

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

DRC Date: October 9, 2025	CASE #: LDLVAR-2025-56 (Silva Solivita Phase 5C Variance)
LUHO Date: November 20, 2025	LDC Section: Section 209.F & PUD 98-12

Request: The applicant is requesting a primary structure rear setback reduction from ten (10) feet to five (5) feet for the installation of a new 13' by 5' solid aluminum roof.

Applicant: Marcos Davila

Property Owner: Michele Silva and Mohamed Habibullah

Location: The subject property is located at 795 Via Como Street, north of Village Center Road, south of Cypress Parkway, east of Poinciana Parkway, west of Marigold Avenue, East of Haines City in Section 14, Township 27, Range 28.

Parcel ID#: 282714-933556-000920

Size: ±0.10 acres

Land Use Designation: Poinciana Pre-Development of Regional Impact (DRI) #1
Planned Unit Development (PUD) 98-12, Solivita Phase 5C

Development Area: Transit Supportive Development Area (TSDA)

Case Planner: Kyle Rogus, Planner II

Summary:

The applicant is seeking a variance to reduce the primary structure rear setback from ten (10) feet to five (5) feet for the construction of a solid aluminum roof to extend over a portion of the existing screened enclosure. The subject site is designated as Lot 92 of the Solivita Phase 5C Subdivision recorded as PUD 98-12 under Plat Book 187, Pages 26 through 30 on September 24, 2021. PUD 98-12 was approved for primary structure rear setbacks of 10 feet and accessory structure rear setback of 5 feet. Because the solid aluminum roof will be attached or connected to the principal structure, the newly proposed 13' by 5' solid aluminum roof in BR-2025-6174 will require a variance to reduce the primary structure rear setback from ten (10) feet to five (5) feet.

Staff finds this request will cause no direct or indirect harm to the community and recommends approval. Staff recommends approval of LDLVAR-2025-56 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;*

This is the only property within the immediate surrounding area requesting for a solid aluminum roof to extend full coverage over an existing screened enclosure, but many have been sought in the development. The rear yard of these units also abuts an open space, Tract P-16, in Phase 5D of the Solivita plat. This tract is utilized as an internal wet retention pond. This expansion will have minimal potential adverse effects on the immediate neighbors or the community as a whole. The aluminum roof expansion will not and is not permitted to extend into any drainage easements.

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 existing home on the subject site was constructed in 2022 and met the primary structure setbacks of 10 feet front, 5 feet side, and 10 feet rear under building permit BR-2022-679. In December 2022, the owner purchased the subject site through a special warranty deed according to the Property Appraiser (O.R. BK 12549 PGs 2137-2138). The applicant later filed for a building permit BR-2023-812, for the construction of a new 30' by 5' screened enclosure with concrete slab expand the lanai. Now, under building permit BR-2025-6174, the applicant is looking to add a new solid aluminum roof to extend over a portion (43%) of the existing screen enclosure.

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-2025-56**

CONDITIONS OF APPROVAL:

1. The property is granted a reduction in the primary rear structure setback from ten (10) feet to five (5) feet for the installation of a new 13' by 5' solid aluminum roof.
2. The applicant shall secure permission from the Solivita Community Association prior to seeking building permits for the proposed extension.
3. All necessary permits must be applied for within one (1) year of the date for which the Land Use Hearing Officer's Final Order is rendered.
4. 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 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;*

In December 2022, the owner purchased the subject site through a special warranty deed according to the Property Appraiser (O.R. BK 12549 PGs 2137-2138). The subject site is designated as Lot 92 in the Solivita Phase 5C Subdivision recorded as PUD 98-12 under Plat Book 187, Pages 26 through 30 on September 24, 2021. It is located within the interior of the development with road frontage off Via Como Street, a private roadway. To the east and west of the subject site are similar sized lots and single-family housing. Both lots to the east and west have an extended lanai to the rear. Located to the rear yard of these units also abuts an open space, Tract P-16, in Phase 5D of the Solivita plat. This tract is utilized as an internal wet retention pond. Seeking rear yard setback relief when abutting common areas has become commonplace throughout this development. This aluminum roof expansion will not and is not permitted to extend into any drainage easements. According to plat Surveyor note No. 6, "there is a 5' wide drainage, utility easement along the side and rear of all lots."

