYING IN SECTION 4, TOWNSHIP 3 SOUTH, RANGE 29 EAST, CITY OF JACKSONVILLE, DUVAL COUNTY, FLORIDA.

10TH AVENUE SOUTH
FORMERLY SUWANNEE AVENUE
(A 80' R/W)

PABLO BEACH SOUTH
BLOCK 101
P.B. 3, PG. 28



LEGEND

- R\W = RIGHT-OF-WAY
P.B. = PLAT BOOK
D.B. = DEED BOOK
PG(S). = PAGE(S)
O.R.B. = OFFICIAL RECORDS BOOK
S.F. = SQUARE FEET
DBH = DIAMETER AT BREAST HEIGHT

COSTA VERANO CONDOMINIUM ASSOCIATION INC
O.R.B. 15449, PG. 181

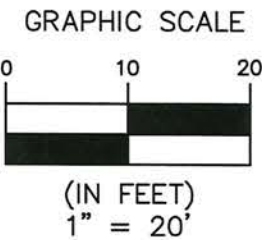
LOT 2

GENERAL NOTES

1. BEARINGS SHOWN HEREON ARE BASED ON THE EASTERLY R/W LINE OF 1ST STREET SOUTH AS N 13°27'39" W. (STATE PLANE COORDINATE SYSTEM, FLORIDA EAST ZONE NAD 1927.
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4. THIS SURVEY WAS MADE WITHOUT THE BENEFIT OF A TITLE COMMITMENT.
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ZONING REGULATIONS:

- ZONED: RM-2
FRONT YARD: 20'
SIDE YARD: 10' (CORNER LOT MIN. 20% = 13')
REAR YARD: 30'
MAXIMUM LOT COVERAGE: 65%
BUILDING HEIGHT: 35'
TREES: 1 SHADE TREE (OR 3 PALM TREES) PER 3000 S.F. LOT
-(2" DBH & 10' TALL OR 8' TALL TO BASE OF PALM FRONDS)



LOT C

JOB NO. 2021-945 LOT C

DRAFTER EJC

DATE 10/14/21

SCALE 1"=20'

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CHECKED BY: MICHAEL J. COLLIGAN, P.S.M. CERT. NO. 6788

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NOV - 4 2021

PROPOSED LOT D

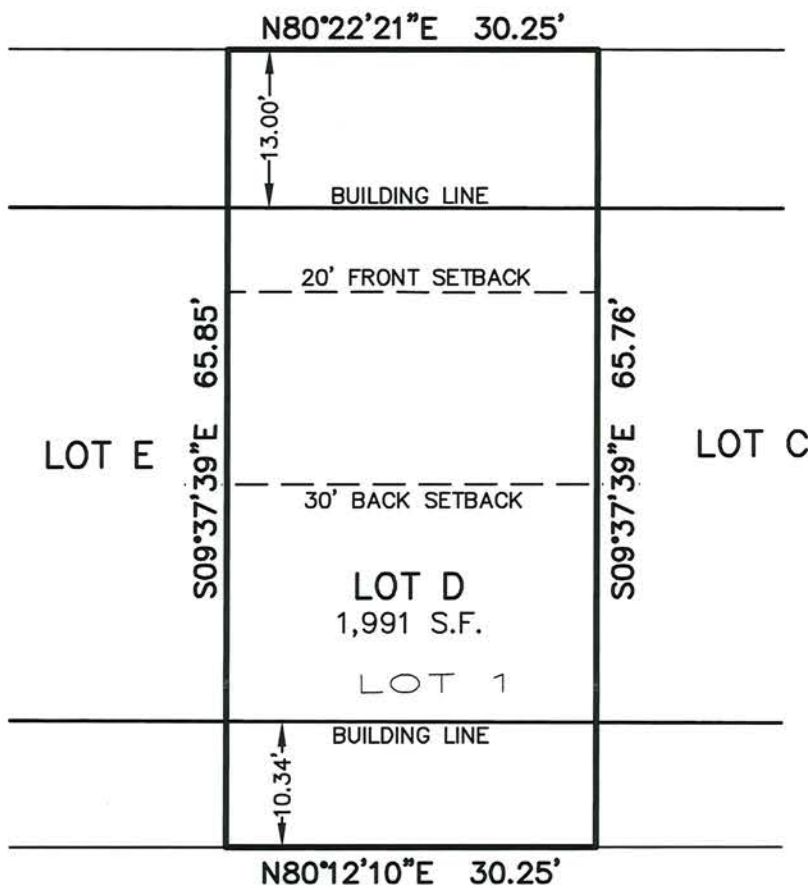
MAP SHOWING A PLOT PLAN

LOT D, OCEANFRONT AT 10TH

A PORTION OF LOT 1, BLOCK 101, AS SHOWN ON THE PLAT OF PABLO BEACH SOUTH, RECORDED IN PLAT BOOK 3, PAGE 28 OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, LYING IN SECTION 4, TOWNSHIP 3 SOUTH, RANGE 29 EAST, CITY OF JACKSONVILLE, DUVAL COUNTY, FLORIDA.

