

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

|                  |                       |                     |   |
|------------------|-----------------------|---------------------|---|
| <b>DRC Date</b>  | <b>March 12, 2026</b> | <b>CASE #:</b>      | <b>LDLVAR-2026-11</b>                       |
| <b>LUHO Date</b> | <b>April 23, 2026</b> | <b>LDC Section:</b> | <b>Willow Drive ADU<br/>Section 206.A.2</b> |

**Request:** The applicant is requesting an accessory dwelling unit (ADU) larger than 1,000 square feet and a rear setback variance for the accessory structure.

**Applicant:** Maximo Castizo Hernandez

**Property Owner:** Maximo Castizo Hernandez, Florelia Reyes Roque, Angel Miguel Castizo Jr.

**Location:** 4082 Willow Drive North, east of Willow Drive West, North of Willow Drive South, east of Willow Oak Road, north of State Road 60 east of the town of Mulberry, in Section 33, Township 29 and Range 23.

**Parcel ID#:** 232933-142370-000480

**Size:** 0.35± acres (15,045 square feet)

**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 2,262 square foot dwelling currently on it and converted a 1,200 sq.ft. detached garage into an ADU. A setback variance is also needed because the converted accessory structure was constructed nine (9) feet from the rear property line but the accessory setback in the RS district is 10 feet.

The applicant decided in September of 2024 to convert a portion of the garage to a residential building space and expand the structure. However, it was realized that the ADU exceeded the 1,000 square foot limit set forth in Section 206.A.2 of the LDC. Although the applicant intends to only use a portion of the detached garage for a residential unit, this clears up any ambiguities or limits in the full rental of the structure in the future and corrects a miscalculation in the distance to the rear property line. 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 ADU size is within 20% of the standard and the rear setback request is within 10% of the standard.
- **The variance request, if granted, is the minimum variance that will make possible reasonable use of the structure;** other wise the structure will have to be significantly altered at great expense to the owner and **will constitute unnecessary and undue hardship on the applicant.**

### **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 1,200 square feet with a measurement tolerance of up to five percent (5%).
2. A variance to the standards in Section 208, Table 2.2, of the Land Development Code (LDC) shall be granted to reduce the rear yard accessory structure setback from 10 feet to nine (9) feet for an accessory dwelling unit structure.
3. 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 15,045 square feet and the current home covers only 15% of the property. The addition of this 1,200 square foot ADU will raise it to 23%. The patio, shed, and driveway equate to approximately 4,200 square feet which is 28%. All combined, the impervious surface of the property will not exceed 51%.

The applicant is seeking approval of an ADU that is approximately 20% larger than the standard in the code. It is also subordinate in size to the primary dwelling at 53%. The setback relief on the rear property line is within a foot of the standard which is less than 10%. 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 no special conditions or circumstances which are peculiar to the land, structure, or building involved. All of the properties within the subdivision are relatively the same size and measurements. This is the first request for an ADU in the subdivision.

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

While there are some circumstances regarding this request that are a result of the actions by the applicant, the relief sought is rather minor. Had the applicant made a more informed decision in 2018 and 2023, the structure may have been designed to be less than 1,000

square feet and setback 10 feet from the rear property line. But the applicant is trying to salvage these missteps and the ADU size and setback errors are somewhat minor.

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;*

While granting this approval may be considered a privilege and it is the first single family lot within the subdivision constructing an ADU, the request for a larger unit and rear setback relief is marginally exceeding the maximum limits of the Code. The proposed ADU is 20% larger and the setback relief is less than 10% of the standard.

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 20% larger than the County's current ADU maximum standard. The ADU will be approximately 53% the size of the primary dwelling as it is sized today. This falls well into the confines of the definition of accessory (incidental and subordinate).

The owner began construction of a 1,040 square foot detached garage in 2018 when he was cited by Code Enforcement for building without a permit. After the second citation in 2023, a permit was sought and obtained. The detached garage was added to the tax rolls in 2023 according to the Property Appraiser's database. The applicant decided in September of 2024 to convert a portion of the garage to a residential building space and expand the structure. However, it was realized that the ADU exceeded the 1,000 square foot limit set forth in Section 206.A.2 of the LDC. Although the applicant intends to only use a portion of the detached garage for a residential unit, this clears up any ambiguities or limits in the full rental of the structure in the future and corrects a miscalculation in the distance to the rear property line.

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. However, it is not prohibited to rent an ADU separately from the primary residence. Standard tenant rental (beyond 30 days) of the ADU does not change the use of the property.

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*

Accessory dwelling units are prohibited to be subdivided from the primary dwelling's parcel, according to Section 206.A.9 of the LDC. Approval of this ADU above the 1,000 sq.ft. limit does not authorize the subdivision of the parcel.

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 Will-O-Woods Subdivision was mapped R-3 on the original zoning map. The plat of the subdivision was recorded June 22, 1978. There have been no conditions placed on the development by the Planning Commission or the Board of County Commissioners (BoCC).

