

**POLK COUNTY
LAND USE HEARING OFFICER
STAFF REPORT**

DRC Date: November 14, 2024	CASE #: LDLVAR-2024-54 (N Cactus Cir Variance)
LUHO Date: December 10, 2024	LDC Section: Section 208, Table 2.2

Request: The applicant is requesting a reduction in the right of way setback from fifteen (15) feet to four (4) feet for a porch.

Applicant: Jose Colon

Property Owner: Jose Colon, Sarai Fernandez

Location: 58 North Cactus Circle, west of Thornhill Estates Drive North, east of Thornhill Road, south of Thornhill Estates Court, west of the city of Winter Haven in Section 03, Township 29, Range 25.

Parcel ID#: 252903-357011-000150

Size: ±0.97 acres

Land Use Designation: Residential Low-1 (RL-1)

Development Area: Urban Growth Area (UGA)

Case Planner: Aleya Inglima, Planner II

Summary:

The applicant is requesting a variance to reduce the primary structure right-of-way setback from 15 feet to four (4) feet for a porch. The applicant purchased the property December 2022. The subdivision plat was recorded in May of 1989, and the mobile home was set on the property in 1990 both prior to the Land Development Code (LDC) and Comprehensive Plan. The property is located off North Cactus Circle, a local road, and is in a Residential Low-1 (RL-1) future land use district. The right-of-way setbacks established in RL-1 land use districts for local roads are set at fifteen feet for primary structures. The applicant wants to add a porch to the existing home. The placement of the home on this parcel significantly limits the amount of buildable space without some relief from the setbacks.

The applicant was cited by Code Enforcement for building without a permit for the porch and seeks to come into compliance. The Code Enforcement Special Magistrate has found it to be a violation. CMA-2024-343 is pending as the owner is seeking approval for the porch to be located four feet off the right of way. The applicant has also applied for a building permit (BR-2024-7103). Staff finds this request will cause no harm to the community or neighbor. The subject parcel is surrounded by a cluster of lots up to 5 acres.

Staff recommends approval of LDLVAR-2024-54 as it meets the following criteria listed in Section 931:

- **Granting the variance will not be injurious to the area involved or otherwise detrimental to the public welfare** because home is located along somewhat of a cul-de-sac at a turn in the road that that is functionally unnecessary for vehicle travel. Although the home is approximately nine feet from the right of way, it is 39 feet from the edge of pavement and at least 65 feet from the drive aisle of the two Cactus Circle roadways.

- **Special conditions and circumstances exist which are peculiar to the land, structure, or building involved** as the lot being along the cul-de-sac and the house being so close to the road affects adding additions to the home, making it difficult to meet the setbacks in place for local roads in the RL-1 land use district.
- **Special conditions and circumstances present in the request do not result from the actions of the applicant** because the home placement occurred 32 years before the applicant purchased the property.

Development Review Committee

The Development Review Committee, based on the criteria for granting variances, the submitted application, and a recent site visit, finds that the applicant's request as written **IS CONSISTENT** with Section 931 of the Polk County Land Development Code (LDC) and recommends **APPROVAL of LDLVAR-2024-54**.

CONDITIONS OF APPROVAL:

1. The approval of this variance is to reduce the primary structure right-of-way setback from 15 feet to 4 feet for a porch. Further additions or structures placed on the property shall be required to meet the setback requirements of Section 208, Table 2.2 of the Polk County Land Development Code or re-apply for another variance approval from the Land Use Hearing Officer.
2. This variance does not authorize any encroachments into easements, and the applicant shall be responsible to make certain there are no encroachments unless approval is granted by the easement holder and/or any applicable permitting agencies. The property owner(s) is also responsible for compliance with any restrictions of record pertaining to lots and/or land and this approval shall not be used to supersede authority over those restrictions.
3. The applicant shall have one (1) year from the date the Land Use Hearing Officer's Final Order is rendered to apply for all necessary building permits and pay all associated fees for the proposed addition.

GENERAL NOTES

NOTE: This staff report was prepared without the benefit of testimony and evidence submitted by the public and other interested parties at a public hearing.

NOTE: All conditions of approval, unless otherwise specified, shall be met prior to the effectiveness and validity of the variance approval.

NOTE: All written commitments made in the application and subsequent submissions of information made during the application review process, which are on file with the Land Development Division, shall be considered to be binding upon the applicant, provided such commitments are not at variance with the Comprehensive Plan, LDC or other development regulations in effect at the time of development.

NOTE: Issuance of a development permit by the county does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the county 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.

NOTE: Approval of this variance shall not constitute a waiver or an additional variance from any applicable development regulation unless specifically noted in the conditions of approval and consistent with the LDC.

