

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

<b>DRC Date</b>	<b>July 10, 2025</b>	<b>CASE #:</b>	<b>LDLVAR-2025-38</b>
<b>LUHO Date</b>	<b>August 26, 2025</b>	<b>LDC Section:</b>	<b>Palm Street ADU variance Section 206.A.2</b>

**Request:** The applicant is requesting an accessory dwelling unit (ADU) larger than the 1,000 square feet maximum.

**Applicant:** Donald Robert

**Property Owner:** Donald and Cindy Robert

**Location:** 2240 East Palm Street, accessed through easement north of East Palm Street, south of Goose Road, north of Horseshoe Creek Road, east of U.S. Highway 17/92, west of Osceola County, east of the town of Davenport, in Section 02, Township 27 and Range 27.

**Parcel ID#:** 272702-713000-020020

**Size:** 4.82± acres

**Land Use Designation:** Residential Medium-X (RMX)  
North Ridge Selected Area Plan

**Development Area:** Urban Growth Area (UGA)

**Case Planner:** Erik Peterson, AICP

**Summary:**

The applicant is seeking a variance to the maximum size limit of 1,000 square feet for an accessory dwelling unit (ADU). Section 206.A.2 of the Land Development Code (LDC) limits ADUs to less than the size of the primary residence and not to exceed 1,000 square feet. The applicant's home is 2,050 square feet under roof and is seeking a 1,250 square-foot accessory dwelling unit.

The applicant has purchased a large tract of land in an area that is rapidly urbanizing. He does not intend to develop this land in the way neighboring properties are being developed. He seeks the ADU size approval for the property to comfortably house his elderly parents onsite. The design of the dwelling requested is 25% larger than the County's ADU standards permitted by right. The applicant could be permitted to subdivide the property and build an even larger structure under administrative review. However, he chooses for the property to remain whole because the true intention is that it be an accessory dwelling to the primary residence. Staff find that 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 density entitlements for properties in the area are much greater.
- **Special conditions and circumstances present in the request do not result from the actions of the applicant** because the applicant could subdivide the property and build an even larger home, but the applicant wants the property to remain as one.

### **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-2025-38**, with the following conditions:

### **CONDITIONS OF APPROVAL:**

1. A variance to the standards in Section 206.A.2, of the Land Development Code (LDC) shall be granted to adjust the maximum allowable square footage of an accessory dwelling unit (ADU) from 1,000 square feet to 1,250 square feet with an additional tolerance of 2%.
2. This variance shall be valid as long as the primary residence remains 2,050 square feet under roof or greater.
2. This variance does not authorize any encroachments into easements and the applicant shall be responsible for making 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 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 the 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 submission 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*

**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 Board of County commissioners set a cap on the size that an accessory dwelling could reach under typical circumstances because they wanted to avoid situations where the size of the accessory structure was nearly the same as the primary structure. This was to discourage properties from becoming twice as intense as envisioned. The 1,000 square foot cap was chosen because it corresponds with the separation in impact fee rates from partial to full residence.

It was understood by the Board that there would be exceptional situations, so this variance option was added to the duties of the Land Use Hearing Officer to review. The one stipulation is that the total impervious surface coverage of a property with a larger than 1,000 square foot ADU does not result in more than 60%. The applicant's property is nearly five acres and the current home, and its patio and driveway cover less than 2% of the property. The addition of this 1,250 square foot ADU will not likely exceed 2% let alone 60% of the property.

The applicant is seeking approval of an ADU that is approximately 25% larger than the standard in the code. It is also subordinate in size to the primary dwelling by 40%. The applicant could build a larger home if he went through the process of subdividing the tract. The base density for the district is 10 dwelling units to the acre and multifamily dwellings are permitted by right. For these reasons, approval will not be injurious to the area involved or otherwise detrimental to the public welfare.

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;*

There are certainly special circumstances that exist that are peculiar to the applicant's land. This property and the properties that surround it are entitled to 10 dwelling units per acre by right under current land use designations. However, there is not the proper infrastructure in place to accommodate such development intensity. The property to the northwest developed by paying the cost of extending services from the town of Davenport and eventually was annexed into its jurisdiction. That is why a townhome development of approximately seven units per acre is developing just feet away from the applicant's property line.