10TH AVENUE SOUTH
FORMERLY SUWANNEE AVENUE
(A 80' R/W)

PABLO BEACH SOUTH
BLOCK 101
P.B. 3, PG. 28



LEGEND

R/W = RIGHT-OF-WAY
P.B. = PLAT BOOK
D.B. = DEED BOOK
PG(S) = PAGE(S)
O.R.B. = OFFICIAL RECORDS BOOK
S.F. = SQUARE FEET
DBH = DIAMETER AT BREAST HEIGHT

COSTA VERANO CONDOMINIUM ASSOCIATION INC
O.R.B. 15449, PG. 181

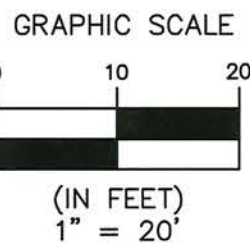
LOT 2

GENERAL NOTES

1. BEARINGS SHOWN HEREON ARE BASED ON THE EASTERLY R/W LINE OF 1ST STREET SOUTH AS N 13°27'39" W. (STATE PLANE COORDINATE SYSTEM, FLORIDA EAST ZONE NAD 1927).
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4. THIS SURVEY WAS MADE WITHOUT THE BENEFIT OF A TITLE COMMITMENT.
5. CROSS REFERENCE: SURVEY BY CLARY & ASSOC. FILE NO. SP-3481.

ZONING REGULATIONS:

ZONED: RM-2
FRONT YARD: 20'
SIDE YARD: 10' (CORNER LOT MIN. 20% = 13')
REAR YARD: 30'
MAXIMUM LOT COVERAGE: 65%
BUILDING HEIGHT: 35'
TREES: 1 SHADE TREE (OR 3 PALM TREES) PER 3000 S.F. LOT
-(2" DBH & 10' TALL OR 8' TALL TO BASE OF PALM FRONDS)



LOT D

JOB NO. 2021-945 LOT D

DRAFTER EJC

DATE 10/14/21

SCALE 1"=20'

CHECKED BY:

THIS MAP OR SURVEY MEETS THE STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES, UNLESS OTHERWISE SHOWN AND STATED HEREON.

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MICHAEL J. COLLIGAN, P.S.M. CERT. NO. 6788