DEMONSTRATIONS OF THE CRITERIA FOR GRANTING VARIANCES SUMMARIZED BELOW:

1. *Whether granting the variance will be in accordance with the general intent and purpose of this Code, and that the variance will not be injurious to the area involved or otherwise detrimental to the public welfare;*

The subject site was created prior to the adoption of the Comprehensive Plan under the Thornhill Estates subdivision plat (PB 88 Page15). The home is located on Lot 15. Granting the subject request will not be injurious to the area as the home is located along somewhat of a cul-de-sac at a turn in the road that that is functionally unnecessary for vehicle travel. There is a 10-foot easement on the west side, and neither the home nor porch will encroach upon it. The porch will not be screened and will be used as protection from weather at the entrance to the home. This subdivision has been fully built out since the early 2000's. Many of the surrounding homes were developed prior to the Land Development Code and Comprehensive Plan.

There is an excess amount of pavement at the turn of Cactus Circle West and Cactus Circle North that forms a semi-cul-de-sac that serves only four properties. Along with it is more than 30 feet of additional right-of-way from the edge of pavement. There are no water or wastewater lines within the right-of-way, only a drainage swale. Although the home is approximately nine feet from the right of way, it is 39 feet from the edge of pavement and at least 65 feet from the drive aisle of the two Cactus Circle roadways.

2. *Whether special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the applicable land use district;*

This property is located in the RL-1 land use district and is approximately 0.97 acres. According to Table 2.2 of the LDC, minimum lot sizes in RL-1 are 40,000 square feet the same as it was prior to the LDC when it was zoned Rural Conservation (RC). The primary right-of-way setback established by RL-1 land use for local roads is 15 feet. Under the RC zoning it was 25 feet. The home was placed on the property in 1990 approximately nine feet away from the right of way. The placement of the home on the lot makes it difficult to add additions to the home meeting past and current setbacks. The requested porch is relatively small at ± 75 square feet.

3. *Whether provided the special conditions and circumstances present in the request do not result from the actions of the applicant;*

The owner purchased the property in December 2022, according to the Polk County Property Appraiser. As noted above, the placement of the home on the lot places a burden on the reasonable use of this land. The home has been located on site since the early 2000's. The applicant is attempting to add a small porch (approximately 75 square feet according to the site plan). Without this variance, it would be difficult to add additions to the home.

4. *Whether granting the requested variance will not confer on the applicant any special privilege that is denied by the provisions of this Code and will constitute unnecessary and undue hardship on the applicant;*

Every variance approval is a special privilege. The placement of the home on the lot creates a hardship when developing on this property without relief from the right-of-way setbacks. However, in function the porch will be a significant distance (>60 feet) from the drive aisle of the roadway. In essence, it will not appear as if this porch is close to the roadway. The other homes on the turn of the roadways are positioned close to the right-of-way too but not as close as the applicant's (See table to follow)

5. *Whether the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure;*

The requested variance is believed to be the minimal variance necessary to optimize the use of the owner's land. Without the variance, constructing a porch to meet setbacks on the parcel would be difficult due to the right-of-way primary setbacks in RL-1 land use set at fifteen feet.

6. *Whether that in no case shall a variance be granted which will result in a change of land use that would not be permitted in the applicable land use designation;*

Granting this variance will not result in a change of land use. It will remain a residence.

7. *Whether that in no case shall a variance be granted which would result in creation of any residual lot or parcel which does not meet the requirements of this Code; and*

Granting this request is not anticipated to result in the creation of a lot or parcel that does not meet the requirements of the Code.

8. *Whether that the granting of the variance does not circumvent a condition, or the intent of a condition placed on a development by the Planning Commission or the BoCC.*

The property was zoned Rural Conservation (RC) when the subdivision was recorded, and the mobile home was placed on the property. The right-of-way setbacks were 25 feet at that time. When the home was placed there over 34 years ago, it probably did not appear to be too close to the roadway due to the excessive amount of distance to the edge of pavement and functional portion of the street.

Surrounding Future Land Use Designations and Existing Land Use Activity:

Northwest: RL-1 Mobile Home	North: RL-1 Mobile Home	Northeast: RL-1 Mobile Home
West: RL-1 Mobile Home ±188 feet from ROW	Subject Property: RL-1 Mobile Home ±9 feet from ROW	East: RL-1 Mobile Home ±40 feet from ROW
Southwest: RL-1 Mobile Home ±20 feet from ROW	South: RL-1 Mobile Home ±17 feet from ROW	Southeast: RL-1 Mobile Home ±26 feet from ROW

The mobile home is located along North Cactus Circle, a local road. Staff found no prior variances in this neighborhood in the County's digital document management systems. Some homes are close to the right-of-way but not as close as the applicant's is located.