This expansion is minimal relative to the structure. It will not limit the neighbor's peripheral view of the open space when sitting on their lanai. The screen enclosure is already existing under BR-2023-812, therefore the request to provide partial roof coverage of the existing screened porch will have little to no effect on the two immediate neighbors to the east and west.

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 placement of the primary structure on the lot creates the existing circumstance. The subject site was once part of the larger Poinciana Pre-Development of Regional Impact

(DRI) #1 Planned Unit Development (PUD) 71-10. The Solivita Phase 5C Subdivision was recorded in Plat Book 165, Pages 10 through 21. A replat of a portion of Tracts FD-1 and C-15, of Solivita Phase 5C Subdivision was recorded as PUD 98-12 under Plat Book 187, Pages 26 through 30 on September 24, 2021. The subject site is designated as Lot 92. PUD 98-12 was approved for primary structure rear setbacks of 10 feet and accessory structure rear setback of 5 feet.

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

The existing home on the subject site was constructed in 2022 and met the primary structure setbacks of 10 feet front, 5 feet side, and 10 feet rear under building permit BR-2022-679. BR-2022-679 was approved with a 11' by 10'8" lanai encompassing the southeast portion of the house (see Exhibit #7). In December 2022, the owner purchased the subject site through a special warranty deed according to the Property Appraiser (O.R. BK 12549 PGs 2137-2138). The applicant later filed for a building permit BR-2023-812, for the construction of a new 30' by 5' screened enclosure with concrete slab (see Exhibit #8) to expand the lanai. Because the screen enclosure did not have a solid roof at the time of construction, no variance was needed for the extension. Now, under building permit BR-2025-6174, the applicant is looking to add a new solid aluminum roof to extend over a portion of the existing screen enclosure. Pursuant to Section 209.F of the Land Development Code (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." Because the solid aluminum roof will be attached or connected to the principal structure, the newly proposed 13' by 5' solid portion in BR-2025-6174 requires a variance to reduce the primary structure rear setback from ten (10) feet to five (5) feet.

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 homes in this phase of the development are situated on the lots so that the developable area is almost completely covered by the structure leaving only the undeveloped space within the setback requirements. Many buyers in the development see little value in the private open space that remains. Within the Solivita Phase 5C Subdivision, there have been three (3) similar variance requests.

Case	BOA/LUHO Date	Setback Reduction
LDLVAR-2024-53	11/12/2024	Rear setback 10' to 5'
LDLVAR-2024-62	12/10/2024	Rear setback 10' to 5'
LDLVAR-2025-2	3/25/2025	Rear setback 10' to 5'

The owner will derive more utility from that space if it is enclosed with screens and covered by a solid roof. Since this property backs up to open space Tract P-16 (wet detention pond), there is no significant harm that it may cause another property owner.

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. The applicant intends to extend roof coverage only over a portion of the existing lanai extension under BR-2025-6174 for handicap and elderly assistance as stated in their justification. The fully covered screened lanai will significantly reduce the risk of slipping as the current screen roof allows for heavy rainfall.

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 home will remain a residential use in a residential district of the Planned Development.

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. This variance 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 was anticipated that some lots may not be able to comply with all the standards set forth in the Planned Unit Development (PUD) approval. As long as the drainage easements are not encroached upon, this request will not circumvent the Board approvals.