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NOV - 4 2021

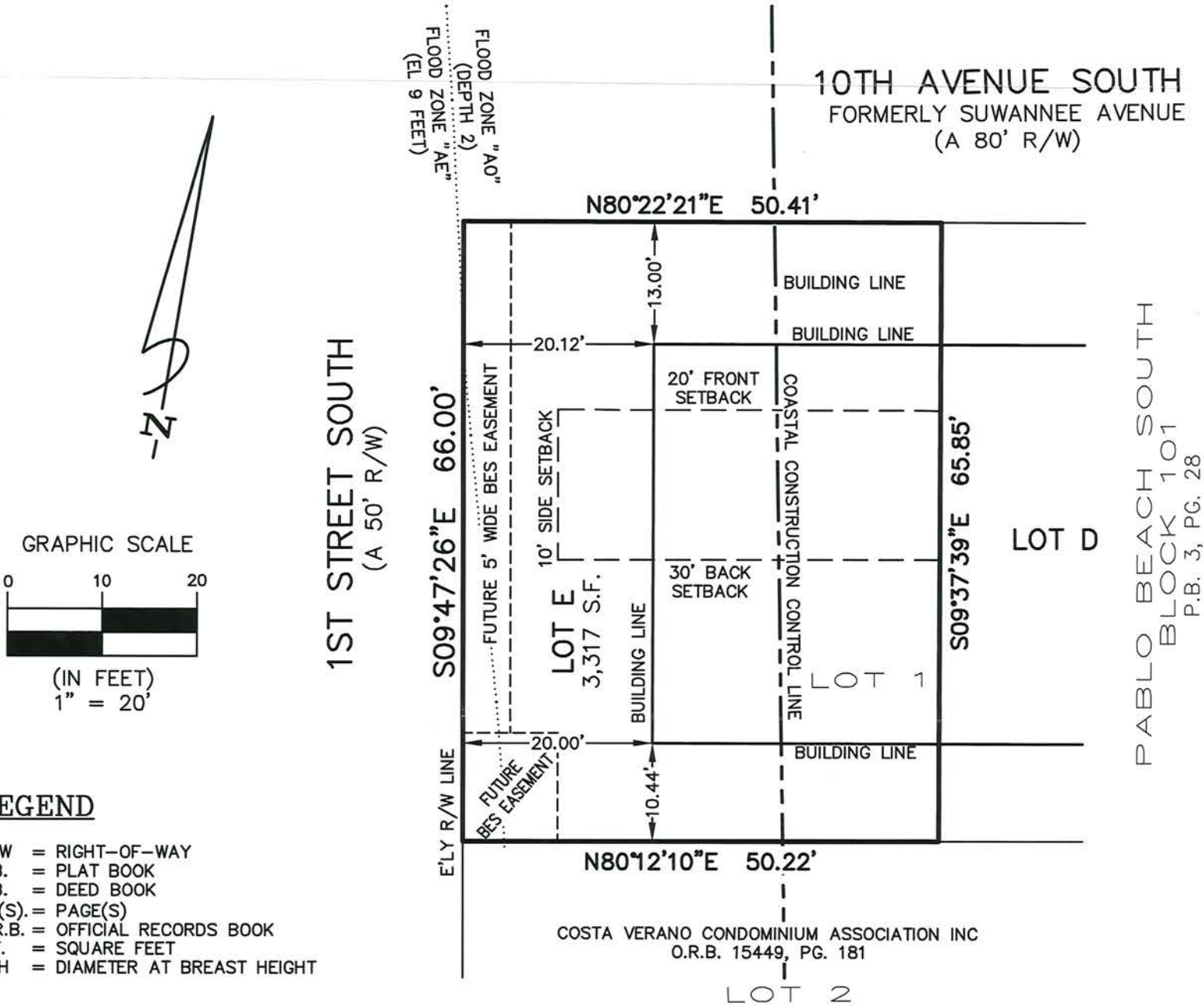
PLANNING & DEVELOPMENT

PROPOSED LOT E

MAP SHOWING A PLOT PLAN

LOT E, OCEANFRONT AT 10TH

A PORTION OF LOT 1, BLOCK 101, AS SHOWN ON THE PLAT OF PABLO BEACH SOUTH, RECORDED IN PLAT BOOK 3, PAGE 28 OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, LYING IN SECTION 4, TOWNSHIP 3 SOUTH, RANGE 29 EAST, CITY OF JACKSONVILLE, DUVAL COUNTY, FLORIDA.



LOT E

JOB NO. 2021-945 LOT E
DRAFTER EJC
DATE 10/14/21
SCALE 1"=20'

THIS MAP OR SURVEY MEETS THE STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES, UNLESS OTHERWISE SHOWN AND STATED HEREON.

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CHECKED BY: MICHAEL J. COLLIGAN, P.S.M. CERT. NO. 6788

RECEIVED
21-100193
NOV - 4 2021

Map Showing A Boundary Survey

EXISTING

LOT 1, BLOCK 101, PABLO BEACH SOUTH, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 3, AT PAGE 28 OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, TOGETHER WITH ALL OF THAT CERTAIN PARCEL OF LAND LYING IMMEDIATELY TO THE EAST OF SAID LOT 1 AS SHOWN ON SAID PLAT AND HERETOFORE CONSTRUCTED BY THE CITY OF JACKSONVILLE BEACH, FLORIDA ALONG THE SHORE OF THE ATLANTIC OCEAN AS MAY BE EMBRACED BETWEEN THE EASTERLY PROLONGATION OF THE NORTH AND SOUTH BOUNDARY LINES OF SAID LOT 1, IF EXTENDED EASTERLY TO INTERSECT WITH SAID SEAWALL.

CERTIFIED TO: ECKSTEIN INVESTMENTS LLC
MTI TITLE INSURANCE AGENCY, INC.
ALLIANT NATIONAL TITLE INSURANCE CO.
MASON TITLE AND ESCROW CO.
OCEANFRONT AT 10TH LLC
FORUM CAPITAL PARTNERS, LLC
FIDELITY NATIONAL TITLE INSURANCE COMPANY
BARR & FORMAN LLP
VAN ROOY LAW



DEPARTMENT OF
ENVIRONMENTAL PROTECTION
MONUMENT NO. 72-81-A29

N: 2161639.98
E: 533846.33

1ST STREET SOUTH
(A 50' R/W)

N: 2161574.94
E: 533857.55

DEPARTMENT OF
ENVIRONMENTAL PROTECTION
MONUMENT NO. 72-81-A30

10TH AVENUE SOUTH
FORMERLY SUWANNEE AVENUE
(A 80' R/W)

VACANT
NO BUILDINGS
LOT 1

LOT 2

ATLANTIC
OCEAN

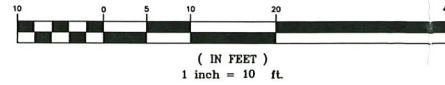
GENERAL NOTES

- BEARINGS SHOWN HEREON ARE BASED ON THE EASTERLY R/W LINE OF 1ST STREET SOUTH AS N 13°27'39" W. (STATE PLANE COORDINATE SYSTEM, FLORIDA EAST ZONE NAD 1927).
- INTERIOR IMPROVEMENTS NOT LOCATED EXCEPT AS SHOWN.
- THIS SURVEY ONLY SHOWS IMPROVEMENTS/STRUCTURES SITUATED ABOVE GROUND. BELOW GROUND IMPROVEMENTS/STRUCTURES IF ANY NOT SHOWN OR LOCATED.
- CROSS REFERENCE: SURVEY BY BOATWRIGHT FILE NO. 2019-0553 DATED APRIL 12, 2019.
- COORDINATES ARE BASED ON NORTH AMERICAN DATUM 1983/2011 - STATE PLANE COORDINATES - FLORIDA EAST ZONE - (U.S. SURVEY FEET)
- COASTAL CONSTRUCTION CONTROL LINE (CCCL) CALCULATED FROM COORDINATES FOR MONUMENTS 72-81-A29 & 72-81-A30, SHOWN ON DUVAL COUNTY COASTAL CONSTRUCTION CONTROL LINE MAP BY THE STATE OF FLORIDA DEPARTMENT OF NATURAL RESOURCES, RECORDED IN MAP BOOK B PAGES 24-24E, AMENDED & RE RECORDED IN MAP BOOK C PAGES 72-72H (O.R.B. 7379, PG. 1769) OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY (MONUMENTS NOT FOUND).
- THE LANDS SHOWN HEREON LIE WITHIN FLOOD ZONES "AE" (EL 9 FEET), "A0" (DEPTH 2) & "VE" (EL 13 FEET) AS SHOWN FLOOD INSURANCE RATE MAP, PANEL NO. 0419 J, COMMUNITY NO. 120078, DATED NOVEMBER 02, 2018. HOWEVER, THE FLOOD INSURANCE RATE MAPS ARE SUBJECT TO CHANGE.
- THIS SURVEY WAS MADE WITH THE BENEFIT OF TITLE COMMITMENT PROVIDED BY FIDELITY NATIONAL TITLE INSURANCE COMPANY, ORDER NO. 8920489, COMMITMENT DATE: OCTOBER 19, 2020.
- THE LANDS SHOWN HEREON ARE ZONED "RM-2" PER INFORMATION PROVIDED BY THE CITY OF JACKSONVILLE BEACH PLANNING AND DEVELOPMENT DEPARTMENT.

