POLK COUNTY
LAND USE HEARING OFFICER
STAFF REPORT

DRC Date	**December 11, 2025**	**CASE #:**	**LDLVAR-2025-70**
LUHO Date	**January 22, 2026**	**LDC Section:**	**Jimmy Lee Road ADU variance Section 206.A.2**

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

Applicant: Carl Kelley

Property Owner: Carl Kelley

Location: 40 Jimmy Lee Road, south of CR 542 (K-Ville Ave), east of Lake Arrowhead Drive, west of SR 655 (Recker Highway), north of SR 540 (Winter Lake Road), south of Auburndale, West of Winter Haven, in Section 27, Township 28 and Range 25.

Parcel ID#: 252827-000000-031060

Size: 2.32± acres

Land Use Designation: Residential Suburban (RS)

Development Area: Suburban Development Area (SDA)

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 accessory dwelling units to less than the size of the primary residence and not to exceed 1,000 square feet. The applicant's property has a 1,736 square foot dwelling currently on it and would like to build a much larger home (3,500-4,500 sq.ft.) in front of it so that the current dwelling becomes an ADU.

The applicant is seeking approval of an ADU that is approximately 73.6% larger than the ADU standard in the code. Although, it will clearly be subordinate in size to the primary dwelling by 49.6% at the most. The applicant could build a larger home without a variance approval if he went through the process of subdividing the tract. The base density for the district is two (2) dwelling units to the acre by right. However, the applicant chooses for the property to remain whole because the true intention is that it be an accessory dwelling to the larger future primary residence. For these reasons, staff find that approval will meet the spirit and intent for limiting the size of an ADU in the LDC. Additionally, staff find that the request meets the following variance criteria listed in Section 931:

- The request **will not be injurious to the area involved or otherwise detrimental to the public welfare** because the request as proposed will be subordinate and incidental as intended by the LDC with regard to accessory uses and structures.

- **Special conditions and circumstances present in the request do not result from the actions of the applicant** because the property is entitled to two units per acre under the current land use district standards, but the applicant does not want the accessory unit to be on a separate standalone parcel.

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-2025-70,** 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 1,736 square feet with an additional tolerance of 5%.

2. This variance shall be valid as long as the property remains more than one acre.

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 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 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 approximately 2.32 acres and the current home, and its patio and driveway cover less than 2% of the property. The conversion of this 1,736 square foot to an ADU will be approximately 1.7% of the property. With the addition of the new home at the larger end of its estimated size (4,500 square feet), the coverage could be 6.2% at the most.

   The applicant is seeking approval of an ADU that is approximately 73.6% larger than the standard in the code. It is also subordinate in size to the proposed future primary dwelling by 49.6% at the most. The applicant could build a larger home if he went through the process of subdividing the tract. The base density for the district is two (2) dwelling units to the acre 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;*

   Jimmy Lee Road is approximately 3,444 feet long within an unrecorded residential subdivision in which every property is at least 2.32 acres and has 165 feet of road frontage. So, there are no special circumstances with regard to the property parameters in comparison to others in the community.

   The applicant owns two lots within the subdivision. On one there is a 1,746 square foot single-family site-built home that was constructed in 1974. The other has only a storage barn on it. Both are contained within the same perimeter fence. The applicant seeks a much larger home on the one lot with the existing dwelling but does not want to remove or destroy it for the newer home. The applicant in Exhibit 6 states that there is a sale pending for this variance on the property. This approval may be for the prospective buyer that needs two homes on the one property.

This peculiar situation is not circumventing any real planning, zoning, or growth management standards. The property is allowed to be subdivided into smaller lots and even become more than two dwellings in the same area. The RL-2 district allows two units per acre and lots as small as 15,000 square feet. This request is for personal reasons that have no adverse implication to the County's land development policies.

