

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

DRC Date	November 12, 2024	CASE #:	LDLVAR-2024-51 (Pasco Road ADU Variance)
LUHO Date	October 10, 2024	LDC Section:	Table 2.2

Request: The applicant is requesting to reduce the rear accessory setback from five (5) feet to four (4) feet for an Accessory Dwelling Unit (ADU).

Applicant: Patrick Duggan, DCR Tampa LLC

Property Owner: Ronald & Leslie Mount

Location: 116 Pasco Road, south of Wakulla Drive, north of Okaloosa Drive, west of Overlook Drive, east and north of Winter Haven in Section 34, Township 28, Range 26.

Parcel ID#: 262834-659500-005951

Size: 0.31 +/- acres

Land Use Designation: Residential Low-3 (RL-3)

Development Area: Urban Growth Area (UGA)

Case Planners: Ian Nance

Summary:

The applicant is requesting to reduce the rear accessory setback from five (5) feet to four (4) feet for an Accessory Dwelling Unit (ADU). An ADU is defined in the Land Development Code (LDC) as an accessory residential living unit on the same parcel as a single-family dwelling which provides complete independent living facilities for one or more persons. The applicant is converting an existing detached shed into a 1,428 sq. ft. ADU in the footprint of the original structure which was found to be within the rear setback during the Building Permit review process.

Staff recommends approval of this request, finding that the variance will not be injurious to the area involved or otherwise detrimental to the public welfare. The original structure was placed prior to the ownership of the current resident and sits at an angle relative to the home on an irregularly shaped lot. The proposed structure will meet all other setbacks onsite and only requires the setback reduction at its closest point to the rear property line, rather than long the entire vertical plane of the structure. A six-foot PVC fence surrounds the rear yard providing screening, and ADUs are allowable accessory uses in Residential Low-3 (RL-3) land use districts. It is smaller than the primary structure and is situated to the rear of the home, as required by LDC standards. The need to remodel and reclassify this structure as an ADU was the reason for triggering this variance review.

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-2024-51**.

CONDITIONS OF APPROVAL:

1. Approval of this variance is to reduce the rear accessory setback from five (5) feet to four (4) feet for an Accessory Dwelling Unit (ADU), as described in the application and staff report. Further additions or structures placed on the property shall be required to meet the requirements 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 three (3) years 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 structure.

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 applicant is converting an existing detached shed into a 1,428 sq. ft. ADU, largely inside the footprint of the original structure which was found to be in violation of the setbacks during the Building Permit review process. The original structure was permitted in 2017 (BLD-H-364552) as a 24 x 40 metal garage with a 10-foot lean-to. Based on the site plan provided, the ADU will be expanded slightly towards the home. The overall height of the structure will be 13 feet, which does not change what was originally approved.

The setbacks for detached accessory structures in RL-3 are five (5) feet on the side and rear property lines. The site plan shows the structure sits at an angle relative to the property lines and that it will reach four (4) feet from the rear at the very southwest corner of the structure, and not along the entire vertical plane of the building (Exhibit 5). Other setbacks will be maintained. A six-foot PVC fence surrounds the rear yard providing screening. It is smaller than the primary structure and is situated to the rear of the home, as required by LDC standards. The need to remodel and reclassify this structure as an ADU was the reason for triggering this variance review.

The subject property is within a plat, but no easements are noted on this lot. The nearest home or enclosed building from the proposed ADU is approximately 60 feet to the west. Given that the need for this variance on one corner is so minimal, granting it will not detract from the ability of the neighbors to add accessory structures onto their properties without creating issues with the Fire Code.

Given that this is a change of use from a relatively benign storage shed to being used as a dwelling, there could be concerns regarding privacy so close to a neighboring property line, though ADU setbacks are the same as any other accessory structure. Windows will be located on the side and rear of the building but will not exceed the height of the surrounding six-foot PVC fence to create a privacy issue for neighbors (Exhibit 7). Finally, though the applicant has not raised the issue, there are concerns with ADUs being used for Short-Term Rentals. LDC Section 206.A.6 expressly prohibits ADUs from being used for this purpose.