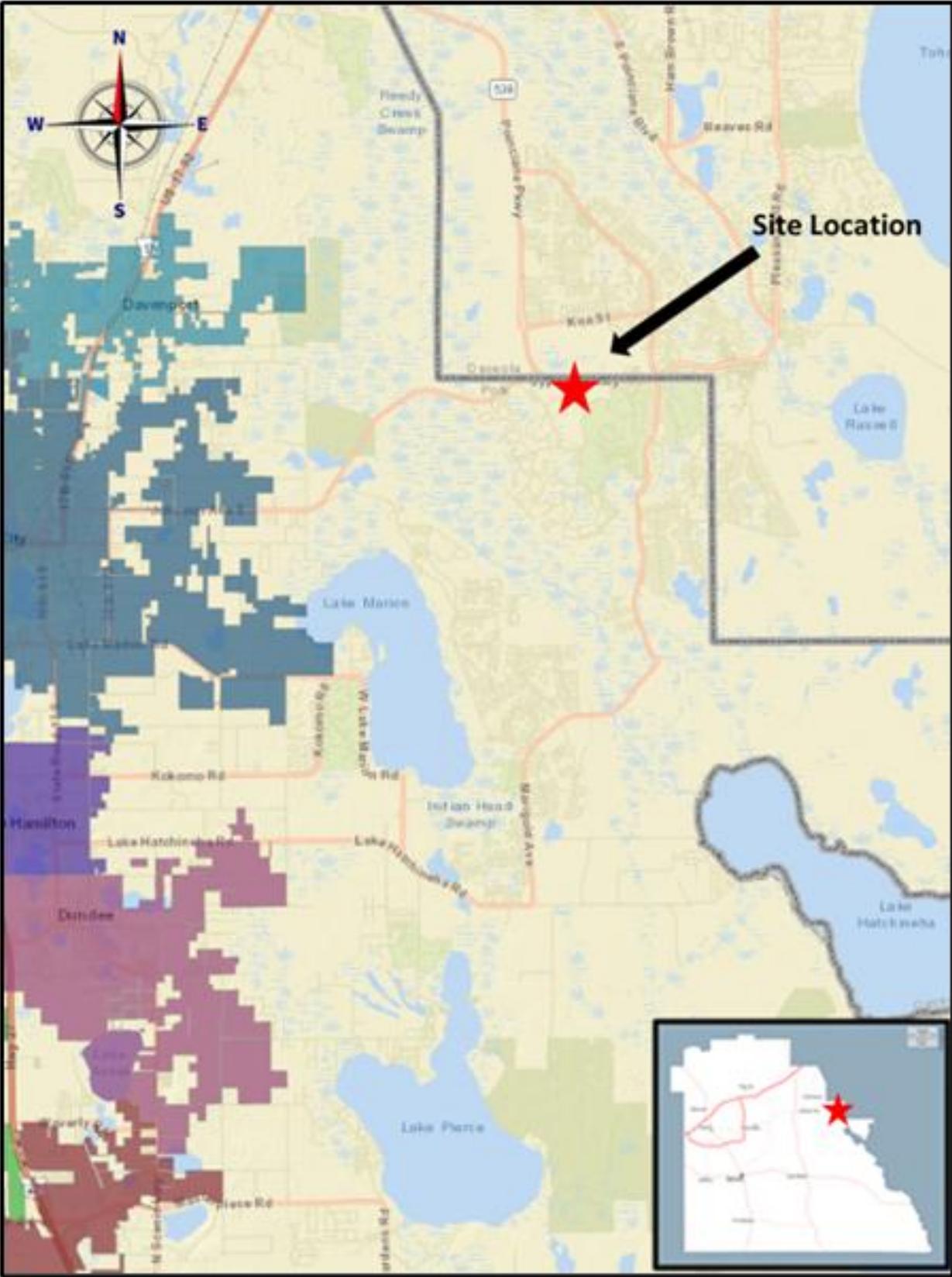
Surrounding Future Land Use Designations and Existing Land Use Activity:

<p>Northwest: Poinciana Pre-Development of Regional Impact (DRI) #1 Planned Unit Development (PUD) 98-12, Solivita Phase 5C Lot 16 2,240 sq. ft. single-family home Built 2023 0.10 acres</p>	<p>North: Poinciana Pre-Development of Regional Impact (DRI) #1 Planned Unit Development (PUD) 98-12, Solivita Phase 5C Lot 17 2,145 sq. ft. single-family home Built 2022 0.10 acres</p>	<p>Northeast: Poinciana Pre-Development of Regional Impact (DRI) #1 Planned Unit Development (PUD) 98-12, Solivita Phase 5C Lot 18 2,320 sq. ft. single-family home Built 2022 0.10 acres</p>
<p>West: Poinciana Pre-Development of Regional Impact (DRI) #1 Planned Unit Development (PUD) 98-12, Solivita Phase 5C Lot 91 2,364 sq. ft. single-family home Built 2022 0.10 acres Screened Extension</p>	<p>Subject Property: Poinciana Pre-Development of Regional Impact (DRI) #1 Planned Unit Development (PUD) 98-12, Solivita Phase 5C Lot 92 2,145 sq. ft. single-family home Built 2022 0.10 acres Screened Extension</p>	<p>East: Poinciana Pre-Development of Regional Impact (DRI) #1 Planned Unit Development (PUD) 98-12, Solivita Phase 5C Lot 93 2,273 sq. ft. single-family home Built 2022 0.10 acres Screened Extension</p>
<p>Southwest: Poinciana Pre-Development of Regional Impact (DRI) #1 Planned Unit Development (PUD) 98-12, Solivita Phase 5C Tract P-16 Wet detention pond 1.57 acres</p>	<p>South: Poinciana Pre-Development of Regional Impact (DRI) #1 Planned Unit Development (PUD) 98-12, Solivita Phase 5C Tract P-16 Wet detention pond 1.57 acres</p>	<p>Southeast: Poinciana Pre-Development of Regional Impact (DRI) #1 Planned Unit Development (PUD) 98-12, Solivita Phase 5C Tract P-16 Wet detention pond 1.57 acres</p>