Exhibits:

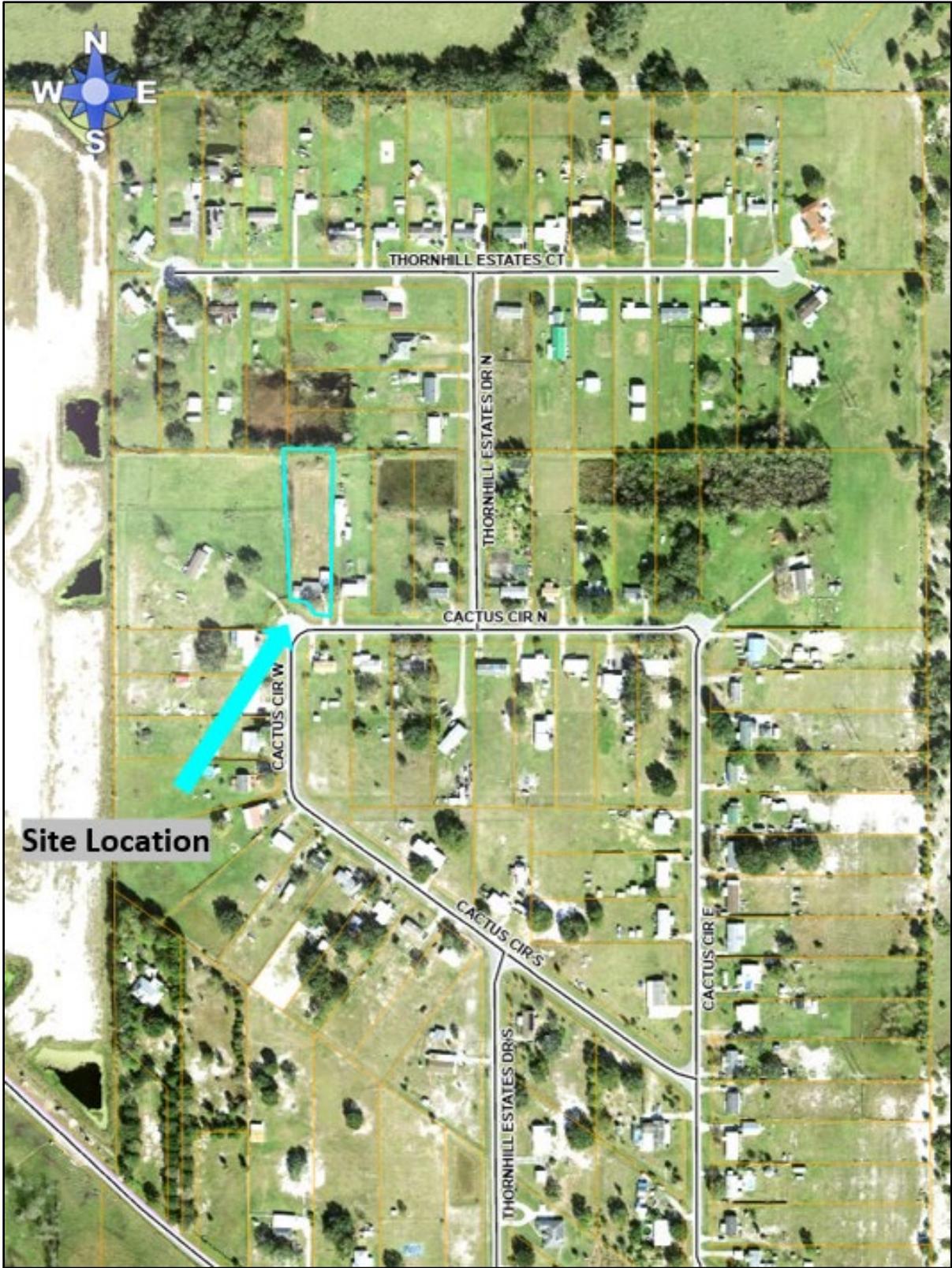
Exhibit 1	Location Map
Exhibit 2	Future Land Use Map
Exhibit 3	Aerial Imagery (Context)
Exhibit 4	Aerial Imagery (Close)
Exhibit 5	Site Plan
Exhibit 6	Justification
Exhibit 7	Thornhill Estates Plat