LEGEND

- R/W = RIGHT-OF-WAY
P.B. = PLAT BOOK
PG(S) = PAGE(S)
O.R.B. = OFFICIAL RECORDS BOOK
FOC = UNDERGROUND FIBER OPTIC CABLE
BES = BEACHES ENERGY SERVICES
☆ = LIGHT POLE
+ = SIGN
□ = WIRE PULL BOX
□ = TELEPHONE PEDESTAL
□ = CABLE SERVICE BOX
△ = CCCL MONUMENT
● = FOUND 1/2" IRON PIPE (SIZE & TYPE AS NOTED)

GRAPHIC SCALE



RECEIVED
21-000193
NOV - 4 2021

PLANNING & DEVELOPMENT

8/24/2021	JRS	N/A	ADD FUTURE BES EASEMENT; NO FIELD WORK THIS DATE.
11/2/2020	MJC	2020-701	ADD FIBER OPTIC CABLE
10/30/2020	EJC	2020-701	PER COMMENTS; NO FIELD WORK THIS DATE.
REVISION DATE	DRAFTER	WORK ORDER NO.	REASON FOR REVISION
THIS MAP OR SURVEY MEETS THE STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, IN CHAPTER 9A-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 412.02(2), FLORIDA STATUTES, UNLESS OTHERWISE SHOWN AND STATED HEREON.			
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THIS MAP OR SURVEY IS FOR THE EXCLUSIVE USE OF THE ENTITIES NAMED HEREON. THE CERTIFICATION SHOWN HEREON DOES NOT EXTEND TO ANY UNNAMED PARTY.			
 Clary & Associates PROFESSIONAL SURVEYORS & MAPPERS LB NO. 3731 3830 CROWN POINT ROAD JACKSONVILLE, FLORIDA 32257 (904) 260-2703 WWW.CLARYASSOC.COM			
MICHAEL J. COLLIGAN, P.S.M. CERT. NO. 6768			

FILE NO. SP-3481

JOB No. 2020-701

DRAFTING: EJC

PARTY CHIEF: HENDERSON

F.B. DIGITAL

CAD FILE: 2020-701 BNDY.DWG

CHECKED BY:

DATE: 10/27/2020

FILE NO. SP-3481

REFERENCE

RECEIVED
via e-mail
JAN 7 2022
21-100193

January 7, 2022

RE: Public Hearing January 19th / BOA#21-100193

PLANNING & DEVELOPMENT

To the Council –

Due to Covid, I will not be able to attend the Board of Adjustments meeting on January 19th. I hope my letter and all others submitted will carry the same weight as if there in person.

I received the public notice letter on January 5th as I live in a townhome on 1st S. and 10th Avenue. I have watched the construction since there were just flags in the grass. It was at that early stage, just a day or two on the project last year, when I asked the owner and developer what was going in there. He told me, "Townhouses that he hopes to have done by the end of next year."

It is obvious to everyone that his intention from the beginning was to put townhouses in. This is a narrows lot and thus it is platted as a Condo or Apartment lot for those reasons. He knew from the beginning his townhouses wouldn't fit with the setbacks so found a clever way to get around the law and code. As we can clearly see, he's now trying to beg for forgiveness on his over boundary townhouses he built. This will make it easier and more profitable for him to replat, sell as townhouses and walk away from the project leaving a building that doesn't conform to code for everyone else to deal with.

If you allow this clear diversion of the code, this will become standard practice by all builders to get around the law. It also sets a precedent for all homes to be able to adjust their setbacks. Just think of the additional building that could happen to the existing homes, or tear down and new builds of the old (it's only a matter of time) just on 10th avenue alone if they had an additional 27 feet of setback allowed. That is what this builder is asking. That's enough to add on and lose the conformity of the street. Having one house stick out further than others to try to gain an extra view of the ocean blocking the view from the rest that have followed code. It also, once he replats the project, will give other lots in the area the ability to divide up their lots.

This builder clearly submitted his plan to the city as a condo and it was approved as a condo by the city. The city needs to stick with this decision or a whole can of worms will be open. If you say, well we just won't allow others to do it from now on, or we will just make an exception here, then you are opening a potential legal battle when the next person asks for a variance on setbacks.

Please, adhere to the well thought out codes that are in place. They were created for a variety of reasons including safety and enjoyment for those home around them. To let a builder play the system and get around the law would be detrimental to the city and citizens. Please, do not allow this request for adjustment. This builder laid his bed and can now lay in it.

Thank you for your time on this important matter.