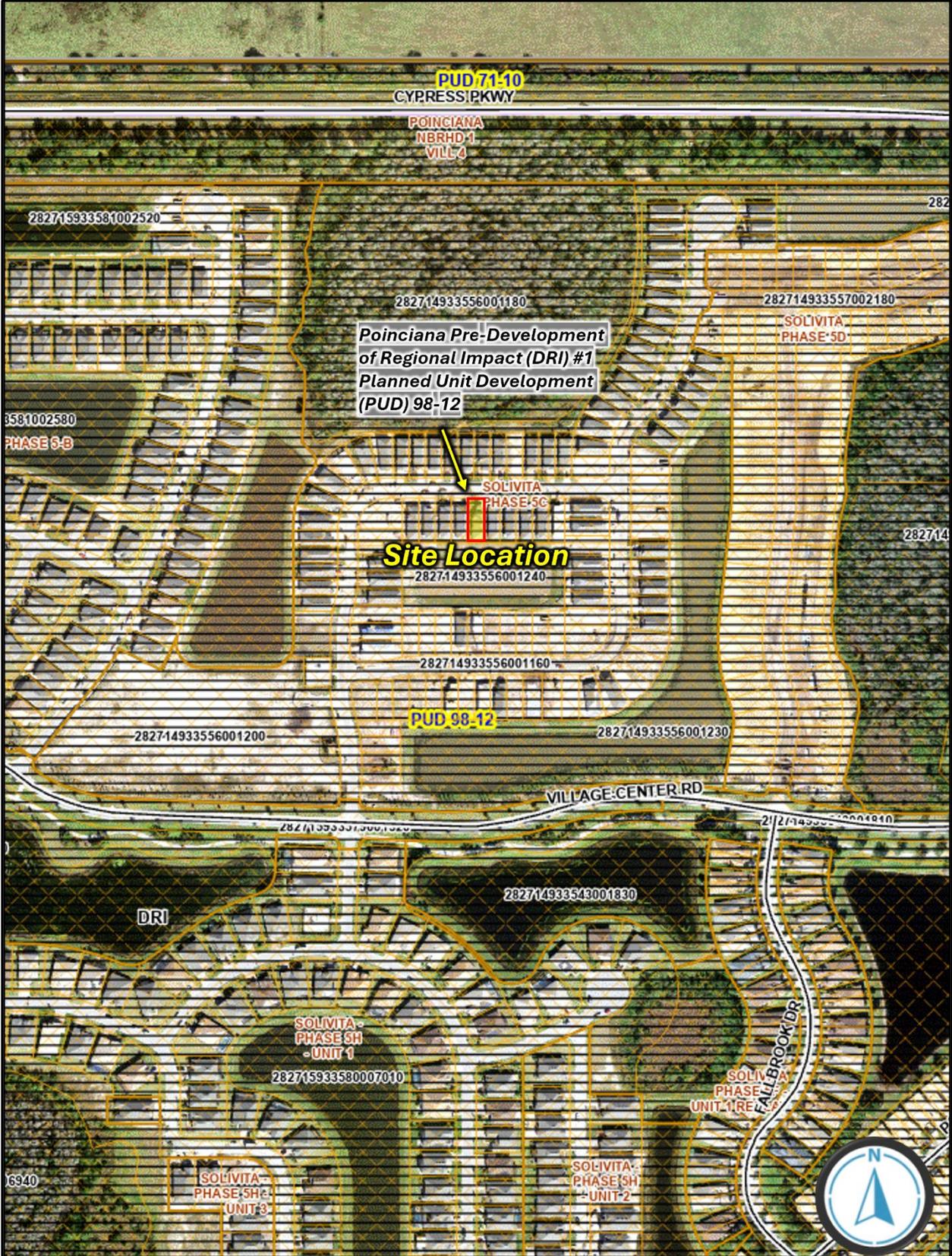
The property is part of the Poinciana Pre-Development of Regional Impact (DRI) #1 Planned Unit Development (PUD) 98-12, Solivita Phase 5C. Phase 5D of the Solivita development is single-family detached units. This proposed solid aluminum roof coverage will extend five feet (5') off the primary structure providing partial coverage over the existing screened enclosure. This is the only property within the immediate surrounding requesting for a solid aluminum roof to extend coverage over an existing screened enclosure. Both properties to the east and west of the subject site have similar lanai extensions, but only a screened roof. The rear yard of these units also abuts an open space, Tract P-16, in Phase 5D of the Solivita plat. This tract is utilized as an internal wet retention pond. This aluminum roof expansion will not and is not permitted to extend into any drainage easements. According to plat Surveyor note No. 6, "there is a 5' wide drainage, utility easement along the side and rear of all lots."