As a result of this information, staff finds the request 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;*

The subject property is recorded as Lot 596 and the northeasterly 20 feet of Lot 595 of the Eloise Woods East Lake Mariam Unit subdivision (BK 13027 PGS 1597-1598). The property is 80-feet-wide, but the depth decreases from 175 feet on the northern property line to 161 feet on the southern property line. The lack of uniformity in depth likely resulted in the incorrect placement of the original structure. The primary home (2,196 sq. ft.) was built in 1964 at an angle relative to the property lines which might have caused confusion, too. Again, though, the four-foot setback is only applicable at the corner of the structure.

Most of it meets setbacks.

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

The property has been under the current ownership since 2024. The original structure was permitted in 2017 (BLD-H-364552) as a 24 x 40 metal garage with a 10-foot lean-to. The conversion of this shed into an ADU triggered the variance review. The physical structure will change slightly, though the use is different.

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;*

Aside from this reduction in the rear setbacks, granting this variance will not allow anything else that would otherwise violate RL-3 standards. ADUs are regulated as Accessory Uses in LDC Section 206.A. They may be permitted as accessory uses to single-family detached homes and mobile homes in all residential districts and lots of record for residential purposes subject to the applicable district regulations. ADUs may be rented, leased, or serve as housing for living assistants, guests, or family members but may not be subdivided from the parent property or placed under separate ownership from the primary dwelling. As accessory structures, they must be in the side or rear yard and remain subordinate in size to the principal structure. This ADU meets these standards.

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 and build the structure as requested. The existing building is being renovated, and any expansion will occur towards the primary structure and away from property lines. Permitting the accessory structure at the same setback and over the existing slab makes sense for the property owner. The reduction is for one foot at the southwest corner of the structure.

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. This is a residential accessory structure in a RL-3 future land use designation.

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 going 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.*

This site is not subject to any Planning Commission or BoCC conditions. It is not within a Planned Unit Development or Planned Development.