Sincerely,

10th Avenue and 1st Street Resident



FILE COPY

LeeAnn Bassabe

From: Rod Versteegh <nicbry@comcast.net>
Sent: Sunday, January 9, 2022 10:59 PM
To: Planning Division
Subject: Jan 19th Hearing BOA #21-100193

RECEIVED
21-100193
JAN 10 2022
via email

PLANNING & DEVELOPMENT

To whom it may concern

It has been brought to my attention that there is a public hearing set to discuss the setback variance for Condo's being built at the corner of 10th S and 1st Street in Jax Beach. I would like to express my concern of the request given the setbacks are substantial from the approved use and I do not agree with the variance approval. This building should abide by the same setbacks that all other properties in the area must abide by otherwise we will be granting these variances for the entire area. Homes and townhouses in the area will then have the ability to request the same variance and disrupt the current code. I also believe this request was intentional after building started in a roundabout way to get townhouses approved rather than apartments or condominiums for which it was zoned for. I am a resident of the area and will not be able to attend the public hearing due to travel. I strongly suggest this does not get approved.

Thank you

Bryan

LeeAnn Bassabe

From: Edward Obrien <edobrientx@aol.com>
Sent: Monday, January 10, 2022 8:49 PM
To: Planning Division
Subject: 19th 7:00 pm and BOA#21-100193

I am against this hearing. Builder is trying to switch from Apartments to townhouse. Not fair to all of us on 10th Ave South. I have already lost 10 feet of my ocean view.

I am totally against this hearing.

Thank you,

Ed O'Brien

(214)762-3458

110 10th Ave South

Jax Beach, FL. 32250

Sent from the all new AOL app for Android

RECEIVED
21-100193
JAN 11 2022
Via email
PLANNING & DEVELOPMENT

From: patrick papa <patrickpapa1925@gmail.com>
Sent: Monday, January 10, 2022 9:09 PM
To: Planning Division
Subject: earing date of Jan 19th 7:00 pm and BOA#21-100193

I am rejecting the additional variants needed to convert condominiums to townhomes on 10th Ave South.

If this were to be allowed what would prevent anyone else on 10th Avenue South from doing the same thing.

Thank you,
Pat Papa

RECEIVED
21-100193
JAN 11 2022
via email
PLANNING & DEVELOPMENT

**Minutes of Board of Adjustment Meeting
held Wednesday, January 19, 2022, at 7:00 P.M.,
in the Council Chambers, 11 North 3rd Street,
Jacksonville Beach, Florida**



CALL TO ORDER

Chairperson John Moreland called the meeting to order at 7:00 P.M.

Deputy City Clerk Jodilynn Byrd administered the Oath of Office to the newly appointed Board of Adjustment 1st Alternate Todd Smith.

ROLL CALL

Chairperson: John Moreland

Vice-Chairperson: Alexi Gonzalez

Board Members: Owen Curley Jeff Truhlar (absent)

Alternates: Dan Elmaleh Todd Smith

Senior Planner Christian Popoli, City Attorney Sandra Robinson, Deputy City Clerk Jodilynn Byrd, and Administrative Assistant Lauren Loria were also present.

ELECTION OF OFFICERS

A. Election of Chair and Vice-Chair per Section 34-77 of the Land Development Code.

Mr. Moreland opened the floor for nominations for the Chairperson position.

Motion: It was moved by Mr. Curley, seconded by Mr. Elmaleh, to nominate Alexi Gonzalez for Chair.

Roll Call Vote: Ayes – Owen Curley, Alexi Gonzalez, John Moreland, Dan Elmaleh

The motion was unanimously approved.

Motion: It was moved by Mr. Elmaleh, seconded by Ms. Gonzalez, to nominate Owen Curley for Vice-Chairperson.

Roll Call Vote: Ayes – Alexi Gonzalez, Owen Curley, John Moreland, Dan Elmaleh, Todd Smith

The motion was unanimously approved.

Ms. Gonzalez and Mr. Curley assumed their new positions on the dais.

APPROVAL OF MINUTES:

It was moved by Mr. Elmaleh, seconded by Mr. Curley, and passed unanimously to approve the following minutes:

- January 4, 2022

CORRESPONDENCE:

Mr. Popoli noted there were copies of emails [on file] for the Board on the dais. All other correspondence was included in the packet.

OLD BUSINESS: None

NEW BUSINESS:

A. **Case Number:** **BOA#21-100185**
Applicant: Starr Sanford Design, Lauren Jagger
Owner: Patrick & Whitney VanMeter
Property Address: 3930 Duval Drive
Parcel ID: 181709-0000

City of Jacksonville Beach Land Development Code Section(s): 34-336(e)(1)c.3, for a rear yard setback of 24 feet in lieu of 30 feet minimum; 34-336 (e)(1)e, for lot coverage of 46% in lieu of 35% maximum; and 34-373(f) for a shell driveway in lieu of a paved driveway to allow for construction of a new single-family dwelling.

Applicant: Patrick & Whitney VanMeter, 3930 Duval Drive, Jacksonville Beach, stated the hardship was a non-conforming lot size. She noted the requested lot coverage was the same as the existing home. She said the northern and southern setbacks were the same as the existing property. The front yard and side yard setbacks would conform to the zoning requirements. She acknowledged both adjacent neighbors were in support.

Discussion ensued regarding a small deck and the shell driveway.

Public Hearing:

The following submitted an email which was read into the record in support of the variance:

- Hobart Walker, 3938 Duval Drive, Jacksonville Beach

Ms. Gonzalez closed the public hearing.