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

The applicant has purchased a large tract of land in an area that is rapidly urbanizing. He does not intend to develop this land in the way neighboring properties are being developed. He seeks to construct an accessory dwelling unit (ADU) on the property to comfortably house his elderly parents onsite (see Exhibit 6). The design of the dwelling requested is

25% larger than the County's ADU standards permit by right. The applicant could be permitted to subdivide the property and build an even larger structure under administrative review. However, the applicant chooses for the property to remain whole because the true intention is that it be an accessory dwelling to the primary residence.

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;*

From a zoning perspective, this will not confer on the applicant any special privilege that is denied by the provisions of this Code. This property could support a number of additional homes with the approval of access and any necessary infrastructure to support them. If he is not granted approval, he will either have to enlarge the existing home or undergo the process of subdividing the lot in order to house his parents onsite.

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 seeking an accessory dwelling unit (ADU) that is approximately 25% larger than the County's current ADU maximum standard. The ADU will be approximately 61% the size of the primary dwelling as it is sized today. This still falls into the confines of the definition of accessory (incidental and subordinate). The home is intended to house the applicant's elderly parents, according to the application (see Exhibit 6).

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;*

A slightly larger than standard accessory dwelling unit (ADU) will not change the use of this property. The applicant has the right to subdivide and build another unit through administrative approval. However, he prefers that the 4.82-acre tract not be subdivided.

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. The applicant could seek subdivision of the property for more units, but that is not his intention for this ADU. He does not intend to sell the unit.

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 Board of County Commissioners changed the Future Land Use Map designation of the properties in this area from A/RR to RMX on December 6, 2006, for the purpose of encouraging higher development densities to meet the future demand for housing. However, not all of the designated areas were expected to take advantage of the entitlements. In this area, necessary infrastructure for higher density development is currently available. While there was the possibility that services could be available to the area in the future, such plans have not materialized in this area over the last 20 years.

However, the applicant has enough property to support more units without infrastructure extensions such as central potable water and wastewater services.

**Surrounding Future Land Use Designations and Existing Land Use Activity:**

The table to follow provides details of abutting structures and lot parameters.

**Table 1**

<p><b>Northwest:</b> Residential Medium-X (RMX) Town of Davenport Bella Vista Development Townhomes</p>	<p><b>North:</b> RMX Vacant Mostly wetlands and 100-year flood zone</p>	<p><b>Northeast:</b> RMX Vacant Mostly wetlands and 100-year flood zone</p>
<p><b>West:</b> RMX Vacant ±4.73 acres</p>	<p><b>Subject Property:</b> RMX Single-family dwelling built in 1987 ±2,050 square feet ±4.82 acres</p>	<p><b>East:</b> RMX Vacant ±4.82 acres</p>
<p><b>Southwest:</b> RMX Single-family dwelling built in 1976 ±5,975 sq.ft. ±4.68 acres</p>	<p><b>South:</b> RMX ±10 acres of a ±20-acre citrus grove</p>	<p><b>Southeast:</b> RMX ±10 acres of a ±20-acre citrus grove</p>

