

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

DRC Date	March 14, 2024	CASE #:	LDLVAR-2024-4 (Grand Canal Drive Variance)
LUHO Date	April 25, 2024	LDC Section:	Section 209.F & PUD 98-12

Request: The applicant is requesting a rear primary setback reduction from fifteen (15) feet to eleven (11) feet to add a solid roof on an existing screen room enclosure.

Applicant: Marjorie Delores Morand

Property Owner: Marjorie Delores Morand
Ann Baldwin

Location: The subject property is located at 417 Grand Canal Drive, Lot 382 of Solivita Subdivision Phase IIIA, south of Walnut Street, east of Marigold Avenue, north of Via Veneto Court, west of Grand Canal Drive, Poinciana, in Section 24, Township 27, Range 28.

Parcel ID#: 282724-934011-003820

Size: ±0.10 acres

Land Use Designation: Poinciana Pre-Development of Regional Impact (DRI) #1
Planned Unit Development (PUD) 98-12, Solivita Phase IIIA

Development Area: Transit Supportive Development Area (TSDA)

Case Planner: Malissa Celestine, Planner II

Summary:

The applicant is requesting a rear primary setback reduction from fifteen (15) feet to eleven (11) feet to add a solid roof on an existing screen room enclosure. Chapter 2, Section 209.F of the Land Development Code (LDC) states that roofed accessory structures physically attached or connected to the principal structure shall be considered a part of the principal structure and shall be subject to the same standards as the principal structure, including the setbacks. The subject property is identified as Lot 382 of Solivita Phase IIIA (PUD 98-12) subdivision. PUD 98-12 was approved with relatively small lots and large setbacks.

Based on a site visit and review of the proposed plans, the request does not appear to be injurious to surrounding homeowners or the neighborhood. The structure is to the rear of the home and abuts a stormwater pond (Tract P-A 911). Staff finds the request to be compatible to others in the immediate vicinity, as several other variances have been approved. However, these requests require a public hearing, and approval by the Land Use Hearing Officer (LUHO) in accordance with Section 931 of the LDC.

Staff recommends approval of LDLVAR-2024-4 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 the structure will be to the rear of the home and abuts a stormwater pond (Tract P-A 911). Variances for similar structures have also been approved within this phase of Solivita and throughout PUD 98-12. Thus, the request is not anticipated to negatively affect the surrounding property owners or the neighborhood.
- The **special conditions and circumstances present in the request do not result from the actions of the applicant** because the established lot sizes, configuration, and setbacks were imposed by the initial developer and exceed what would typically be expected for a community of this density and lot size.

Development Review Committee

The Development Review Committee, based on the criteria for granting Variances, finds that the applicant's request as written **IS CONSISTENT** with **Section 931** of the Polk County Land Development Code.

Development Review Committee Recommendation: Based upon the application, and a recent site visit, the Development Review Committee recommends **APPROVAL of LDLVAR-2024-4**, with the following conditions:

CONDITIONS OF APPROVAL:

1. Approval of this variance is to reduce the rear setback from 15 feet to 11 feet for the proposed structure as described in the staff report and site plan. All further additions or structures placed on the property shall be required to meet the requirements PUD-98-12 or be granted approval via another variance 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 applicant is requesting a variance to reduce the rear primary setback from 15 feet to 11 feet to add a solid roof on an existing screen room enclosure in the same footprint as the existing structure. Granting this variance is in accordance with the general intent and purpose of the Code and will not be injurious to the surrounding area or otherwise detrimental to the public welfare. The structure is to the rear of the home which abuts a stormwater pond (Tract P-A 911). Similar structures are found throughout Solivita, many require a variance. Refer to Table 1, below, for a list of approved variances within this section, township, and range.

The property, identified as Lot 382 within the Solivita Phase IIIA subdivision recorded on August 26, 2004 (Plat Book 127 Pages 10-13). It is part of PUD 98-12 within the Poinciana DRI with adopted rear setbacks of 15 feet for principal structures. A five-foot utility easement is noted within the surveyor's notes on the plat and located along the side and rear lot lines. The proposed roof will not impede on these easements and there will be adequate room for maintenance.

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 lot in question is a part of an approved Planned Unit Development (PUD 98-12) which regulates the lot sizes and other development criteria. For instance, the subject property is approximately 4,356 square feet (± 0.10 acres). The PUD approval included 15-foot rear setbacks. On a lot of this size, the setback is restrictive for home additions and accessory structures. For comparison, the minimum lot size in a Residential High (RH) land use district is 5,000 sq. ft. with a principal rear setback of 10 feet. A 15-foot setback is the standard for Residential Suburban (RS) land use districts that require a minimum lot size of five acres.

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

According to Chapter 2, Section 209.F of the LDC: *“Roofed accessory structures physically attached or connected to the principal structure shall be considered a part of the principal structure and shall be subject to the same standards as the principal structure.”*

The relatively large setbacks for the small lots within this development were created by the developer rather than the individual property owners. The owner acquired the property via a warranty deed in May of 2016. The home (2,142 sq. ft.) was built in 2005. The addition of the solid roof will aid in shielding the property owners from the elements.

