

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

DRC Date: September 12, 2024	CASE #: LDLVAR-2024-41 (Hirsch Variance)
LUHO Date: October 24, 2024	LDC Section: PUD 73-28

Request: The applicant is requesting a reduction of the primary structure ROW setback from 15 feet to 9 feet for the expansion of a RV port for full coverage.

Applicant: Theodore Hirsch

Property Owner: Theodore Hirsch

Location: The subject property is located north of Interstate 4, south of Commonwealth Avenue SW, east of Highway 33 N, west of Berkley Road, enclosed by Polk City in Section 06, Township 27, Range 25.

Parcel ID#: 252706-298365-000121

Size: ±0.24 acres

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

Development Area: Utility Enclave Area (UEA)

Case Planner: Kyle Rogus, Planner I

Summary:

The applicant is requesting a reduction of the primary structure ROW setback from 15 feet to 9 feet for the expansion of a RV port to cover the vehicle. The request is to allow 15 feet of uniform coverage on both sides of the driveway to protect his vehicles parked outside. The curvature of the road creates a non-uniform right-of-way setback. The lot is 0.24 acres, which is below the 1 acre minimum residential lot area in the Residential Low-1X land use district. Because of the small size of the lot, the setbacks restrict further development without impeding on the 15 foot right-of-way setback. The RV port will be within the 15 foot right-of-way on the west side of the driveway outside the drainage easement. The property is within a Residential Low-1X (RL-1X) future land use in the Green Swamp Area of Critical State Concern and Polk City Special Protection Area. Pursuant of the Mount Olive Shores Estates PUD 73-28, the primary setback for the front yard is 15 feet. This variance will allow for 15 feet of protection for owners vehicles while parked outside.

Staff finds this request will cause no direct or indirect harm to the community. The subject parcel is in a residential land use surrounded by lots with similar RV ports. The RV port extension will be placed within 15 feet of Northshore Drive on the west side of the driveway (see Exhibit 5).

Staff recommends approval of LDLVAR-2024-41 as it meets the following criteria listed in Section 931:

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 request will not block or limit the view of traffic and it will not encroach on the drainage easement that runs along Northshore Drive.

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 property is located in the Residential Low-1X (RL-1X) land use district. The minimum lot size in Residential Low-1 land use district is 1 acre. Subject property is smaller than the minimum lot size at approximately 0.24 acres. The small lot size affects the use of the lot without the relief from setbacks.

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-2024-41**

CONDITIONS OF APPROVAL:

1. The approval of this variance is to reduce the primary structure right-of-way setback from 15 feet to 9 feet for the expansion of a RV port. Further additions or structures placed on the property shall be required to meet the setback requirements of Section 205, 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 Land Development Code documented by a 1974 Planned Unit Development (PUD 73-28) as part of Phase 4 (BK 91, PG 50-51). Applicant does not have Homeowners Association (HOA) approval. Currently, the HOA will only allow for an expansion of four (4) feet, eight (8) inches on the west side of the RV port and 10 feet on the east side, adhering to the 15 foot right-of-way setback. HOA approval is pending County approval. The dimensions of the RV port extension will be approximately eight (8) feet in height, 20 feet across, and 10 feet in length from the existing RV port to the intended support beam. The 10 foot dimension excludes the five foot overhang from the intended support beam to the road. The variance request is measured from the support beam, not the 5 foot overhang. The Granting this request will not be injurious to the area as the RV port will not block the view of traffic and will not be located within the drainage easement along Northshore Drive. The reduced setback distance will not diminish the safety of the public and area involved.

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 Residential Low-1X (RL-1X) land use district, the Green Swamp Area of Critical State Concern, and the Polk City Special Protection Area on approximately 0.24 acres. According to the Mount Olive Shores Planned Development

(PUD 73-28), the planned development was approved for 15 feet right-of-way setbacks, 7.5 feet side setbacks, and 15 feet rear setbacks. The curvature of the road creates a non-uniform right-of-way setback. The lot is 0.24 acres, which is below the 1 acre minimum residential lot area in the Residential Low-1X land use district. Because of the small size of the lot, the setbacks restrict further development without impeding on the 15 foot right-of-way setback. The RV port will be within the 15 foot right-of-way on the west side of the driveway outside the drainage easement.

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 October 2023, according to the Polk County Property Appraiser. The angle and orientation of the lots within the Mount Olive Shores Planned Development place a burden on the reasonable use of this land. The subject site is located off Northshore Drive, where the road takes a slight curve. The curvature of the road creates a non-uniform right-of-way setback. If the lots were oriented perpendicular to Northshore Drive, there would be no need for a variance request. The owner may not have been aware of the right-of-way setbacks. Without this variance, it would be difficult to provide full coverage extension.