Location Map



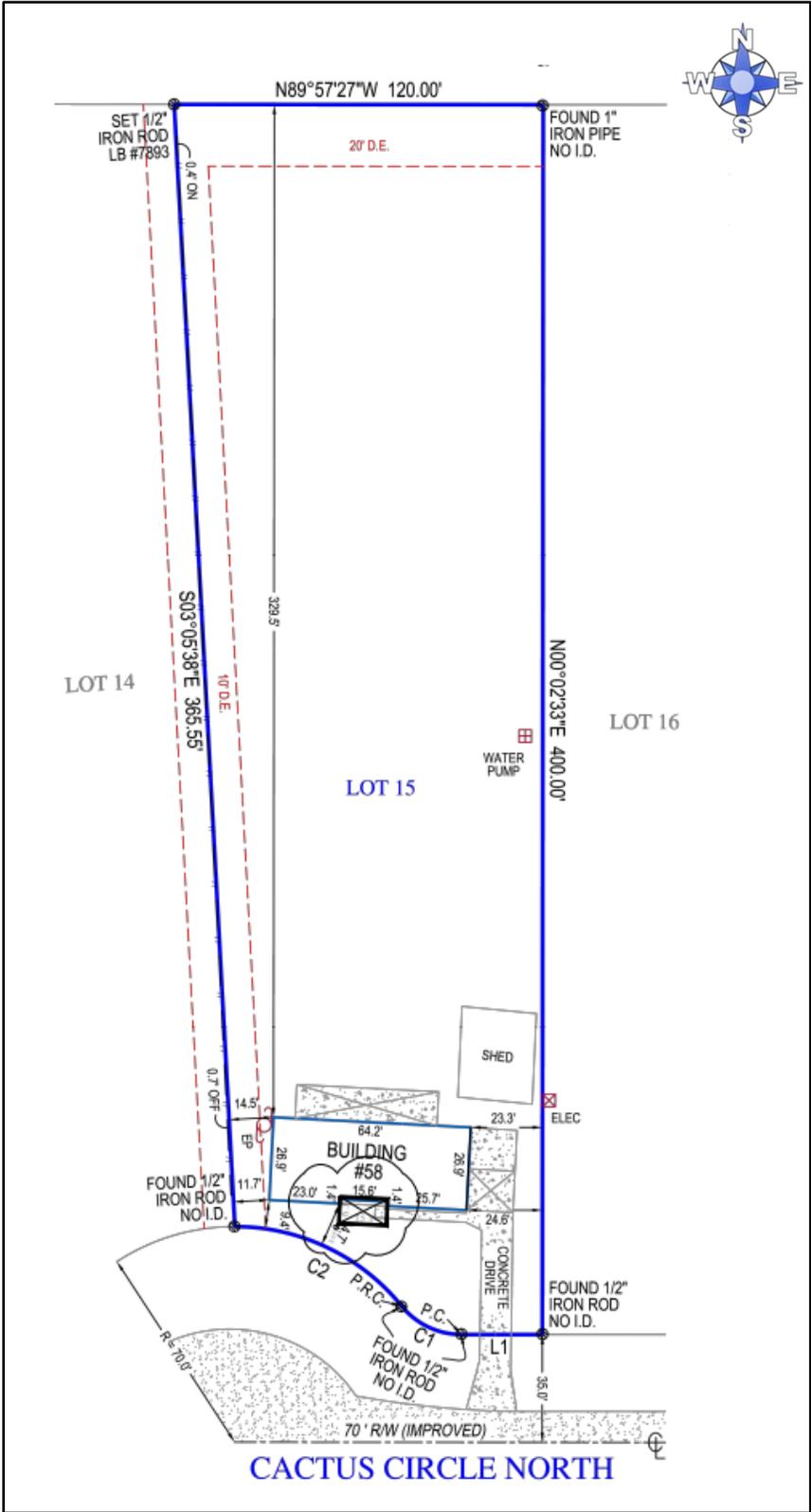
Future Land Use Map



Aerial Imagery (Context)



Aerial Imagery (Close)



Site Plan

CRITERIA FOR GRANTING VARIANCE

Will the variance be injurious to the area involved or detrimental to the public welfare?
NO

What special conditions exist that are peculiar to the land, structure, or building involved?
I HAD A LOT OF LAND ON THE FRONT OF THE HOUSE

When did you buy the property and when was the structure built? Permit Number?
BR 2024 7103

What is the hardship if the variance is not approved?
IF THE VARIANCE IS NOT APPROVED, I NEED TO REMOVE ALL THE PORCH JUST FOR .3 DIMENSIONS

Is this the minimum variance required for the reasonable use of the land?
I DONT KNOW

Do you have Homeowners Association approval for this request?
YES

Justification