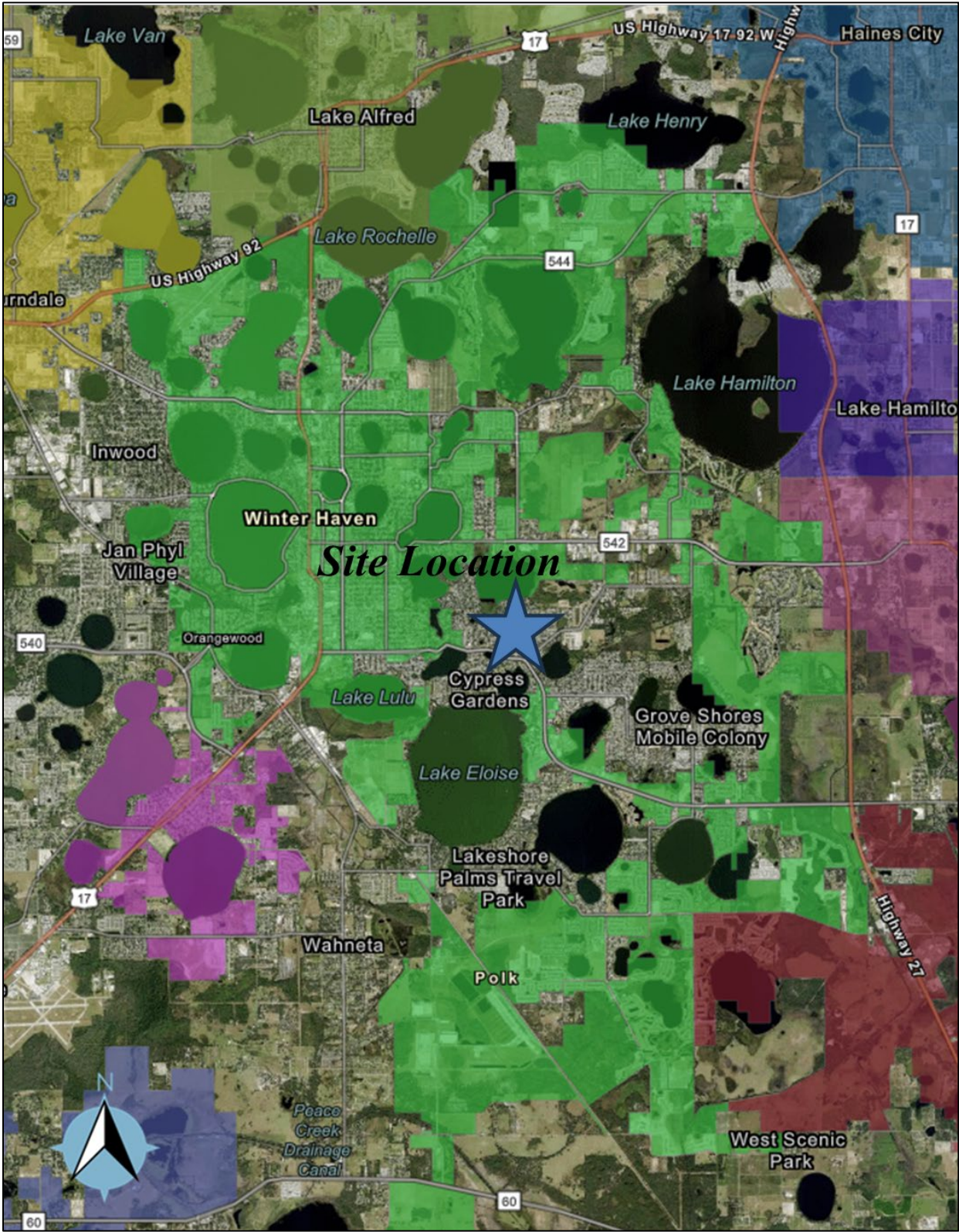
Surrounding Future Land Use Designations and Existing Land Use Activity:

<p>Northwest: Pasco Road RL-3 Single-Family Home</p>	<p>North: RL-3 Single-Family Home</p>	<p>Northeast: RL-3 Single-Family Home</p>
<p>West: Pasco Road RL-3 Single-Family Home</p>	<p>Subject Property: RL-3 Single-Family Home</p>	<p>East: RL-3 Single-Family Home</p>
<p>Southwest: Pasco Road RL-3 Single-Family Home</p>	<p>South: RL-3 Single-Family Home</p>	<p>Southeast: RL-3 Single-Family Home</p>