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
- Exhibit 7 BR-2022-679
- Exhibit 8 BR-2023-812



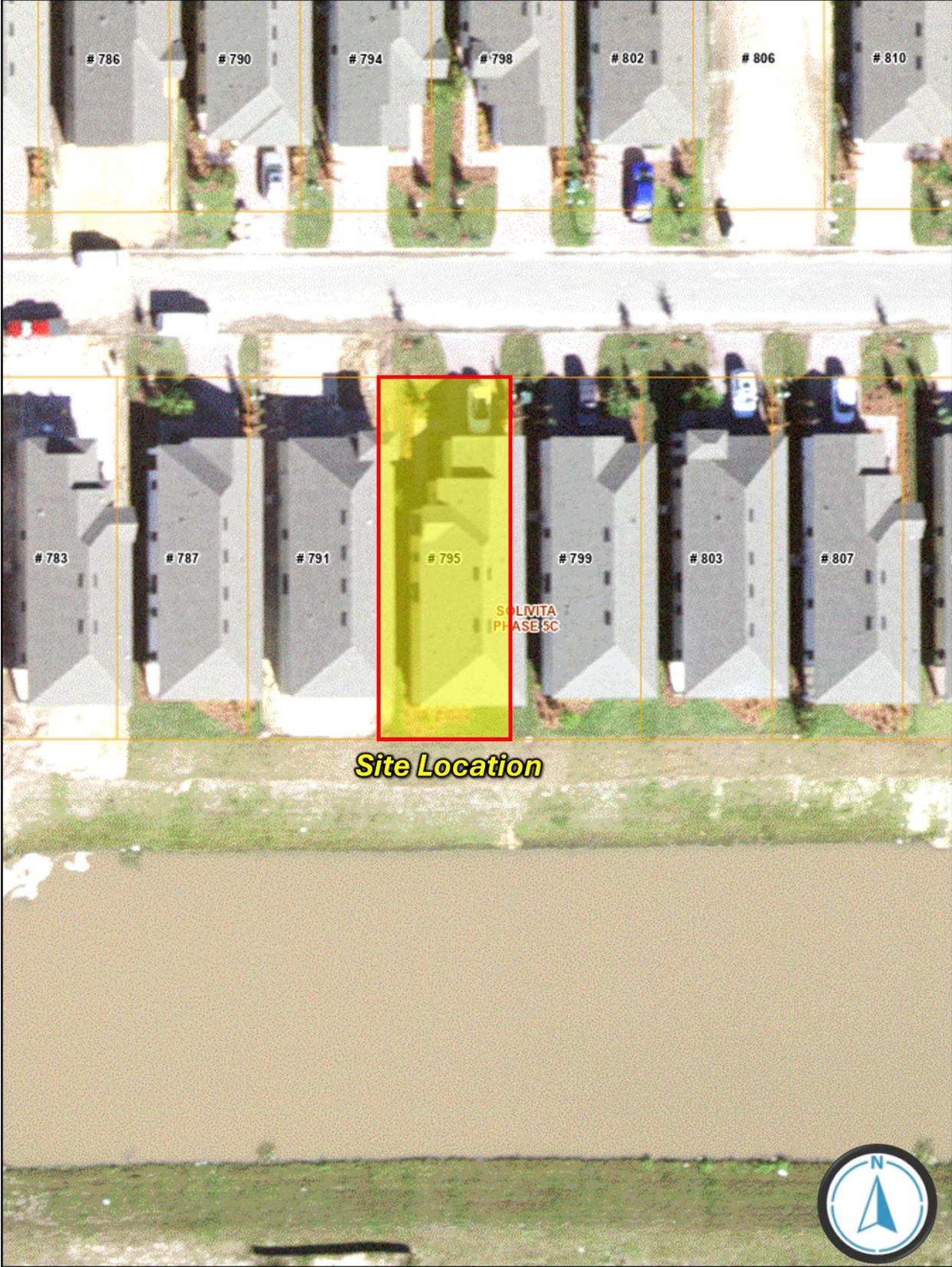
Location Map



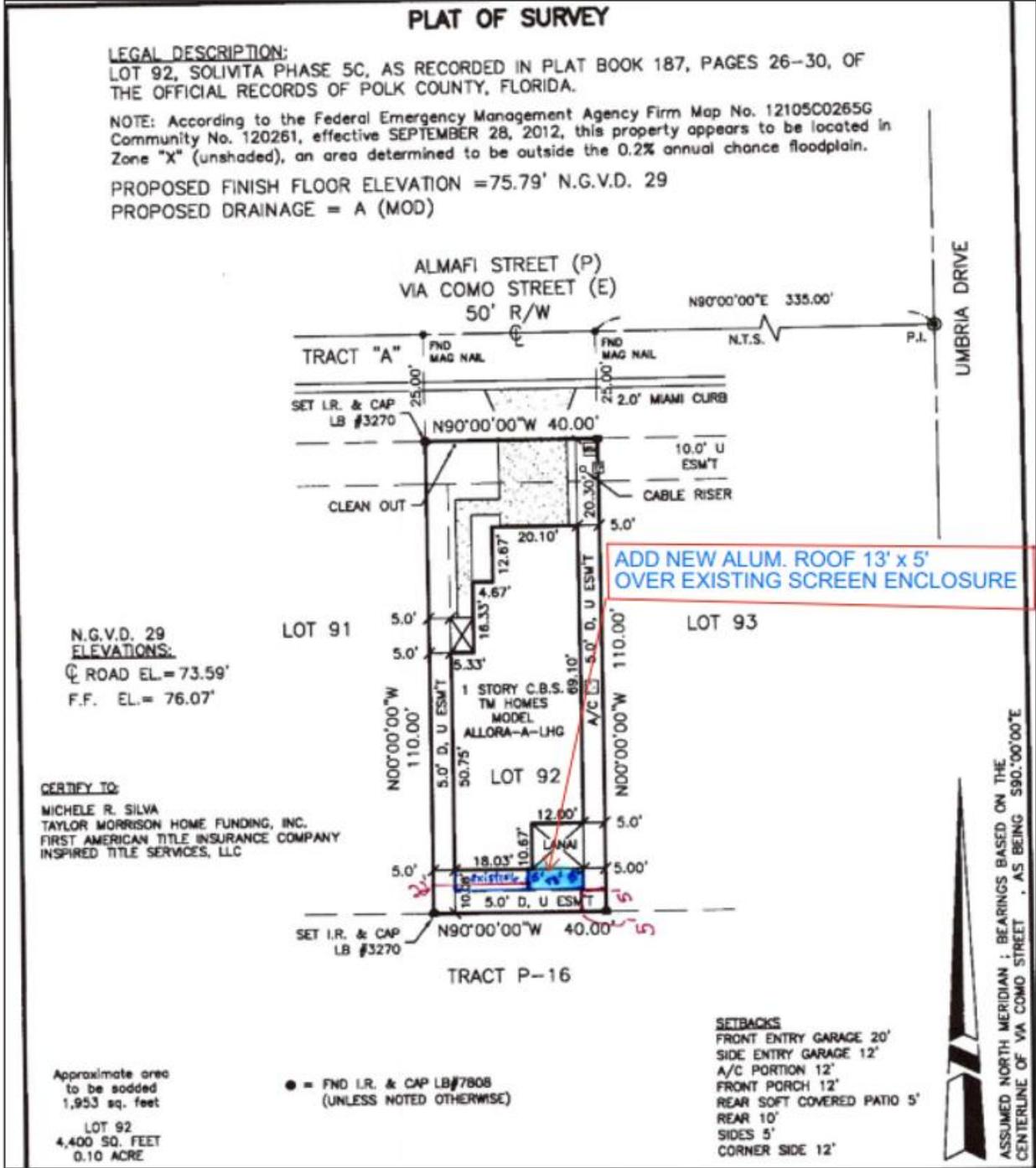
Future Land Use Map



Aerial Imagery (Context)



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, the variance will not be injurious to the area involved or detrimental to the public welfare.