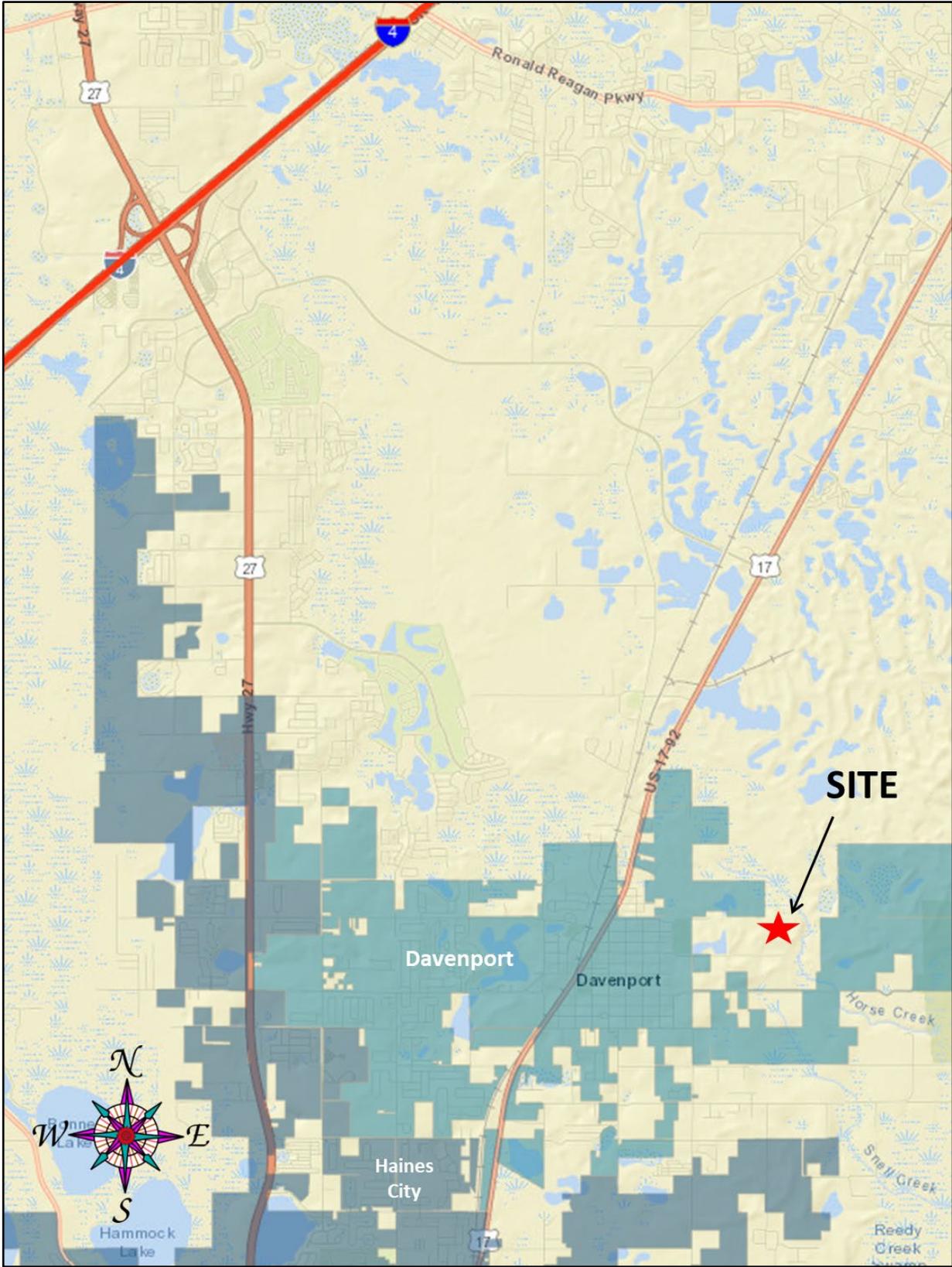
There is a significant contrast between the current use of the applicant’s property and its zoning entitlements. The applicant has a nearly five-acre property and is seeking an accessory dwelling unit (ADU) from the Land Use Hearing Officer to accompany his 2,050 square foot home when the current zoning allows 48 dwelling units on the property. Most of the properties immediately abutting the applicants are large tracts and likely to be developed with one single-family dwelling and perhaps ADUs. Just under 250 feet to the northwest of the applicant’s property is a townhome development in the town of Davenport with an estimated seven (7) dwelling units per upland acre.