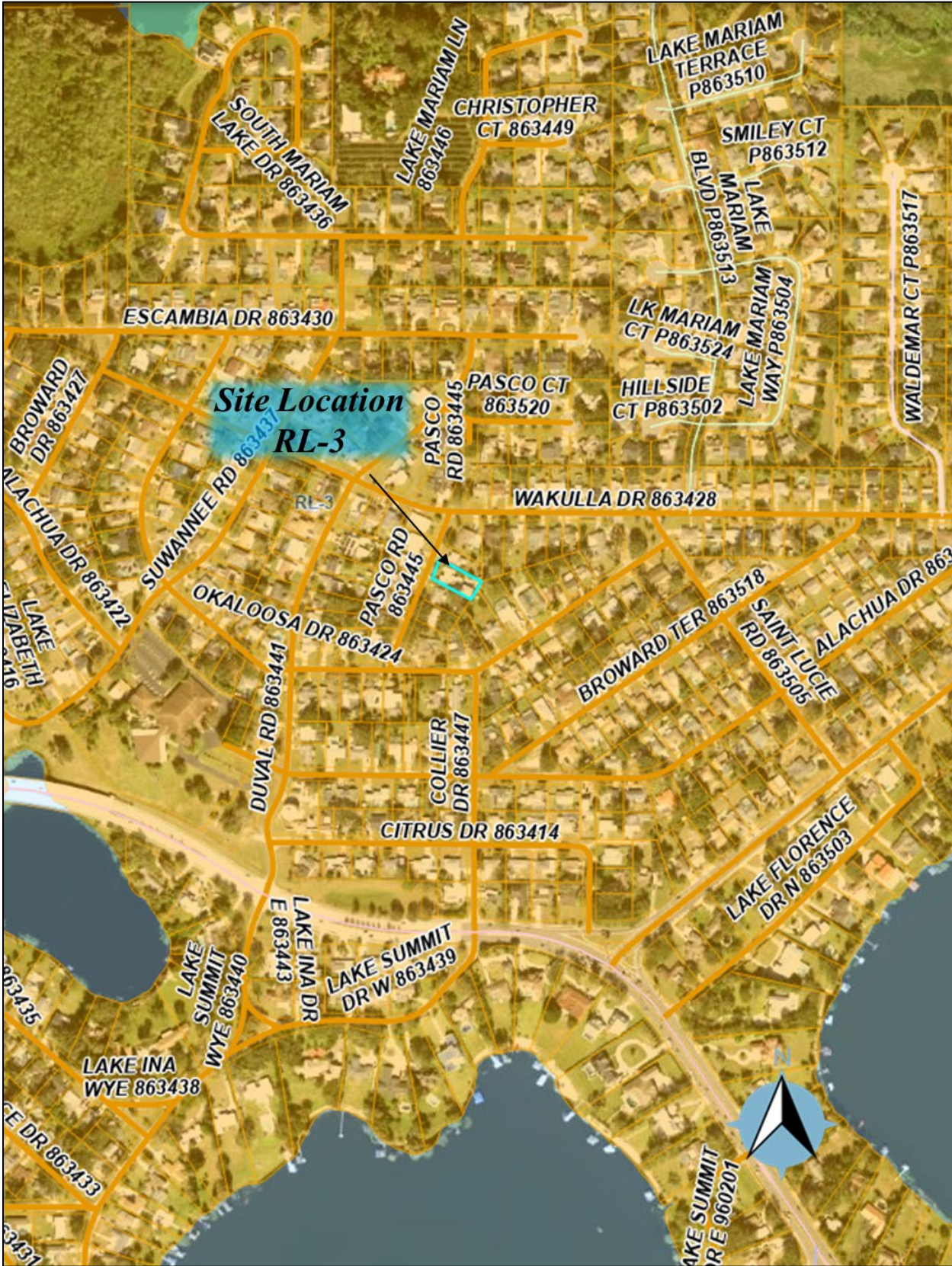
The subject property is recorded as Lot 596 and the northeasterly 20 feet of Lot 595 of the Eloise Woods East Lake Mariam Unit subdivision (BK 13027 PGS 1597-1598). This subdivision was originally platted on December 22, 1925. The surrounding uses are all site-built single-family homes built mostly in the 1960s, prior to any of the County’s zoning or land development regulations. It is within the RL-3 land use designation, and lot sizes are within the scope of this designation (min. 10,000 sq. ft.). No similar variances were found for accessory structures within this subdivision.