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 2.32-acre property in an unrecorded subdivision comprised of similar large properties. Although the land use district allows much smaller properties, the lots within the neighborhood are all 2.32 acres or larger. There is a smaller home on the property, and the owner wants to build a much larger home. However, with so much land to place it, the owner sees no need to destroy the existing home. Section 221.A of the Land Development Code (LDC) states, "*in a residential land use district one single-family dwelling unit and accessory structures shall be permitted on a single lot meeting the minimum requirements of this Code.*" LDC Section 206.A says "*No ADU shall exceed 1,000 sq. ft. of heated floorspace unless granted a variance.*" The applicant could subdivide the property and have the two dwellings without any zoning approvals, but for financial reasons desires to have two units on one single parcel of property. In reality, the public does not see property lines. Two units at two per acre subdivided looks the same as two units at two per acre on one property.

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 four residential lots under the RL-2 district standards. If the ADU size variance is not granted, the applicant can subdivide the lot through recording of separate deeds one time without platting. Four lots can be subdivided through platting. The minimum lot size is 15,000 square feet and the property size is approximately 2.32 acres. The permitted density is two-dwelling units per acre.

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 73.6% larger than the County's current ADU maximum standard. According to the applicant, the ADU will be approximately 49.6% 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).

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;*

The applicant wants to construct a new and much larger home on the property but does not want to destroy an existing home that is in good condition to do it. A 73.6% larger accessory dwelling unit (ADU) than standard ADU size will not change the use of this property. The applicant has the right to subdivide and build another unit through administrative approval. The minimum lot size is 15,000 square feet and the property is

eligible for a one-time lot split without the cost of platting. However, he prefers that the 2.32-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 RL-2 district's minimum lot size is 15,000 square feet. This property could be subdivided into at least four separate fee simple buildable lots.

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 Jimmy Lee Road unrecorded subdivision was zoned Rural Estates-2 (RE-2) under the original zoning map adopted in 1971. The first home in the subdivision was constructed in 1970. No conditions of approval were ever placed on the property by the Board. The minimum lot size in the former RE-2 zoning district was 15,000 square feet.

Surrounding Future Land Use Designations and Existing Land Use Activity:

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

Table 1

Northwest: RL-2 Single-family dwelling built in 2016 ±3,857 square feet ±2.32 acres	**North:** RL-2 Single-family dwelling built in 1978 ±3,768 square feet ±4.63 acres (two lots)	**Northeast:** Residential Low-1 (RL-1) vacant ±294 acres Owned by Faith In Action
West: RL-2 Single-family dwelling built in 1981 ±1,492 square feet ±2.37 acres	**Subject Property:** Residential Low-2 (RL-2) Single-family dwelling built in 1974 ±1,736 square feet ±2.32 acres	**East:** RL-1 vacant ±294 acres Owned by Faith In Action
Southwest: RL-2 Single-family dwelling built in 1974 ±2,776 square feet ±2.37 acres	**South:** RL-2 Storage barn ±880 square feet *Owned by applicant* ±2.32 acres	**Southeast:** RL-1 vacant ±294 acres Owned by Faith In Action

The properties along Jimmy Lee Road are of similar size and all are occupied with a single-family site-built dwelling except for the applicant's lot to the south that has only a storage barn on it. Five of the properties within the unrecorded subdivision are comprised of two buildable lots but only one dwelling. None of the lots within the subdivision have accessory dwelling units, according to the Property Appraiser's database.

Comments from other Governmental Agencies:

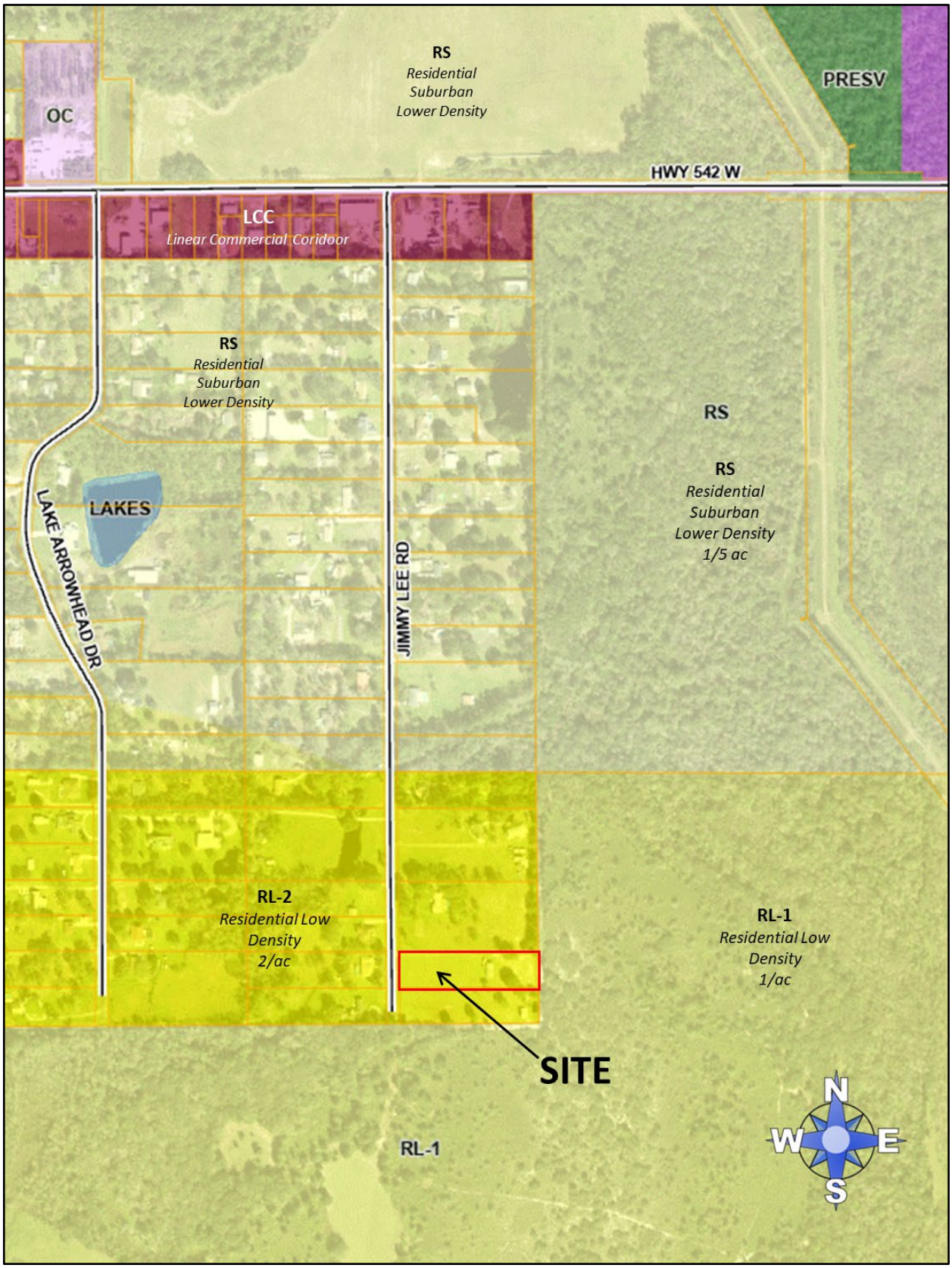
None.