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;*

Accessory structures are a permitted use, as was the case with the screen enclosure. The roof mandates this request but does not materially change its use. This type of variance request has become quite common throughout this community for the above-mentioned hardships on the properties. While variances are a development privilege, this one has been granted to other properties under similar circumstances.

Please refer to the table below as there have been several other approved variances for rear setback reductions within this section, township, and range, and others within PUD 98-12.

Table 1

Case	Date	Approved Variance Request
LDLVAR-2023-36	4-28-2022	Rear setback reduction from 10ft to 6ft
LDLVAR-2021-87	7-21-2021	Rear setback reduction from 10ft to 5ft
LDLVAR-2019-5	3-25-2021	Rear setback reduction from 10ft to 5ft
LDLVAR-2018-14	5-24-2018	Rear setback reduction from 15ft to 10ft

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

The approval of this variance is the minimum variance needed to allow the applicant to apply for the necessary building permits. Screen enclosures are common throughout this development, and many require additional approval from the Land Use Hearing Officer for setback relief.

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 request will not circumvent any conditions of approval. It is anticipated that some lots may not be able to comply with all the standards set forth in in the Planned Unit Development (PUD) approval. Chapter 9, Section 930.B.20 of the LDC allows relief to requirements within approved Planned Unit Developments via an approved variance, specifically linear distances and height.

Surrounding Future Land Use Designations and Existing Land Use Activity:

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

<p>Northwest: DRI; PUD 98-12 Solivita Phase IIIA, Tract P-A 911 Stormwater Pond</p>	<p>North: DRI; PUD 98-12 Solivita Phase IIIA, Lot 383 Site-Built Residence</p>	<p>Northeast: DRI; PUD 98-12 Solivita Phase IIIA, Lot 52 Site-Built Residence</p>
<p>West: DRI; PUD 98-12 Solivita Phase IIIA, Tract P-A 911 Stormwater Pond</p>	<p>Subject Property: DRI; PUD 98-12 Solivita Phase IIIA, Lot 382 Site-Built Residence</p>	<p>East: DRI; PUD 98-12 Solivita Phase IIIA, Lot 53 Site-Built Residence</p>
<p>Southwest: DRI; PUD 98-12 Solivita Phase IIIA, Tract P-A 911 Stormwater Pond</p>	<p>South: DRI; PUD 98-12 Solivita Phase IIIA, Lot 381 Site-Built Residence</p>	<p>Southeast: DRI; PUD 98-12 Solivita Phase IIIA, Lot 55 Site-Built Residence</p>

Poinciana is classified as a Pre-Development of Regional Impact #1 (DRI-1), a large-scale master development containing approximately 47,000 acres located within Polk and Osceola County. In 1971, Polk County granted approval of a Planned Unit Development (PUD 71-10) for Poinciana’s development. The County later approved a portion of PUD 71-10 for an Active Adult Community under PUD 98-12, known as Solivita. Since the subdivision’s approval did not address hard-roof-attached accessory structure setbacks, it defaults to the primary structure setbacks.

The subject site is Lot 382 within the Solivita Phase IIIA subdivision recorded on August 26, 2004 (Plat Book 127 Pages 10-13). There is currently a site-built residence with a screen enclosure on the premises. The request will not expand the footprint of the structure but simply allow the applicant to construct a solid roof for additional enjoyment of the outdoors. To the rear of the property is a platted tract intended for stormwater purposes (Tract P-A 911). Requests like the one proposed are common throughout all phases of Solivita as the rear setbacks and easements are restrictive for building patios with solid roofs.

Comments from other Governmental Agencies: None

Exhibits:

Exhibit 1 –Location Map

Exhibit 2 – Future Land Use Map

Exhibit 3 – Aerial Context

Exhibit 4 – Aerial Close-up

Exhibit 5 – Applicant Site Plan

Exhibit 6 – Applicant’s Justification



Location Map



Future Land Use



2023 Aerial Context

Stars Indicate Previously Approved Setback Variances



2023 Aerial Close Up

CRITERIA FOR GRANTING VARIANCE

Will the variance be injurious to the area involved or detrimental to the public welfare?
It will not be injurious. It will not be detrimental to the public welfare.

What special conditions exist that are peculiar to the land, structure, or building involved?
Existing screen enclosure 30' x 10' on existing concrete slab. Requesting to convert existing screen enclosure with a screen roof to a solid, aluminum roof.

When did you buy the property and when was the structure built? Permit Number?
05/2016

What is the hardship if the variance is not approved?
No hardship in place. Will not move forward with work requesting to be done. Will lose my deposit with contractor.

Is this the minimum variance required for the reasonable use of the land?
Yes as the screen enclosure and concrete pad is existing.

Do you have Homeowners Association approval for this request?
Yes

Applicant's Justification