What special conditions exist that are peculiar to the land, structure, or building involved?

There is currently a screen enclosure built. Converting from a screen roof to an insulated, aluminum roof.

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

Property was bought in December 2022.

Existing screen enclosure was built in 2023.

Permit #BR-2023-812

What is the hardship if the variance is not approved?

Handicap and elderly assistance - this will significantly reduce the risk of slip and fall with a hard roof added instead of the current screen roof which allows for heavy rain.

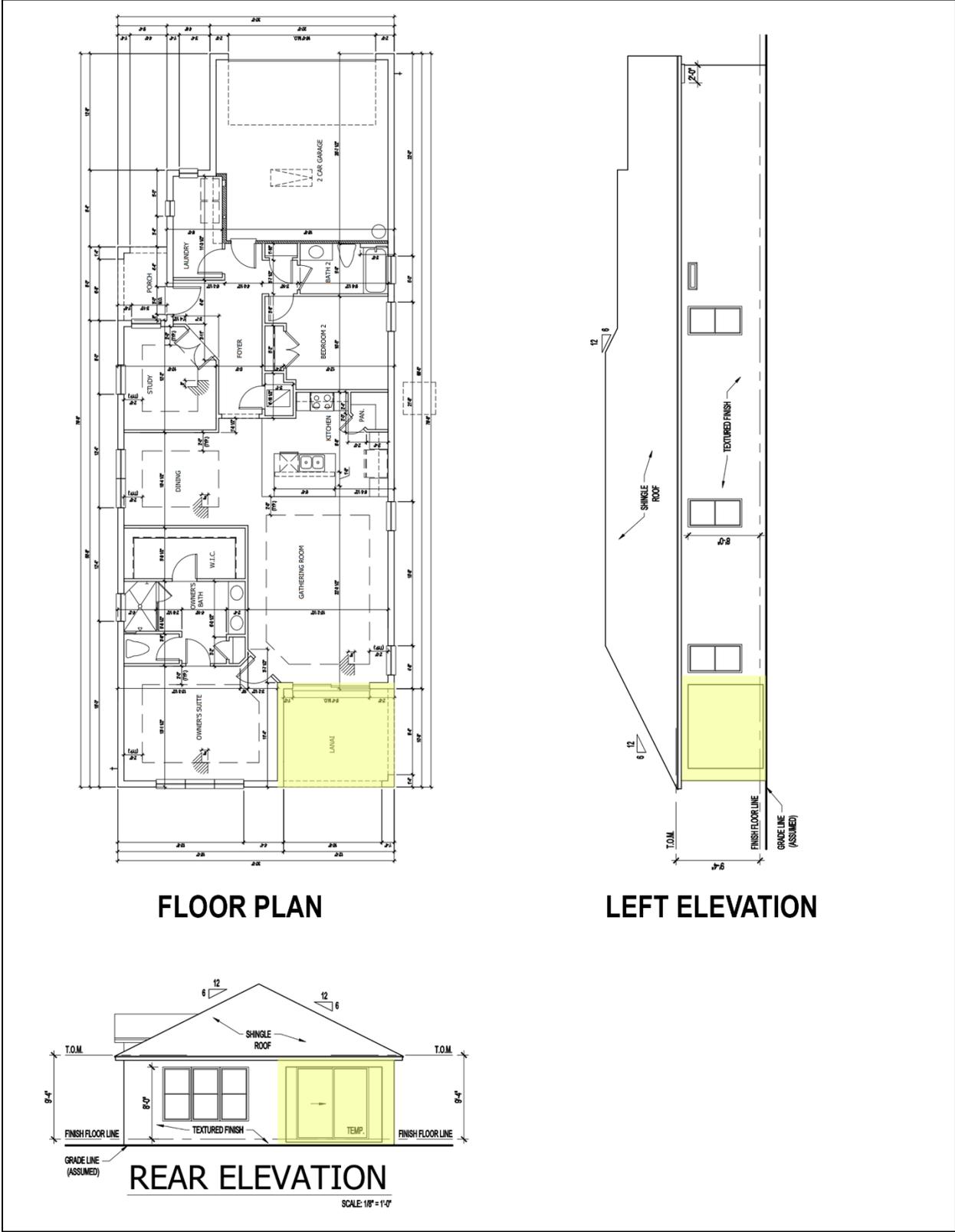
Is this the minimum variance required for the reasonable use of the land?

