

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

DRC Date:	October 17, 2024	CASE #:	LDLVAR-2024-48 (5th St W Variance)
LUHO Date:	November 12, 2024	LDC Section:	Section 209.G

Request: The applicant is requesting a reduction in the accessory rear setback from fifteen (15) feet to one (1) foot for a shed and pool.

Applicant: Ryan White

Property Owner: Alvaro Romero Aguilar, Danielle Romero Aguilar

Location: 120 W 5th St, west of Rifle Range Rd, east of Avenue A W, north of 6th St W, west of the city of Winter Haven in Section 17, Township 29, Range 26.

Parcel ID#: 262917-6895000-018420

Size: ±0.65 acres

Land Use Designation: Residential Suburban-X (RSX)

Development Area: Suburban Development Area (SDA)

Case Planner: Aleya Inglima, Planner II

Summary:

The applicant is requesting a reduction in the accessory rear setback from fifteen (15) feet to one (1) foot for a shed and pool. The owner purchased the property September 2020. This parcel was recorded via warranty deed on December 31, 1968, prior to the Land Development Code and Comprehensive Plan. The property is located off 5th St W, a local road and is in a Residential Suburban (RS) future land use. The rear setbacks established in RS land use districts are set at fifteen feet for accessory structures. Table 2.2 states that RS land use density is 1 du/5 ac. The size of this parcel (0.65 acres) significantly limits the amount of buildable space without some relief from the setbacks. The proposed request necessitates public hearing and approval from the Land Use Hearing Officer (LUHO), in accordance with Chapter 9, Section 931 of the Land Development Code (LDC).

The applicant was cited by Code Enforcement for building without a permit for the pool and seeks to come into compliance. The Code Enforcement Special Magistrate has found it to be a violation. CMA-2022-553 is pending as the owner is seeking approval for the pool to be located one foot off the rear property line. The applicant has also applied for a building permit (BT-2024-12664). Staff finds this request will cause no harm to the community or neighbors. The subject parcel is surrounded by a cluster of lots up to (1) one acre.

Staff recommends approval of LDLVAR-2024-48 as the request meets the following criteria listed in Section 931:

- The request **will not be injurious to the area involved or otherwise detrimental to the public welfare** because it is in character with the surrounding developed lots, many have accessory structures.
- The **special conditions and circumstances present in the request do not result from the actions of the applicant** the lot is smaller than the Residential Suburban (RS) land use designation.

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-2024-48.**

CONDITIONS OF APPROVAL:

1. The applicant is requesting a reduction in the accessory rear setback from fifteen (15) feet to one (1) foot for a shed and pool. Further additions or structures placed on the property shall be required to meet the setback requirements of Table 2.2 of the Polk County Land Development Code or re-apply for another variance approval from the Land Use Hearing Officer.
2. 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.
3. 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.

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: 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 LDC.

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.

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 recorded on December 31, 1968. This lot and many of the surrounding homes in this community were developed prior to the Land Development Code and Comprehensive Plan. The applicant is requesting a reduction in the accessory rear setback from fifteen (15) feet to one (1) foot for a pool and shed on the subject property. This request is associated with Code Enforcement Special Magistrate case CMA-2022-553. The size of this parcel (0.65 acres) significantly limits the amount of buildable space without some relief from the setbacks. The granting of this variance is not expected to be injurious to the area or detrimental to the public welfare as several other homes in this area have accessory detached structures and do not meet setbacks due to the narrowness of the lots.

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;*

The parcel is approximately 70 feet in depth making it difficult to place multiple accessory structures. This property is located in the RS land use district and is approximately 0.65 acres. According to Table 2.2 of the LDC, minimum lot sizes in RS are 1 du/5 ac. The lot was recorded via warranty deed on December 31, 1968, prior to the Land Development Code and Comprehensive Plan. The rear setbacks established by RS land use is fifteen feet.

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

The homes within this community started to develop prior to the 1960s. Accessory structures are common in this community. To the south of the subject site and homes within this community have accessory structures close to the property line. The relatively large setbacks on small lots established within this development were not actions of the individual property owners. Pools are allowed pursuant to Section 211.

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, but no other variances have been requested in this community. There are similar accessory structures from neighboring properties.

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

The applicant is requesting a variance from the required fifteen rear setback for a pool and shed. The lot size of the subject site is 0.65 and the variance request, if approved, would make possible reasonable use of the land.

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. The proposed structure is considered a part of the primary residence. Therefore, the request will remain residential and does not result in a change of land use.

7. *Whether that in no case shall the Land Use Hearing Officer or the Planning Commission grant a variance which would result in creation of any residual lot or parcel which does not meet the requirements of this Code; and*

Granting this request will not result in the creation of a lot or parcel that does not meet the requirements of the Code. This variance request will not change the size, shape, or use of the property.