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

Exhibit 2

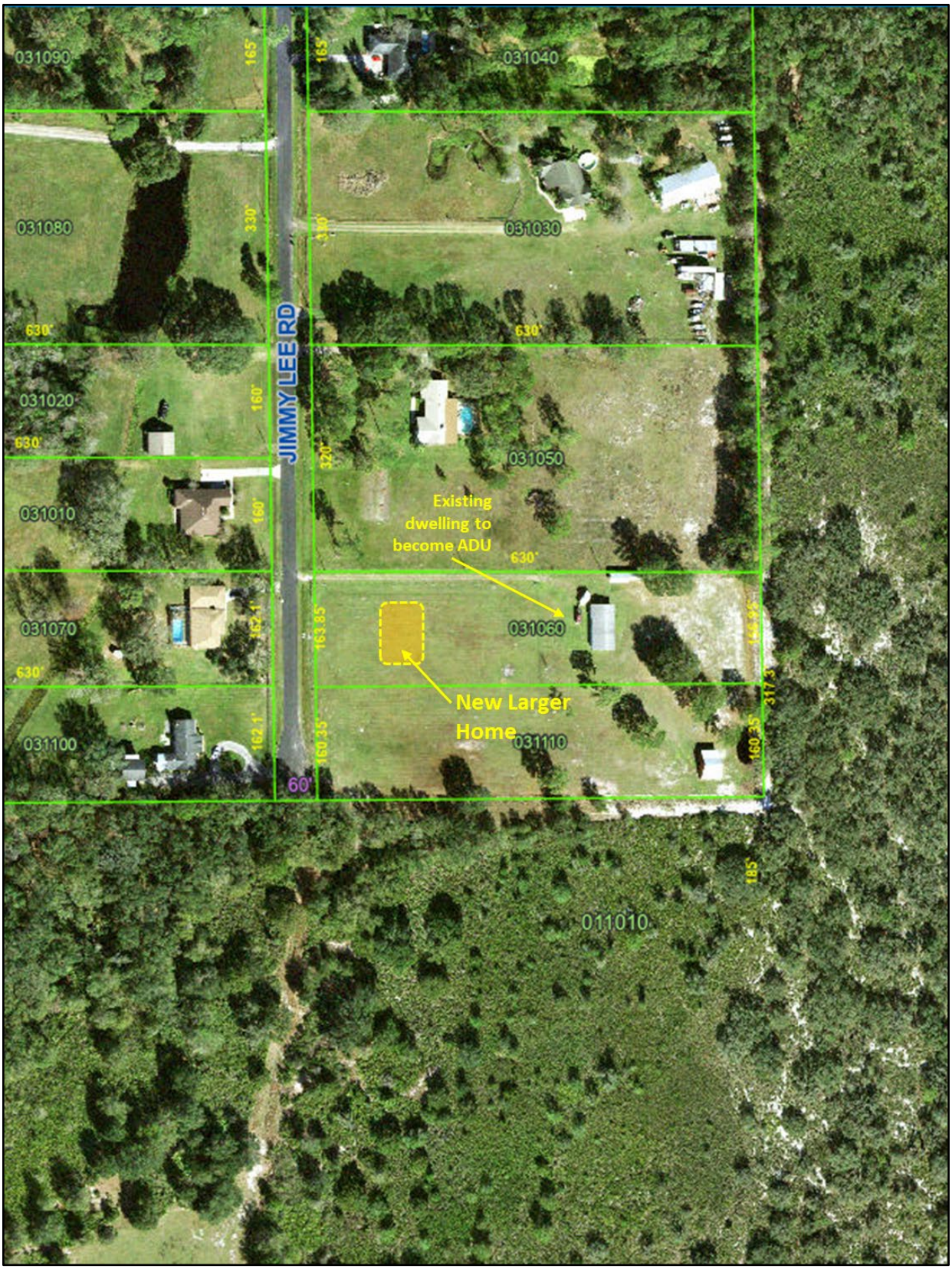


Future Land Use Map

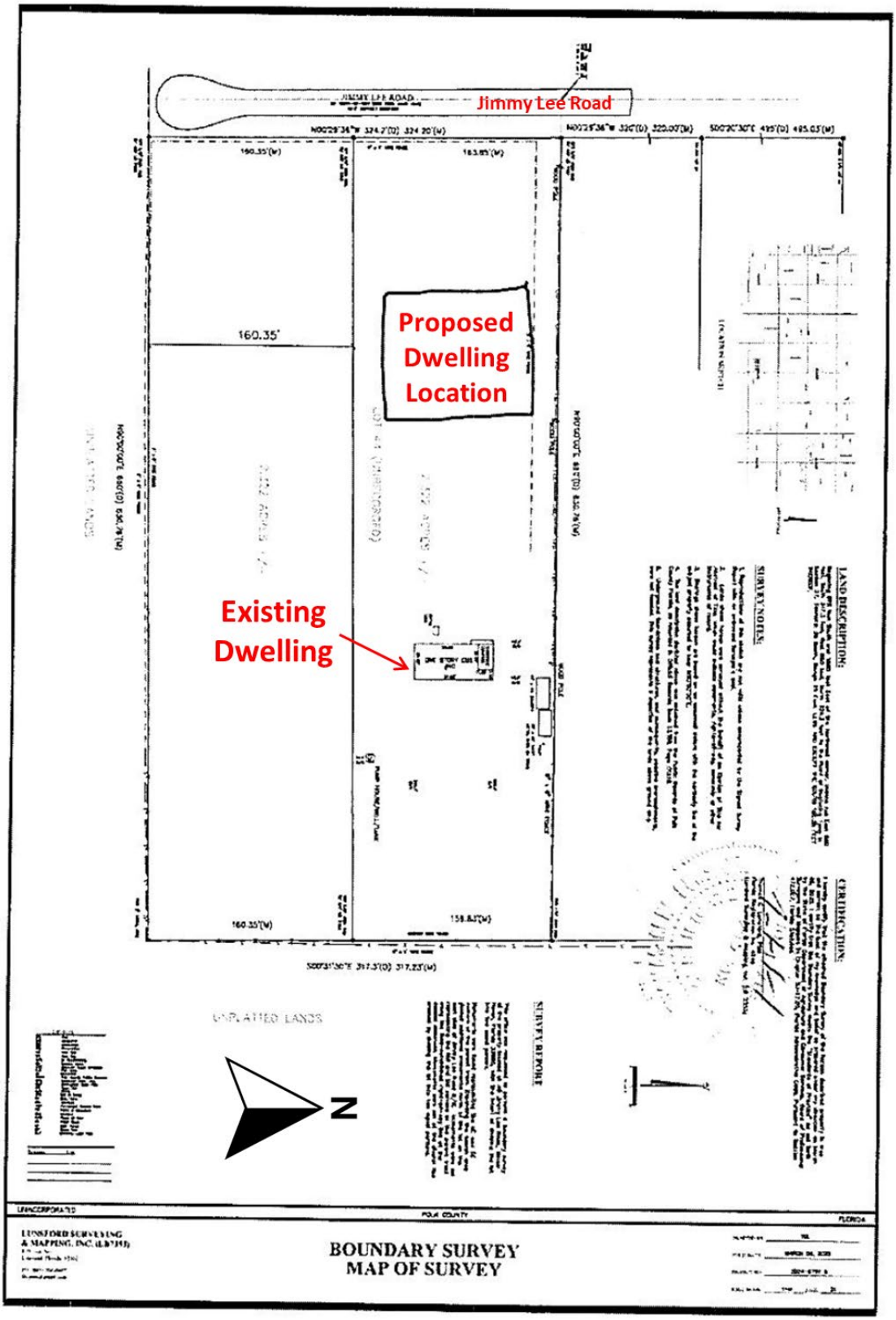
Exhibit 3

2023 Aerial Photo (context)

Exhibit 4



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

What special conditions exist that are peculiar to the land, structure, or building involved?
existing structure is 1400 square feet, requesting to keep it when new home is constructed in front of existing structure

When did you buy the property and when was the structure built? Permit Number?
November 2024, it was existing, built in the 1970s

What is the hardship if the variance is not approved?
sale pending

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

Do you have Homeowners Association approval for this request?
n/a, no home owners association

Applicant's Justification