**Comments from other Governmental Agencies:**

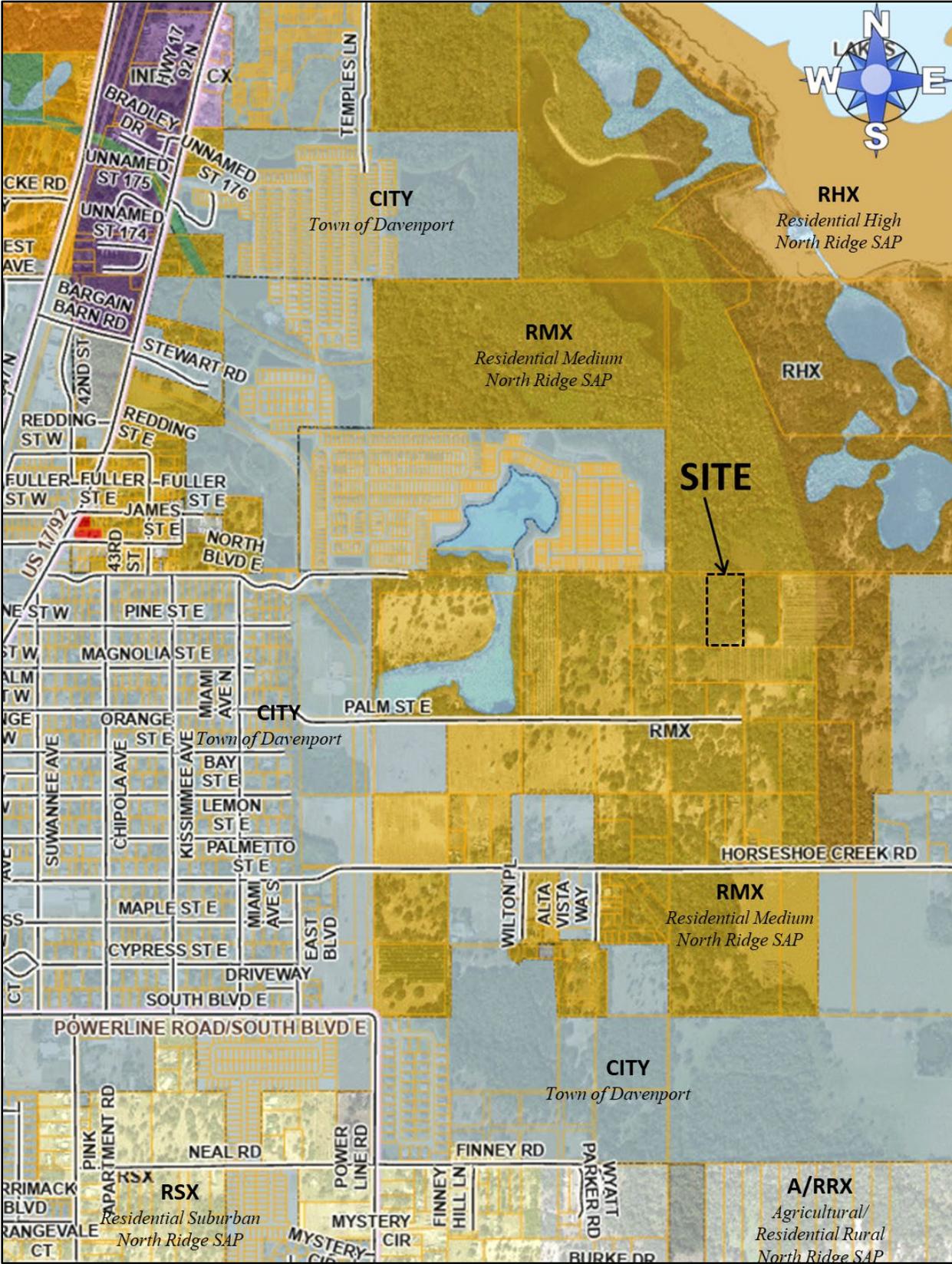
None.

**Exhibits:**

- Exhibit 1 - Location Map
- Exhibit 2 - Future Land Use Map
- Exhibit 3 - 2023 Aerial Photo (context)
- Exhibit 4 - 2023 Aerial Close-up
- Exhibit 5 - Applicant’s Site Plan
- Exhibit 6 - Applicant’s Justification