Exhibits:

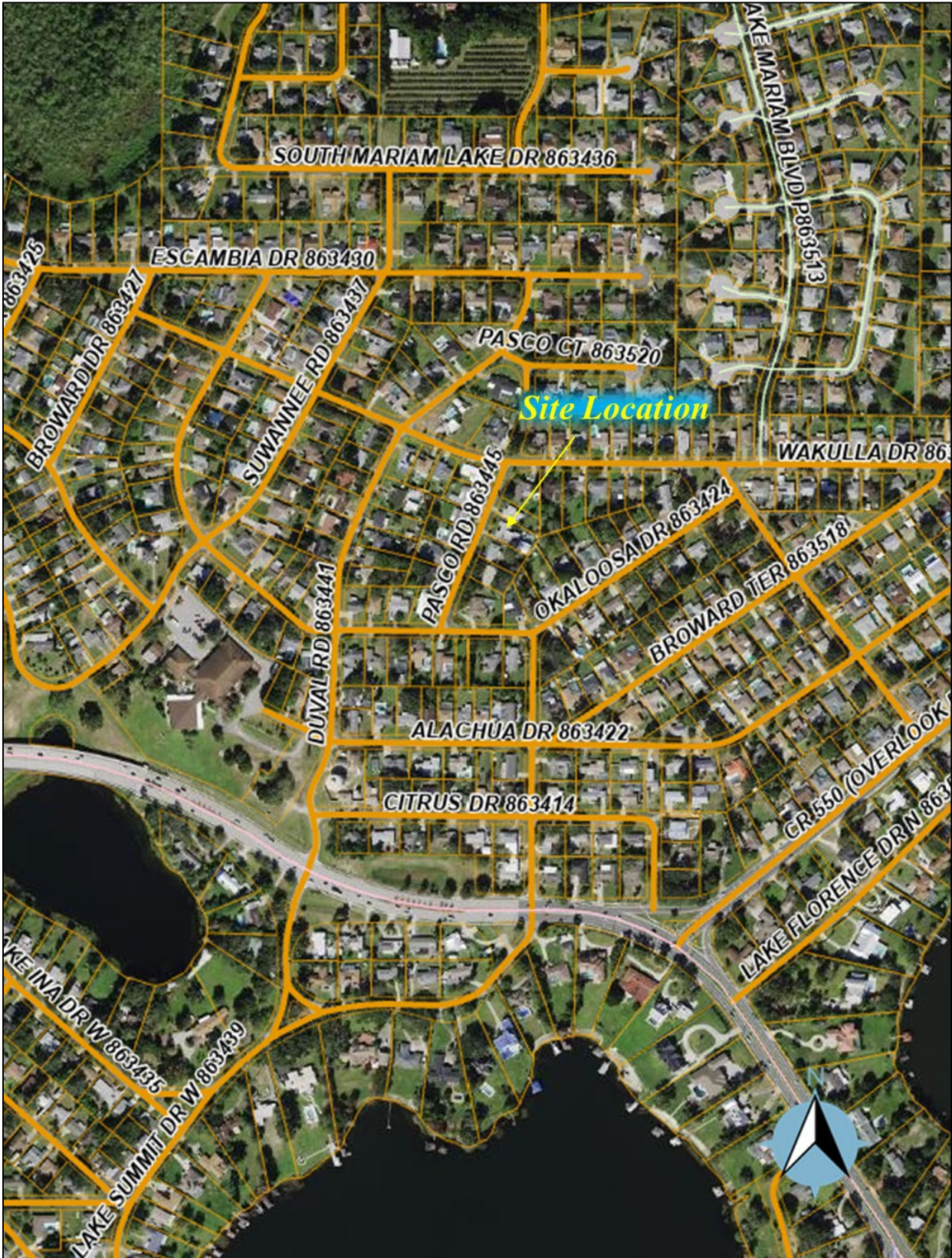
- Exhibit 1 Location Map
- Exhibit 2 Future Land Use Map
- Exhibit 3 Aerial Image – Context
- Exhibit 4 Aerial Image – Close
- Exhibit 5 Site Plan
- Exhibit 6 Floor Plan
- Exhibit 7 Elevations