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 to some degree. The orientation and right-of-way setbacks of the lot creates a hardship when developing on this property without relief from the right-of-way setbacks. RV ports, unlike other accessory structures, are permitted in frontyards.

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 RV port to allow for the full protective coverage the applicant is requesting would be difficult due to the angle and orientation of the lot. The Homeowners Association (HOA) will only allow for the full 10 feet of coverage on the east side of the driveway where the distance from the right of way to the residential structure is greater than on the west side of the driveway.

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.

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.*

There was no evidence found that suggests the proposed request will circumvent the intent of a condition placed on a development by the Planning Commission or the Board of County Commissioners. The Mount Olive Shores Planned Development (PUD 73-28) was approved on January 15, 1973. On January 15, 1991 there was a minor modification of the Planned Unit Development to allow a reduction in side setbacks from 7.5 feet to 6.5 feet in phases 4 and 5. The mount Olive Shores Planned Development allows for a 15 feet front right-of-way setback for primary structures.

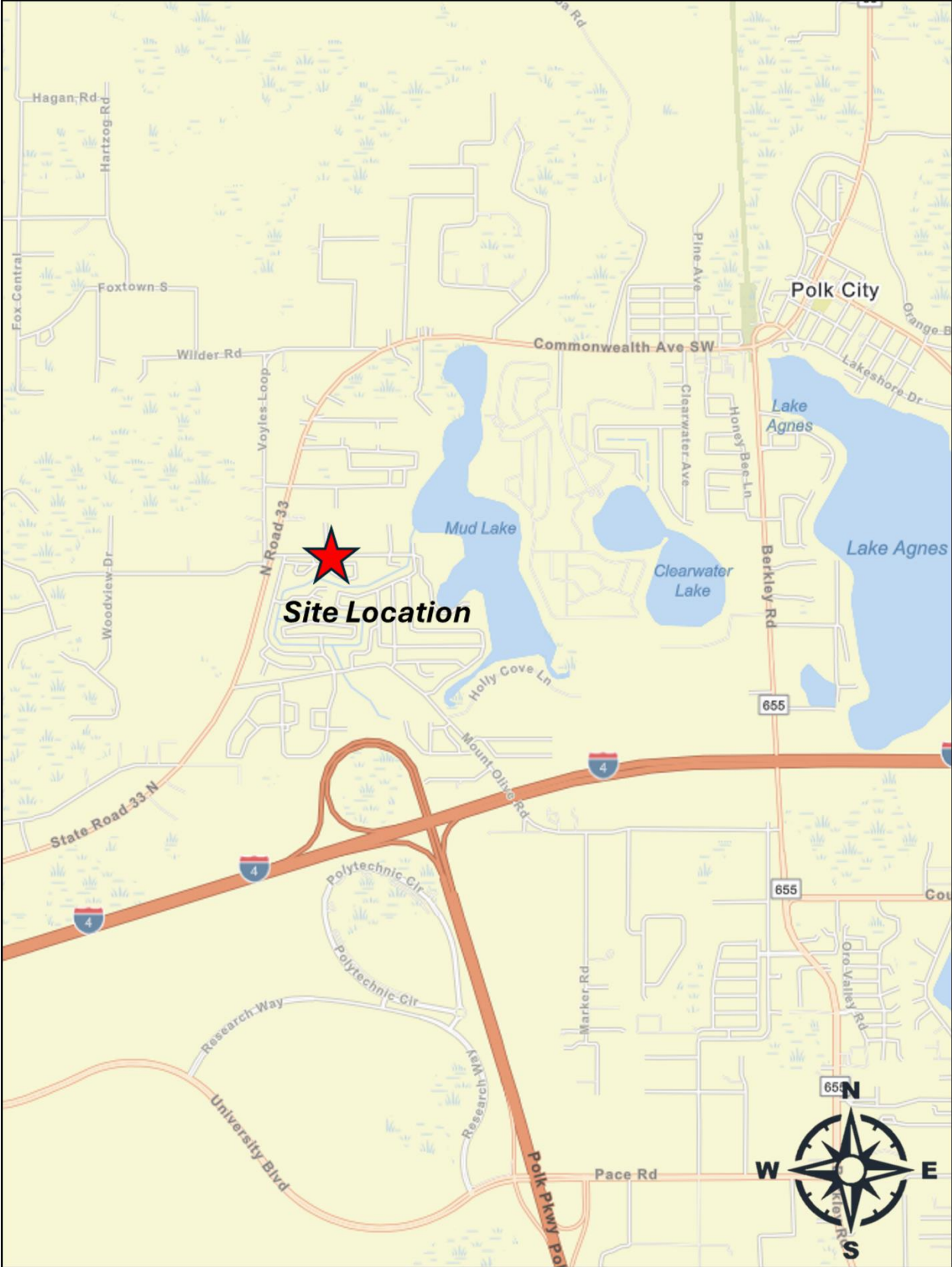
Surrounding Future Land Use Designations and Existing Land Use Activity:

<p>Northwest: ROS Polk City Park 13.99 acres</p>	<p>North: RL-1X Mobile Home 0.84 acres</p>	<p>Northeast: RL-1X Mobile Home 1.73 acres</p>
<p>West: RL-1X Mount Olive Shores Phase 4 Mobile Home 0.28 acres</p>	<p>Subject Property: RL-1X Mount Olive Shores Phase 4 Mobile Home 0.24 acres</p>	<p>East: RL-1X Mount Olive Shores Phase 4 Mobile Home 0.30 acres</p>
<p>Southwest: RL-1X Mount Olive Shores Phase 4 Mobile Home 0.24 acres</p>	<p>South: RL-1X Mount Olive Shores Phase 4 Mobile Home 0.19 acres</p>	<p>Southeast: RL-1X Mount Olive Shores Phase 4 Mobile Home 0.16 acres</p>

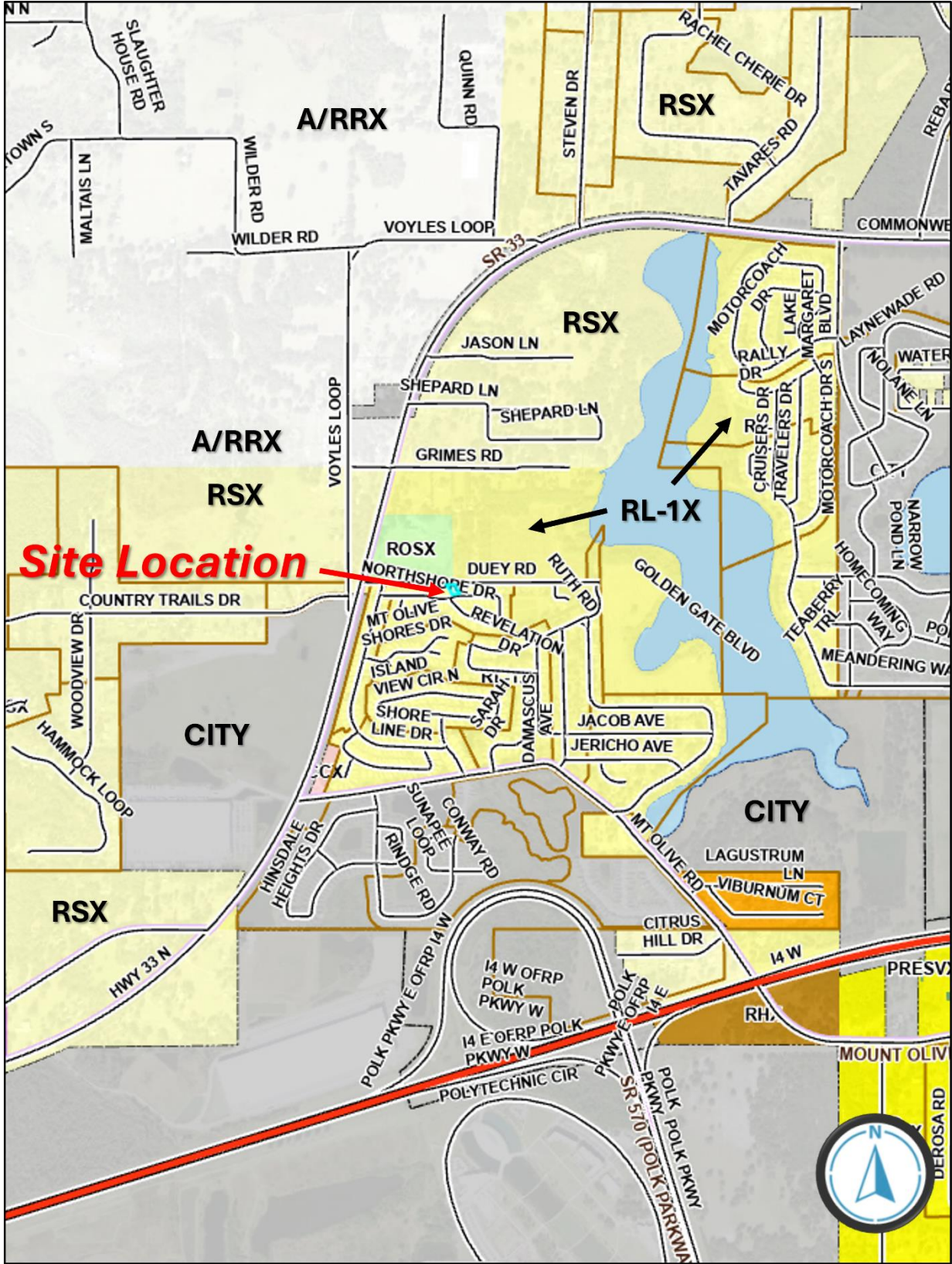
The RV port will be on property along Northshore Drive, outside of the drainage easement within the 15 feet right-of-way setback on the west side of the driveway.