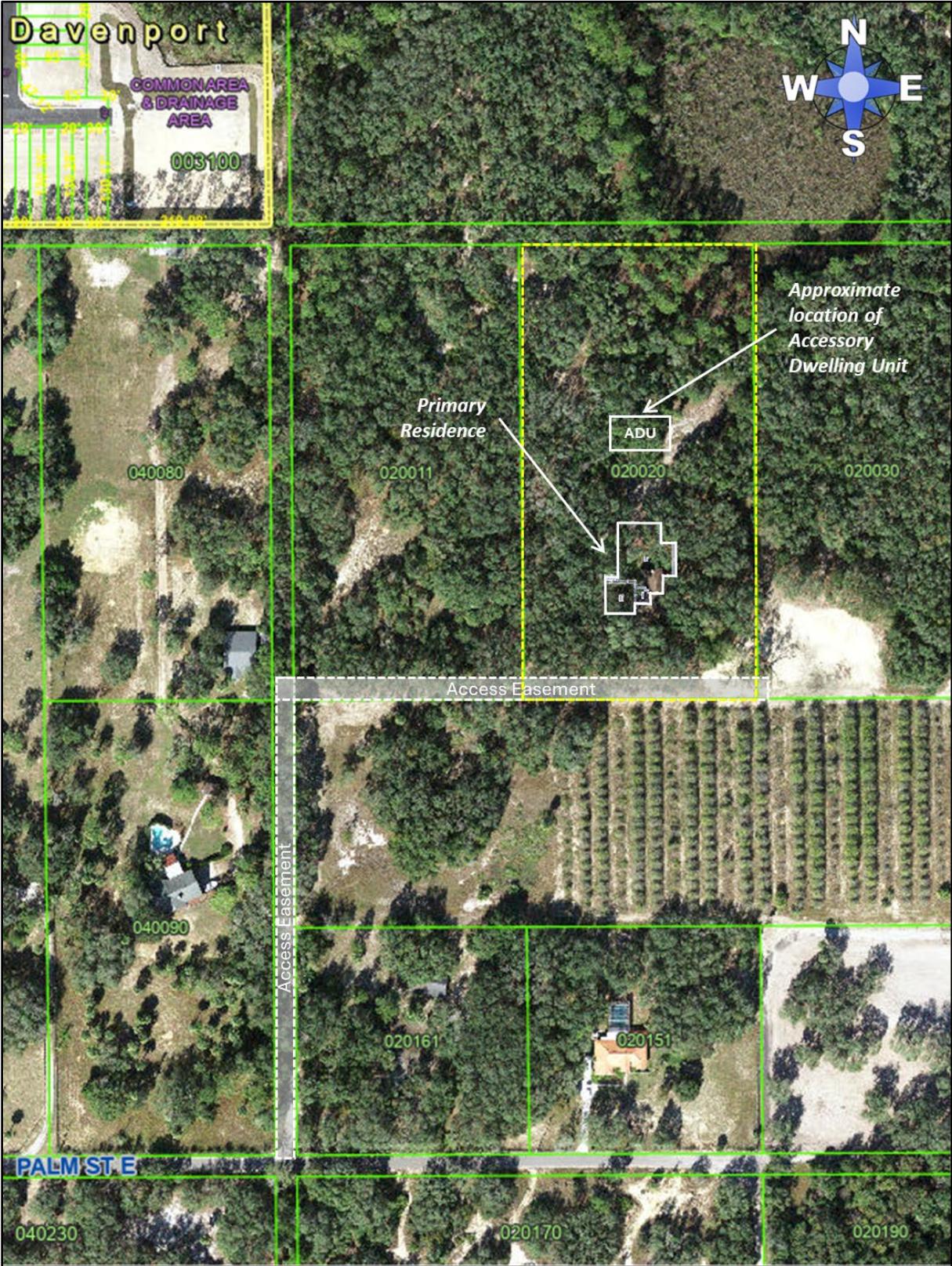
Location Map



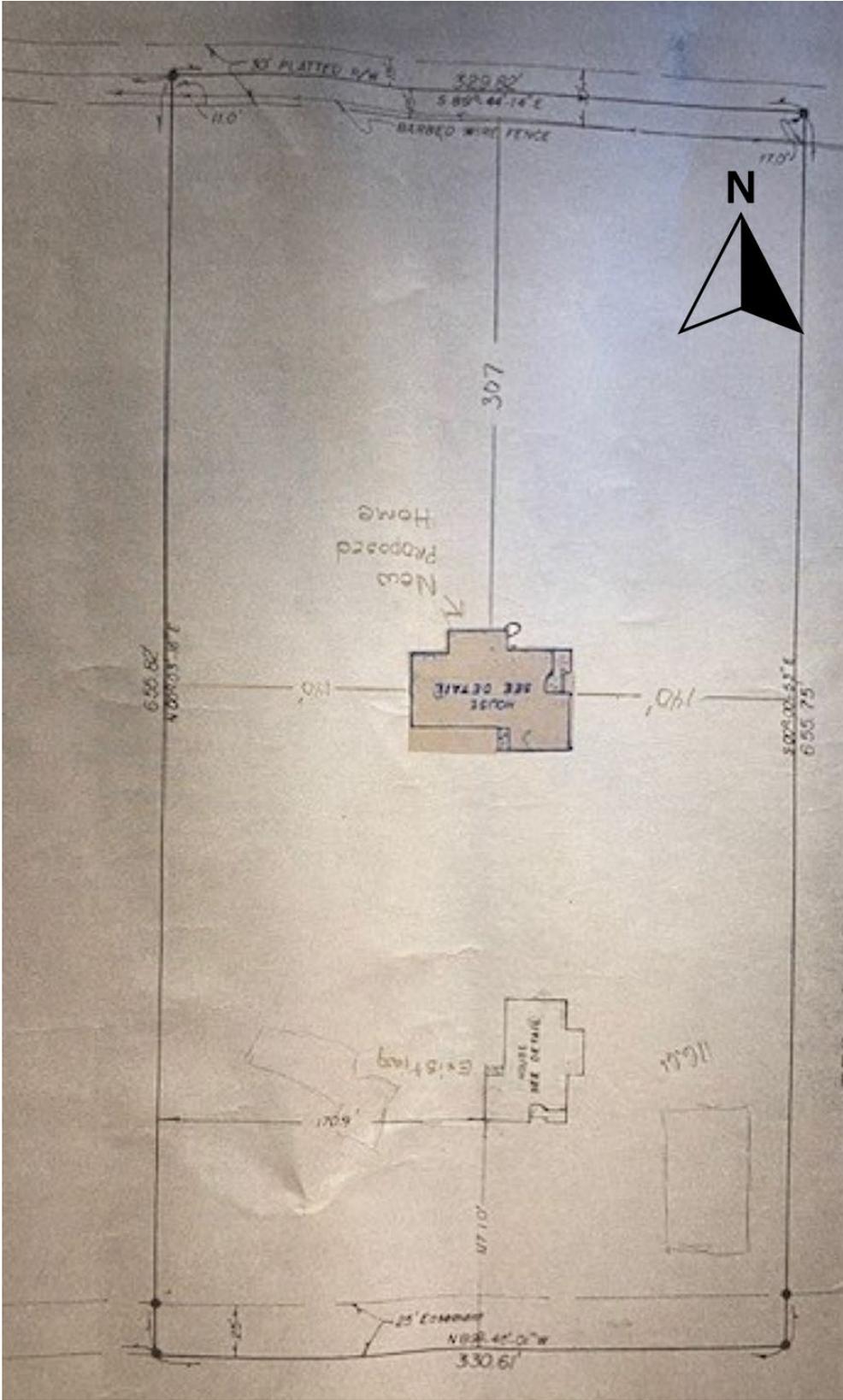
# Future Land Use Map



# 2024 Aerial Photo (context)



# 2023 Aerial Close-up



# Applicant's Site Plan

**CRITERIA FOR GRANTING VARIANCE**

**Will the variance be injurious to the area involved or detrimental to the public welfare?**  
~~NO~~ Since we will be building a single family home in the middle of the 5 acres, I don't think there will be a impact, and only increase property values

**What special conditions exist that are peculiar to the land, structure, or building involved?**  
~~NONE~~ Except for the home we plan on building, we are leaving as much of the remaining 5 acres untouched as possible.

**When did you buy the property and when was the structure built? Permit Number?**  
~~N/A~~ The property and existing house were passed on to us last year. The existing home was built in 1987.

**What is the hardship if the variance is not approved?**  
~~N/A~~ We want to retire here and have a place for our elderly parents. This has been our dream

**Is this the minimum variance required for the reasonable use of the land?**  
~~YES~~ As stated above, we plan on leaving most of the land natural.

**Do you have Homeowners Association approval for this request?**  
~~N/A~~ There is no Homeowners Association.

## Applicant's Justification