Location Map



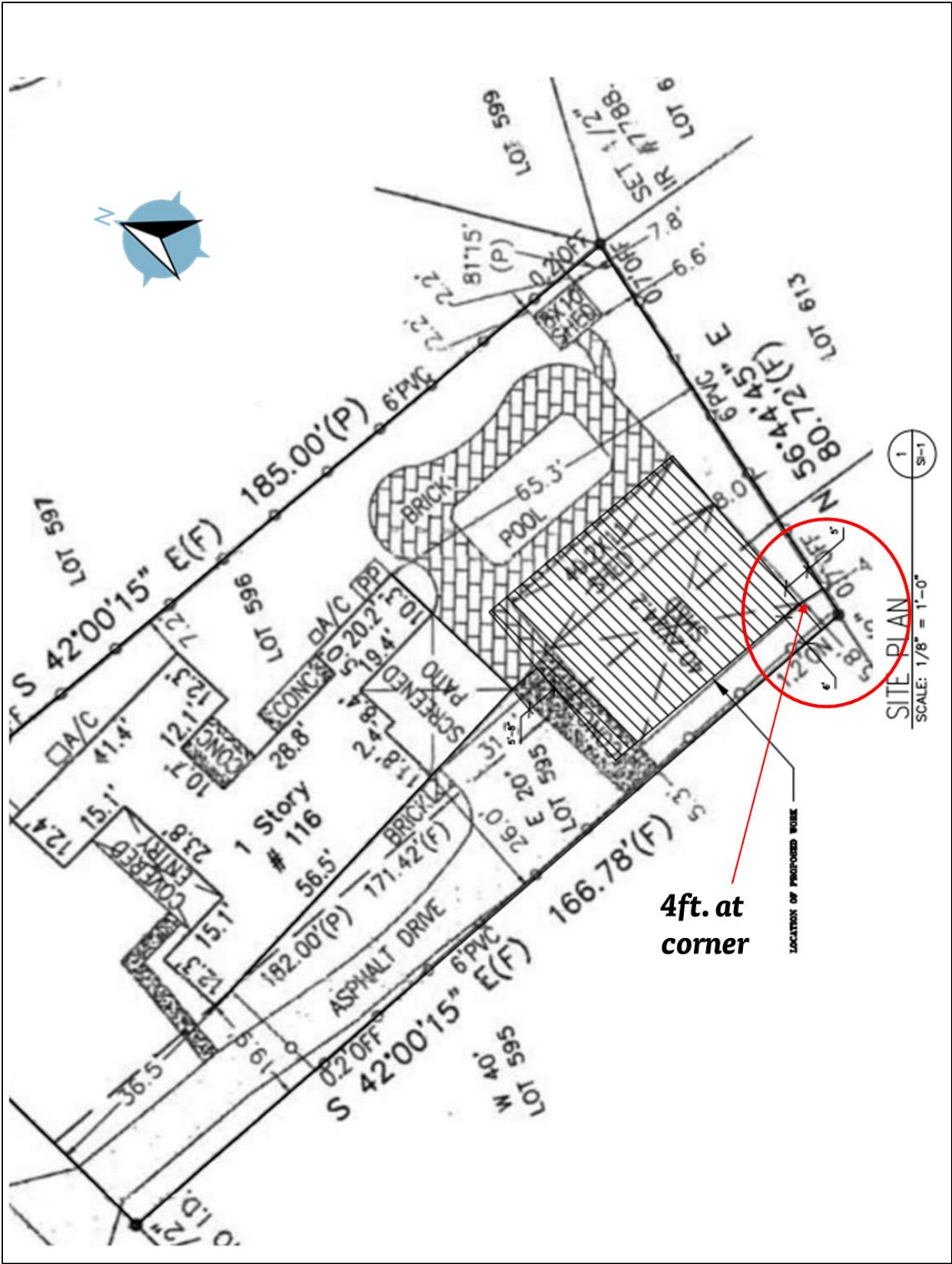
Future Land Use Map