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.*

Granting this variance will not circumvent a condition or the intent of a condition placed on the development by the Planning Commission or the BoCC.

Surrounding Future Land Use Designations and Existing Land Use Activity:

The table to follow provides details of abutting uses and their regulatory parameters.

Northwest: Mobile Home Residential Suburban (RS)	North: Vacant Residential Suburban (RS)	Northeast: Vacant Residential Suburban (RS)
West: Mobile Home Residential Suburban (RS)	Subject Property: Mobile Home Residential Suburban (RS)	East: Mobile Home Residential Suburban (RS)
Southwest: Mobile Home Residential Suburban (RS)	South: Mobile Home Residential Suburban (RS)	Southeast: Mobile Home Residential Suburban (RS)

The subject property has a Future Land Use district of Residential Suburban (RS) within the Suburban Development Area (SDA). The subject site is surrounded by mobile homes, many having accessory structures. Based on the surrounding neighborhood, a recent site visit, and the variance application provided by the applicant, staff believes that the proposed variance is compatible with the surrounding development.

Comments from other Governmental Agencies:

None.

Exhibits:

Exhibit 1 –Location Map

Exhibit 2 – Future Land Use

Exhibit 3 – Aerial Context

Exhibit 4 – Aerial Close-up

Exhibit 5 – Applicant Site Plan

Exhibit 6 – Applicant’s Justification

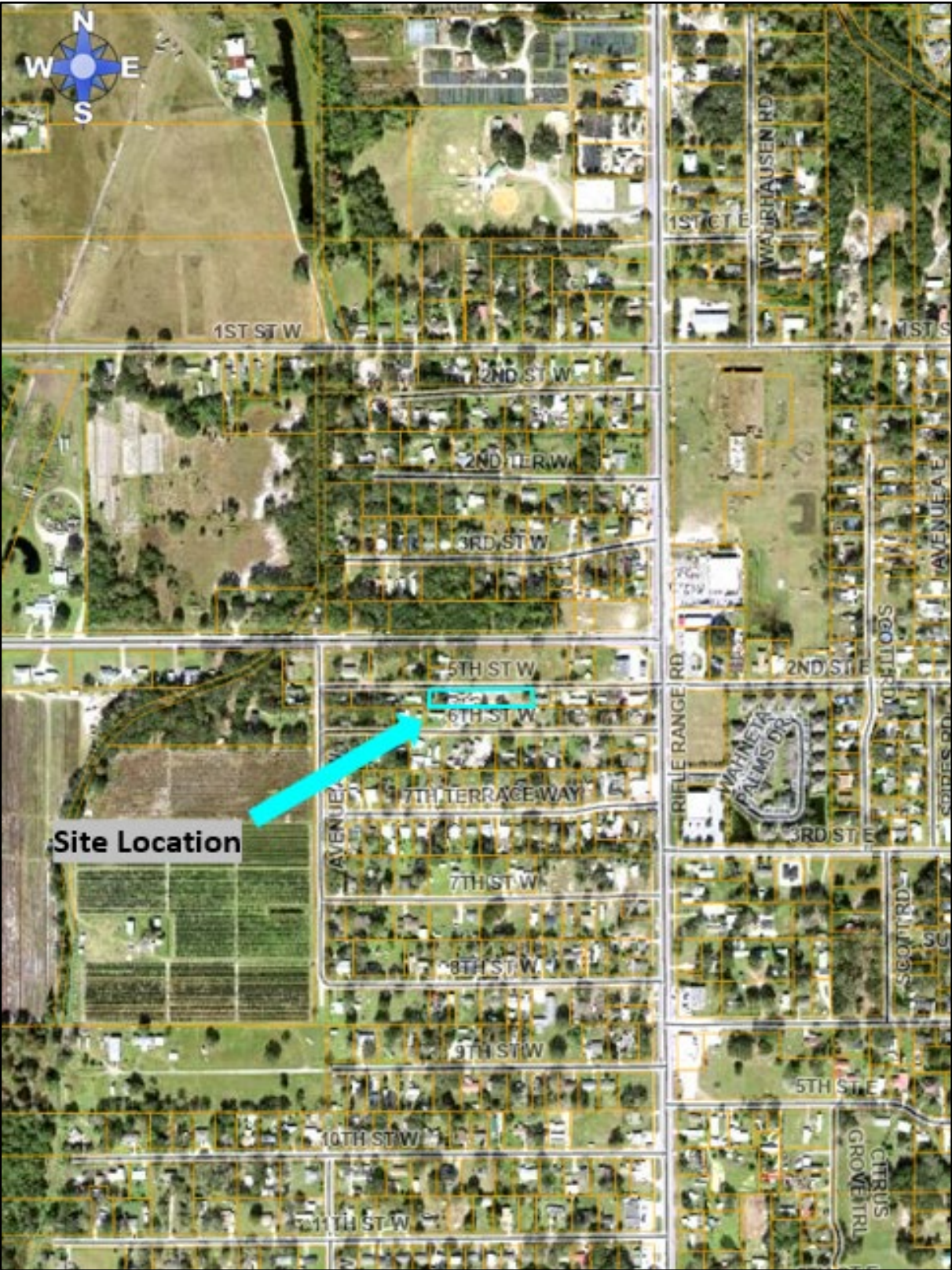


Location Map

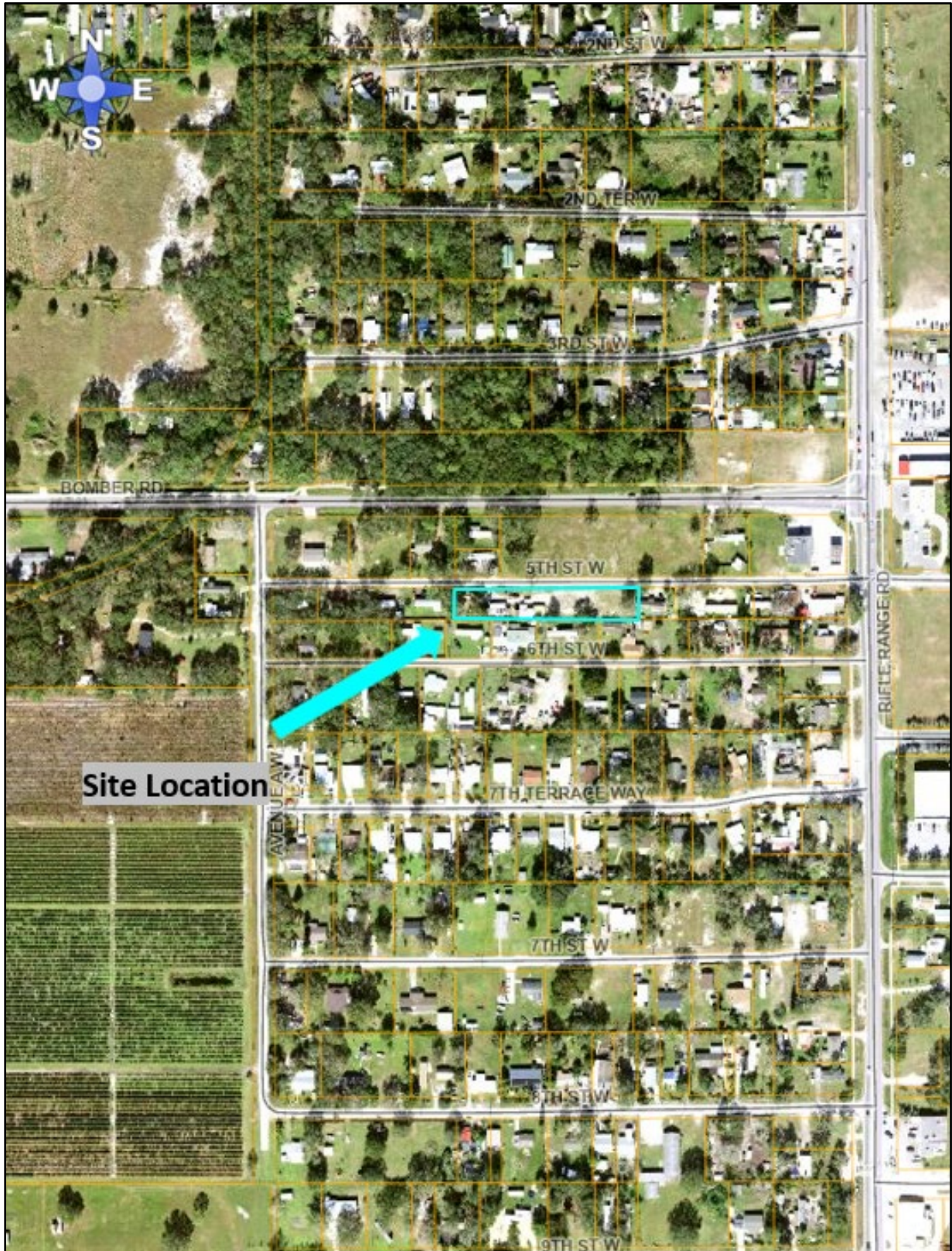


Site Location:
Residential
Suburban (RS)

Future Land Use Map



Aerial Context



Aerial Close-Up

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?

None

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

bt-2024-12664

What is the hardship if the variance is not approved?

pool already built

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

4ft

Do you have Homeowners Association approval for this request?

none

Applicant's Justification