Yes, as the screen enclosure is already built. The roof will not extend past the existing screen enclosure.

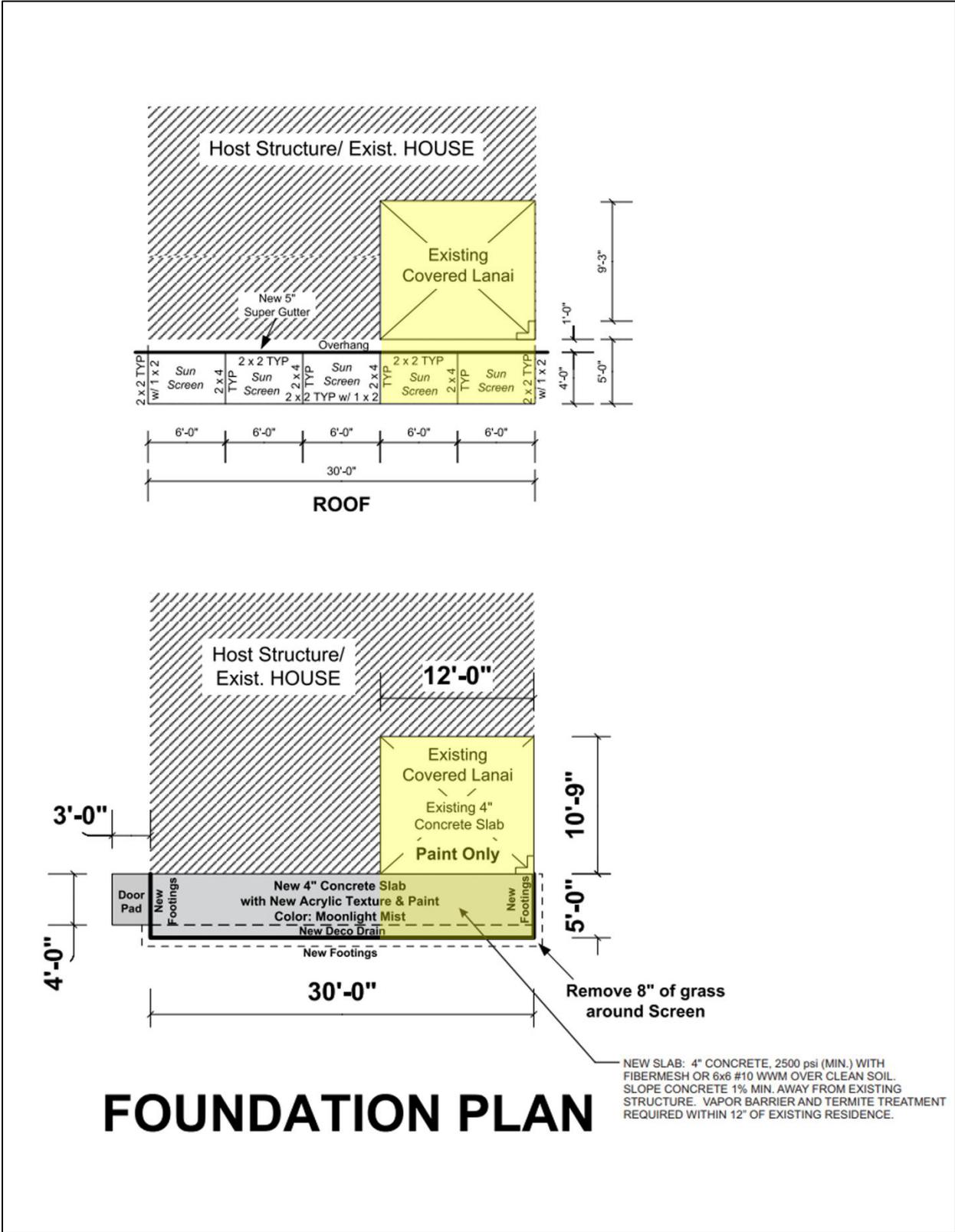
Do you have Homeowners Association approval for this request?

Yes, we have received HOA approval.

Justification



BR-2022-679



BR-2023-812