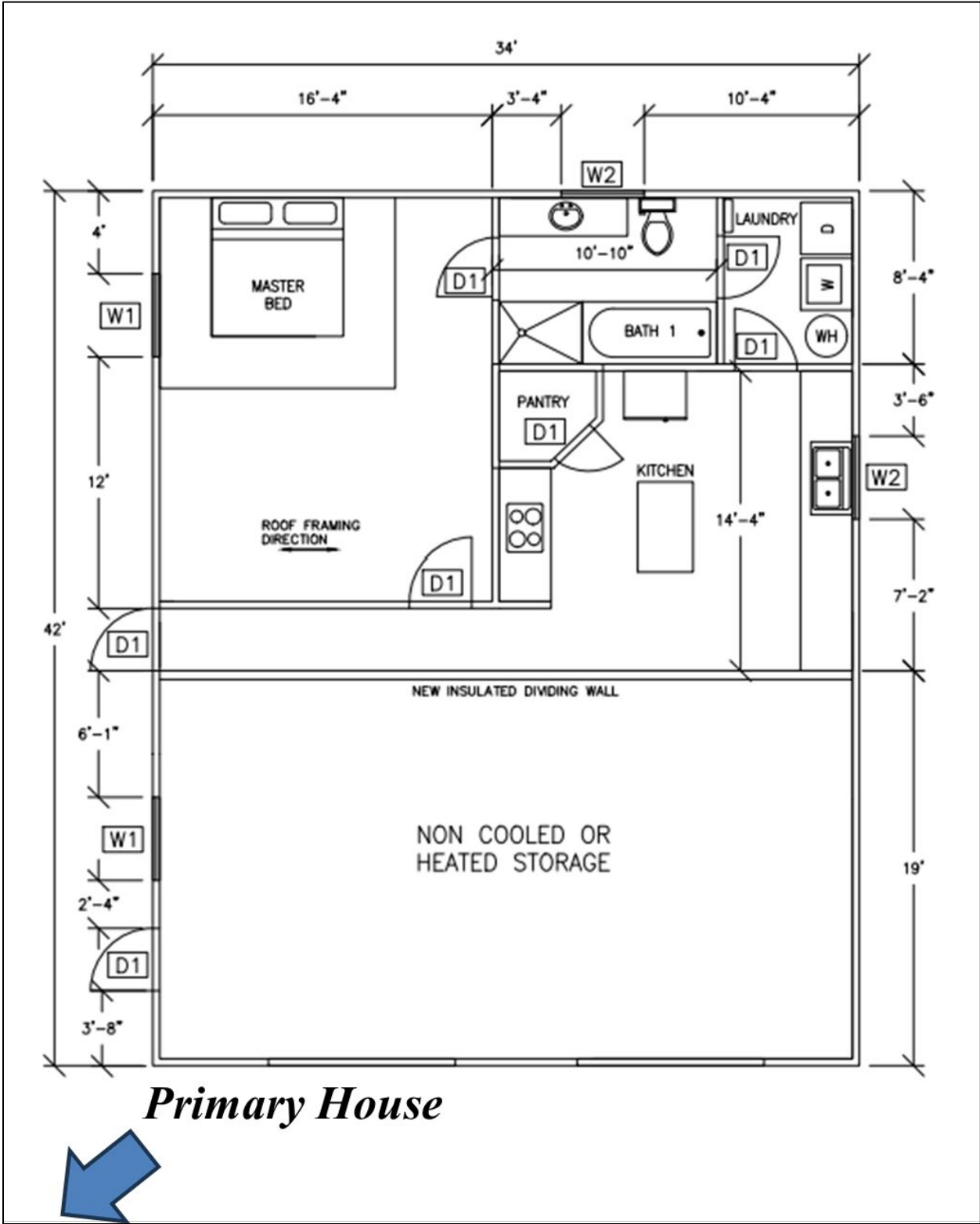
Aerial Image – Context



Aerial Image - Close