Discussion: None

Motion: It was moved by Mr. Curley, seconded by Mr. Moreland, to approve BOA#21-100185 based on the standards for a variance outlined in Section 34-286 of the Land Development Code.

Roll Call Vote: Ayes – Owen Curley, Alexi Gonzalez, John Moreland, Dan Elmaleh, Todd Smith

The motion was unanimously approved.

B. Case Number: **BOA#21-100186**
Applicant: Collin Spelts
Owner: Collin Spelts & Sze Wai Yan
Property Address: 1612 5th Street South
Parcel ID: 179820-0000

City of Jacksonville Beach Land Development Code Section(s): 34-337(e)(1)c.2, for a northern side-yard setback of 2 feet in lieu of 5 feet minimum and a combined side-yard setback of 10 feet in lieu of 15 feet minimum; and 34-337(e)(1)e, for lot coverage of 44% in lieu of 35% maximum to allow for construction of a new garage addition and driveway to an existing single-family dwelling

Applicant: Collin Spelts, 1612 5th Street South, Jacksonville Beach, noted the hardship was a non-conforming lot which had been subdivided. He stated the addition did not affect the northern side, only the south. He noted he would still meet the combined total for minimum setback requirements. He also requested a written statement from adjacent neighbors, and they supported the variance.

Discussion ensued regarding the garage entry and setbacks.

Public Hearing:

The following submitted letters which were read into the record in support of the variance:

- Michael Stephen Fann, 1626 5th Street South, Jacksonville Beach
- Emily J. Moon, 1608 5th Street South, Jacksonville Beach

Ms. Gonzalez closed the public hearing.

Discussion: Discussion ensued regarding the parking garage on the property.

Motion: It was moved by Mr. Curley, seconded by Mr. Moreland, to approve BOA#21-100186 based on the standards for a variance outlined in Section 34-286 of the Land Development Code.

Roll Call Vote: Ayes – Owen Curley, John Moreland, Dan Elmaleh, Todd Smith, Alexi Gonzalez

The motion was unanimously approved.

C. Case Number: **BOA#21-100187**
Applicant: Diarmuid Graham
Owner: Diarmuid Graham
Property Address: 2507 Independence Drive
Parcel ID: 181076-1438

City of Jacksonville Beach Land Development Code Section(s): 34-337(e)(1)c.3, for a rear yard setback of 17 feet in lieu of 30 feet minimum; and 34-337(e)(1)e, for lot coverage of 40% in lieu of

35% maximum to rectify existing non-conformities and allow for construction of a new swimming pool and pool deck at an existing single-family dwelling.

Applicant: Diarmuid Graham, 2507 Independence Drive, Jacksonville Beach, stated the hardship was the non-conforming lot. Mr. Graham said his neighbors were in support.

Public Hearing:

The following submitted emails which were read into the record in support of the variance:

- Kimberly Holter & Gary Sheading, 2505 Independence Drive, Jacksonville Beach
- Jessica K. Wright, adjacent neighbor, Jacksonville Beach

Ms. Gonzalez closed the public hearing.

Discussion: None

Motion: It was moved by Mr. Elmaleh, seconded by Mr. Curley, to approve BOA#21-100187 based on the standards for a variance outlined in Section 34-286 of the Land Development Code.

Roll Call Vote: Ayes – Owen Curley, John Moreland, Dan Elmaleh, Todd Smith, Alexi Gonzalez

The motion was unanimously approved.

D. Case Number: **BOA#21-100189**
Applicant: Dakota Briggs
Agent: Hunter Faulkner
Owner: American Classic Homes, LLC.
Property Address: 512 1st Street South
Parcel ID: 175951-0000

City of Jacksonville Beach Land Development Code Section(s): A request to rescind previously approved variance BOA#21-100040 approved May 18, 2021: City of Jacksonville Beach Land Development Code Section(s): 34-338(e)(1)c.1, for a front yard setback of 18 feet in lieu of 20 feet required; 34-338(e)(1)c.3 for a rear yard setback of 15.5 feet in lieu of 30 feet minimum; and 34-338(e)(1)e, for lot coverage of 42% in lieu of 35% maximum to allow for construction of a new single-family dwelling.

Agent: Hunter Faulkner, 1 Independent Drive, Suite 1400, Jacksonville, stated the variance was approved in May 2021, but a petition was filed by residents of the neighboring development in July 2021. He stated the owner would prefer to rescind the variance. He said the land sat undeveloped, and the owner would like to move forward with the building as permitted, without the approved variance from May 2021.

Public Hearing:

The following spoke in support of the request to rescind previously approved variance BOA#21-100040:

- Lynn Duncan, 112 5th Avenue South, Jacksonville Beach

Jim Burgener 112 5th Avenue South, Jacksonville Beach, submitted a speaker card, but waived his right to speak.

Ms. Gonzales closed the public hearing.

Discussion: Discussion ensued regarding the results of rescinding a variance.

City Attorney Robinson stated a rescission was like a void, so it never existed, and a future property owner could request the same variance. She confirmed any approved variances which preceded the 2021 approved variance would still be in place.

Motion: It was moved by Mr. Curley, seconded by Mr. Elmaleh, to approve BOA#21-100189, which rescinds the previously approved variance of BOA#21-100040 approved May 18, 2021.

Roll Call Vote: Ayes – Owen Curley, John Moreland, Dan Elmaleh, Todd Smith, Alexi Gonzalez

The motion was unanimously approved.