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



Location Map



Future Land Use Map



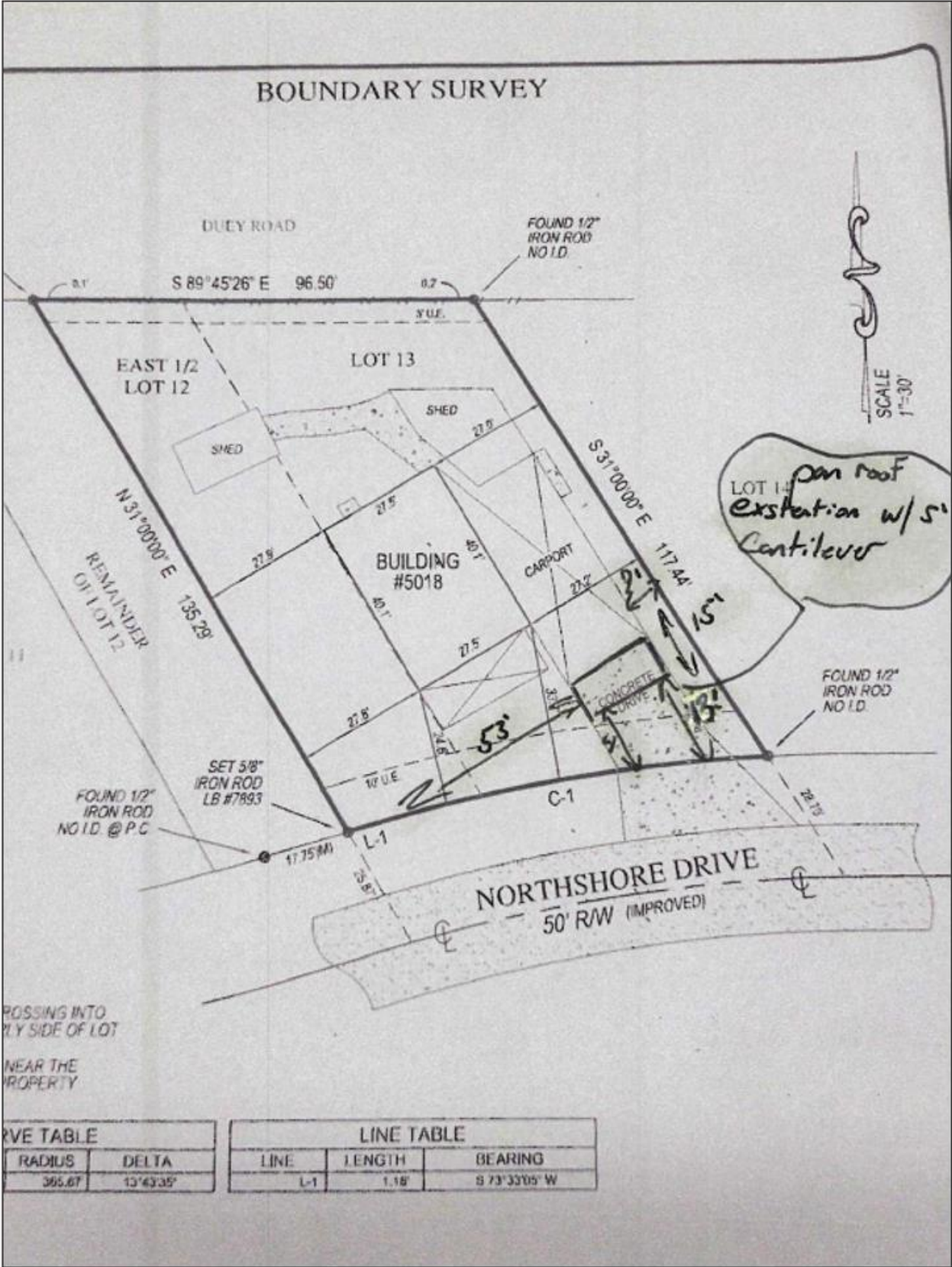
Site Location

Aerial Imagery (Context)



Site Location

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?
shape of the lot

When did you buy the property and when was the structure built? Permit Number?
Purchased property October 2023.
Date of structure build is unknown

What is the hardship if the variance is not approved?
insufficient overhead coverage for vehicles.

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

Do you have Homeowners Association approval for this request?
no

Justification