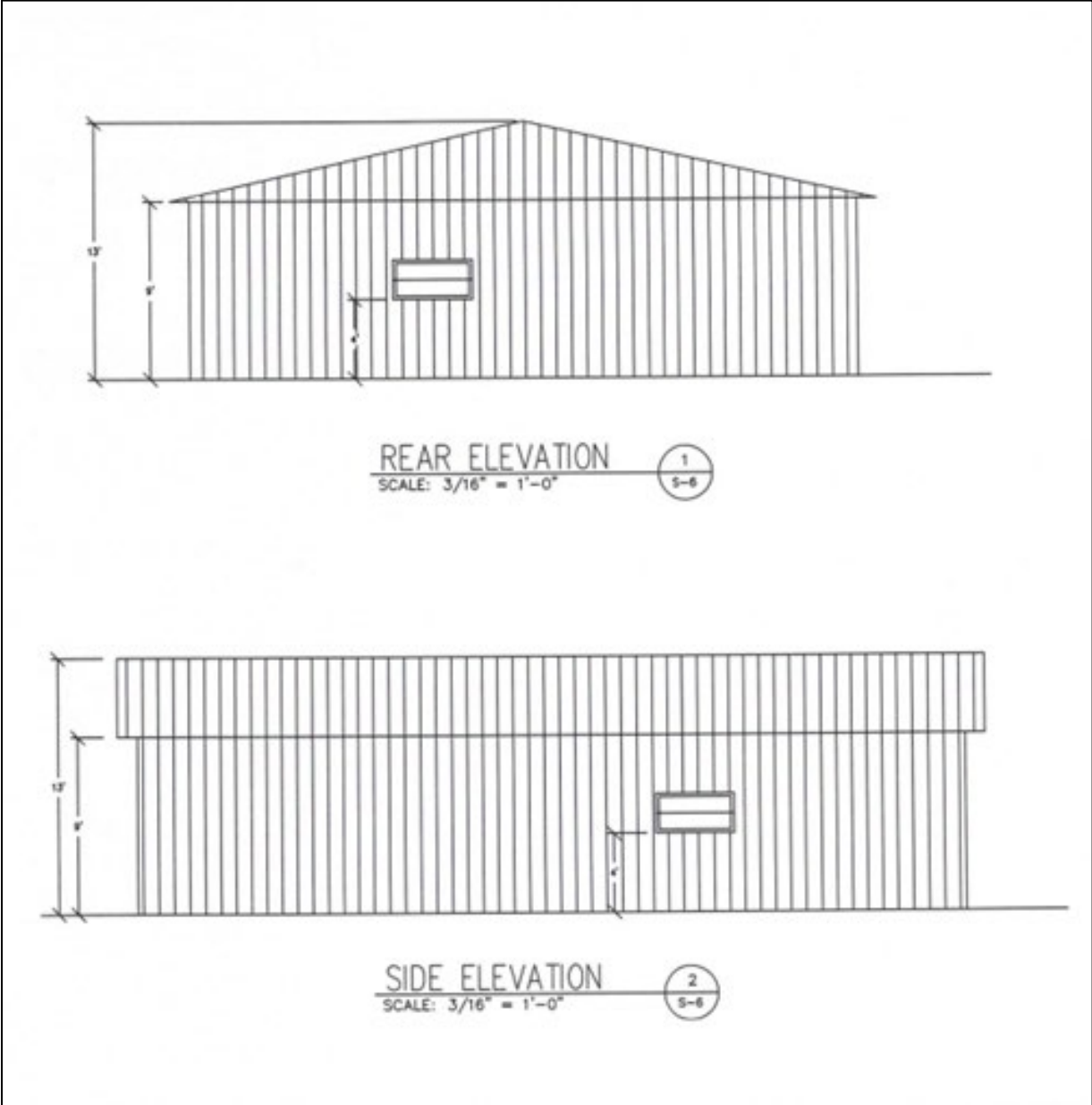
Site Plan



Primary House



Floor Plan



Elevations