E. **Case Number:** **BOA#21-100190**
Applicant/Owner: Michael & Lisa Loiacono
Property Address: 3532 Bay Island Circle
Parcel ID: 180949-1800

City of Jacksonville Beach Land Development Code Section(s): Ordinance 2002-7843 Ocean Cay PUD for lot coverage of 49% in lieu of 45% maximum to allow for construction of a new swimming pool and pool deck to an existing single-family dwelling.

Applicant: Michael & Lisa Loiacono, 3532 Bay Island Circle Jacksonville Beach, stated the hardship was the odd-shaped lot, and the southern part of the lawn was banked against a water retention pond. He noted all five (5) adjacent neighbors were in favor of the variance, and their HOA had also approved it.

Discussion ensued about the white river rock, turf, and lot coverage for PUDs.

Public Hearing: No one came before the Board to speak about this application.

Ms. Gonzalez closed the public hearing.

Discussion:

Mr. Curley disclosed he lived behind the property, on the other side of the retention pond, but he has not engaged in any ex-parte communications.

Discussion ensued about the 2002 variance exception for PUDs and by what criteria they should judge this request.

Motion: It was moved by Mr. Curley, seconded by Mr. Elmaleh, to approve BOA#21-100190, based on the standards of a variance outlined in Section 34-286 of the Land Development Code.

Roll Call Vote: Ayes – Owen Curley, John Moreland, Dan Elmaleh, Todd Smith, Alexi Gonzalez

The motion was unanimously approved.

Mr. Moreland stated the agenda excluded Ex-Parte Communications, and he disclosed he had a phone conversation with a person associated with the next case.

Ms. Gonzalez disclosed no ex-parte communications on any of the cases.

Mr. Elmaleh disclosed he had a brief and confusing conversation with Rick Johnston [BOA#21-100193].

F. Case Number: **BOA#21-100193**
Applicant/Owner: Oceanfront @ 10th, LLC.
Agent: Rick Johnston
Property Address: 22 10th Avenue South
Parcel ID: 176143-0000

Note: This case number was incorrectly listed as BOA#21-100185 in the Staff Report

City of Jacksonville Beach Land Development Code Section(s): 34-340(e)(4)c.1 for a front yard setback of 13 feet in lieu of 20 feet minimum; and 34-340 (e)(4)c.3, for a rear yard setback of 10 feet in lieu of 30 feet minimum, to allow for the conversion of 5 multi-family units into townhomes.

Applicant & Agent: Rick Johnston, 3528 Ocean Drive South, Jacksonville Beach, and Joe Van Rooy, 9417 Baymeadows Road, Suite 103, Jacksonville, were sworn in. Mr. Johnston distributed a supplemental packet to the Board via the Clerk [on file]. He stated their intent when they acquired the property was to design a hybrid project which was duplicative in use (multi-family, condo, townhouse). They submitted under a multi-family project because they could submit under conforming standards and then return for setback variances permitted in RM-2.

Discussion ensued regarding the project's original intent, regulation for condos, and LDC criteria for multi-family and townhomes.

Public Hearing:

The following spoke in support of the variance:

- Edward Carlton, 2912 Abaco Lane, Jacksonville Beach
- Collin Spelts, 1612 5th St. S., Jacksonville Beach

Ruth Musicante, 1031 1st St. S., #1208, Jacksonville Beach, submitted a speaker card but passed on speaking. She did not indicate whether she was in support or opposition of the variance.

The following spoke in opposition of the variance:

- Leah Tahiry, 1031 1st St. S., Apt. 907, Jacksonville Beach
- Donald Cheng, 1032 1st St. S., Suite 8, Jacksonville Beach
- Bobby Welton, 1032 1st St. S. #2, Jacksonville Beach
- Steve Wilson, 1031 1st St. S., Jacksonville Beach

The following submitted a group letter [on file], which was read into the record in support of the variance:

- Michael Holmes, 1031 1s St. S., #340, Jacksonville Beach
- Daniel L. Goldbergen, Jacksonville Beach,
- Laura DiMarino, 1031 1st St. S., #501, Jacksonville Beach
- Tammy Eisenmann, 1031 1st St. S., #502, Jacksonville Beach

The following submitted emails, which were read into the record in opposition of the variance:

- Sharon Rowlands, 1031 1st St. S., #204, Jacksonville Beach
- Laura & Tom DiMarino, 1031 1st St. S., #501, Jacksonville Beach
- Rod Restige, Jacksonville Beach
- Edward O'Brien, 110 10th Ave. S. Jacksonville Beach
- Patrick Ahbad, Jacksonville Beach

Mr. Curley noted one email was received unsigned and with no address, so it was not read.

Mr. Van Rooy responded the building would stay the same. He said only the style of the deed would change.

Mr. Johnston thanked the speakers for coming out and apologized for an unclear application.

Discussion ensued regarding the estimated density of occupants and setbacks.

Ms. Gonzalez closed the public hearing.

Discussion:

Mr. Popoli stated if it was condos or apartments, there could be more units based on pure density. He said it was never discussed as townhomes. He stated if the variance were approved, it would still have to go through a final plat process.

Discussion ensued about townhouse compliance, future variance requests, and setbacks.

Motion: It was moved by Mr. Curley, seconded by Mr. Smith, to deny BOA#21-100193, based on its failure to meet Standard 2 as a result of the actions of the applicant.

Roll Call Vote: Ayes – Owen Curley, Dan Elmaleh, Todd Smith
Nays – John Moreland, Alexi Gonzalez

The motion to deny the variance passed 3-2.

PLANNING DEPARTMENT REPORT

Mr. Popoli stated a training workshop would be held on February 15, 2022.

The next scheduled meeting was Wednesday, February 2, 2022. There were three scheduled cases.

The ethics training would be held on January 28, 2022.

COURTESY OF THE FLOOR TO VISITORS

Ms. Gonzalez extended Courtesy of the Floor to visitors.

- Ruth Musicante, 1031 1st St. South, Jacksonville Beach, stated she was a new resident. She asked about green space and a discussion held at her HOA's Board meeting. She expressed concerns because her HOA Board said they would have a variance assured if they wanted to turn green space into more parking spaces.

Ms. Gonzalez stated there were no assurances for variances, and everyone had to go through the proper process.

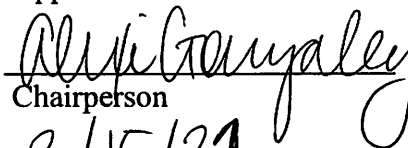
ADJOURNMENT

There being no further business, Ms. Gonzalez adjourned the meeting at 9:30 P.M.

Submitted by: Lauren Loria
Administrative Assistant

These minutes were reviewed by Planning & Development.

Approval:


Chairperson

2/15/22
Date 

CERTIFIED MAIL RETURN - RECEIPT REQUESTED

7020 2450 0000 7999 5267

January 25, 2022

Oceanfront @ 10th LLC
Rick Johnston
9471 Baymeadows Rd. #103
Jacksonville, FL 32256

DEVELOPMENT ORDER FOR VARIANCE

BOA#21-100193
22 10th Avenue South
Lot 1, Block 101, *Pablo Beach South*

The Board of Adjustment for the City of Jacksonville Beach met and held a public hearing at 7:00 p.m. on Wednesday, January 19, 2022, in the City Council Chambers located at 11 3rd Street North, Jacksonville Beach, Florida, to consider development permit application(s) requesting a variance, to deviate from the requirements of the Land Development Code as described below:

- 34-340(e)(4)c.1 for a front yard setback of 13 feet in lieu of 20 feet minimum; and
- 34-340 (e)(4)c.3, for a rear yard setback of 10 feet in lieu of 30 feet minimum

To allow for the conversion of 5 multi-family units into 5 fee simple townhomes.

In support of its request for a variance, the applicant submitted an application, with supporting documentation. At the public hearing, the applicant supplemented his application with additional documentation and testimonial evidence (which is summarized below).

In summary, the applicant's testimonial evidence established that upon the start of the subject construction (and up to the public hearing) the affected parcel and building were in conformance with the requirements of the zoning code; that the applicant made a business decision to commence construction on a project that was permitted, as a matter of right under the zoning code and to time an application for a variance for some time thereafter. The applicant's testimonial evidence showed that the purpose of the variance was so that he could convert his development from condominiums to five fee simple townhouses. In support of the applicant's desire to convert his development project from condominiums to townhouses, the applicant offered testimony of the differences in lending requirements for financing a condominium versus a townhouse and the potential difficulty a prospective purchaser might experience should the development project be required to proceed to conclusion as condominiums. Lastly, the applicant admitted that without a variance he would be limited to either completing the condominiums (as initially planned) or to limiting his construction of townhouses from five to three or fewer.

Based on the review and discussion of said application, supporting documents, and consideration of testimony provided during the duly advertised public hearing, the Board of Adjustment found the applicant **failed to meet** one or more of the required standards, applicable for authorizing a variance pursuant to Land Development

City of

Jacksonville Beach

City Hall

11 North Third Street

Jacksonville Beach

FL 32250

Phone: 904.247.6231

Fax: 904.247.6107

Planning@jaxbchfl.net

www.jacksonvillebeach.org



CERTIFIED MAIL RETURN - RECEIPT REQUESTED

Code Section 34-286; specifically, the applicant failed to show, among other things, that special conditions/circumstances were unique, were not caused by or result from applicant's actions or decisions and that without the variance the applicant would suffer an unnecessary and undue hardship, and could not otherwise enjoy any reasonable use of the land or building.

Upon this competent substantial evidence, the Board ***Denied*** the request based on the applicant's failure to provide any or sufficient evidence to meet standard 2:

- (2) Special circumstances and conditions do not result from the actions of the applicant;

Pursuant to Section 34-158, successive applications for all or part of the same land shall not be considered for a period of one (1) year unless the subsequent applications are materially different. Please remove the public hearing notice(s) posted on your property. Attached is a copy of the submitted site plan for your records. If you have any questions regarding this development order please feel free to call me at (904) 247-6231.

Sincerely,

Christian Popoli
Senior Planner

City of

Jacksonville Beach

City Hall

11 North Third Street

Jacksonville Beach

FL 32250

Phone: 904.247.6231

Fax: 904.247.6107

Planning@jaxbchfl.net

www.jacksonvillebeach.org

DISCLAIMER

As provided by subsection 166.033(6), Florida Statutes, issuance of a variance by a municipality does not in any way create any right on the part of an applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the municipality for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. It is hereby a condition that all other applicable state or federal permits be obtained before commencement of the development.



BOA#21-100193