**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><br/>Residential Suburban (RS)<br/>1,406 sq.ft.<br/>Site-built Residence built 1983<br/>15,066 sq.ft. lot</p> | <p><b>North:</b><br/>Residential Suburban (RS)<br/>1,440 sq.ft.<br/>Site-built Residence built 1980<br/>15,066 sq.ft. lot</p>            | <p><b>Northeast:</b><br/>Residential Suburban (RS)<br/>1,470 sq.ft.<br/>Site-built Residence built 1980<br/>15,066 sq.ft. lot</p> |
| <p><b>West:</b><br/>Residential Suburban (RS)<br/>1,336 sq.ft.<br/>Site-built Residence built 1980<br/>15,045 sq.ft. lot</p>      | <p><b>Subject Property:</b><br/>Residential Suburban (RS)<br/>2,262 sq.ft.<br/>Site-built Residence built 1981<br/>15,045 sq.ft. lot</p> | <p><b>East:</b><br/>Residential Suburban (RS)<br/>1,680 sq.ft.<br/>Site-built Residence built 1980<br/>15,045 sq.ft. lot</p>      |
| <p><b>Southwest:</b><br/>Residential Suburban (RS)<br/>1,844 sq.ft.<br/>Site-built Residence built 1980<br/>15,045 sq.ft. lot</p> | <p><b>South:</b><br/>Residential Suburban (RS)<br/>1,188 sq.ft.<br/>Site-built Residence built 1985<br/>15,045 sq.ft. lot</p>            | <p><b>Southeast:</b><br/>Residential Suburban (RS)<br/>1,654 sq.ft.<br/>Site-built Residence built 1984<br/>15,045 sq.ft. lot</p> |

The applicant’s home is the largest of all the surrounding lots. They were all built in the early 1980s. All of the lots have the same dimensions south of North Willow Drive (88.5’x170’). All of the lots on the north side of the street are 93’x162’. Within the Will-O-Woods subdivision, 19 of the 78 total lots have duplexes on them. These are located on the periphery of the subdivision facing Willow South Drive and Willow Oak Road. Staff found no accessory dwelling units (ADUs) within the subdivision, based on the Property Appraiser’s Office data. The applicant’s is the only parcel within the subdivision that has requested a building permit for an ADU.

**Comments from other Governmental Agencies:**

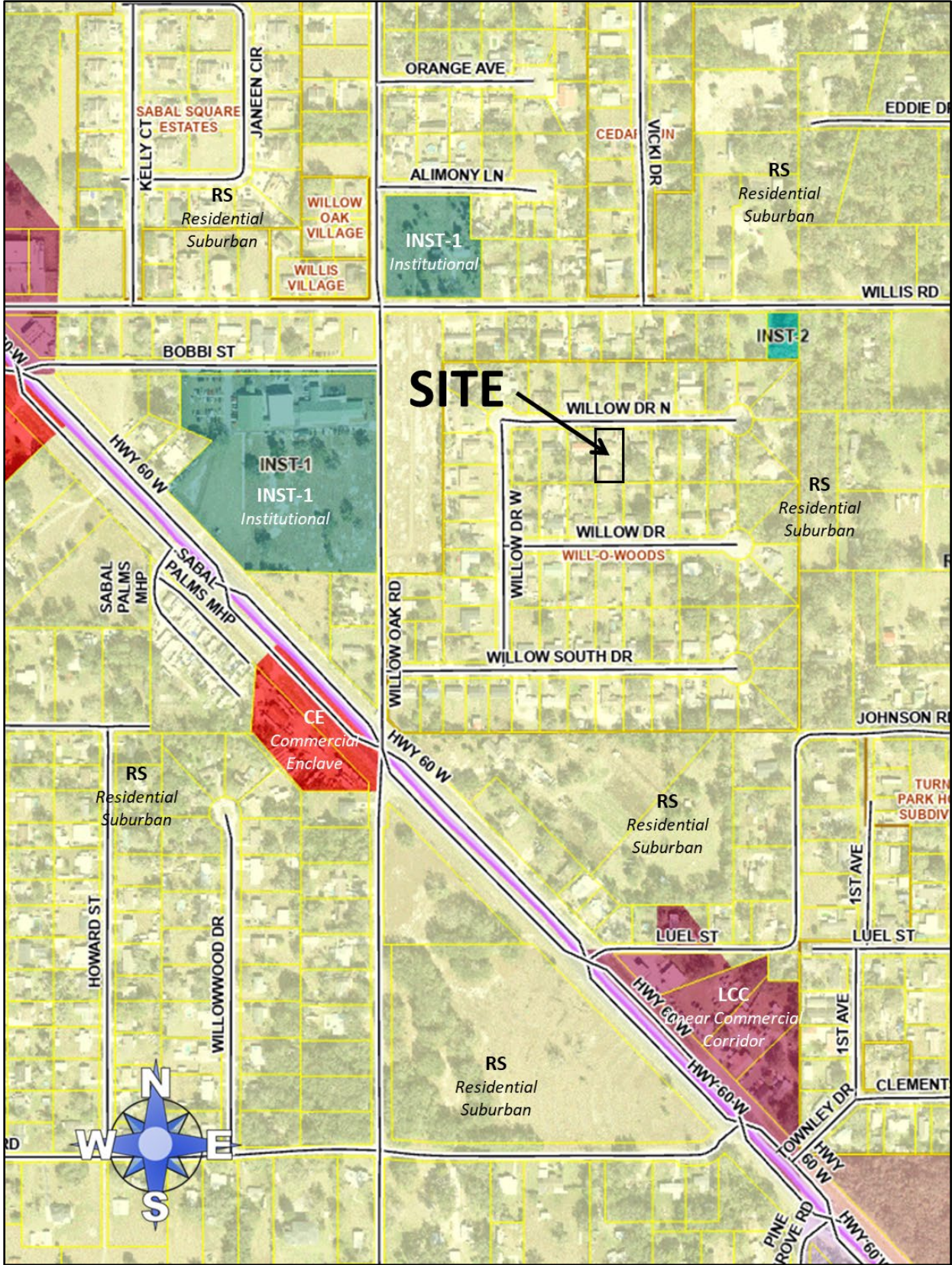
None.

**Exhibits:**

- Exhibit 1- Location Map
- Exhibit 2 - Future Land Use Map
- Exhibit 3 - 2025 Aerial Photo (context)
- Exhibit 4 - 2023 Aerial Close-up
- Exhibit 5 - Applicant’s Site Plan
- Exhibit 6 - Applicant’s Justification



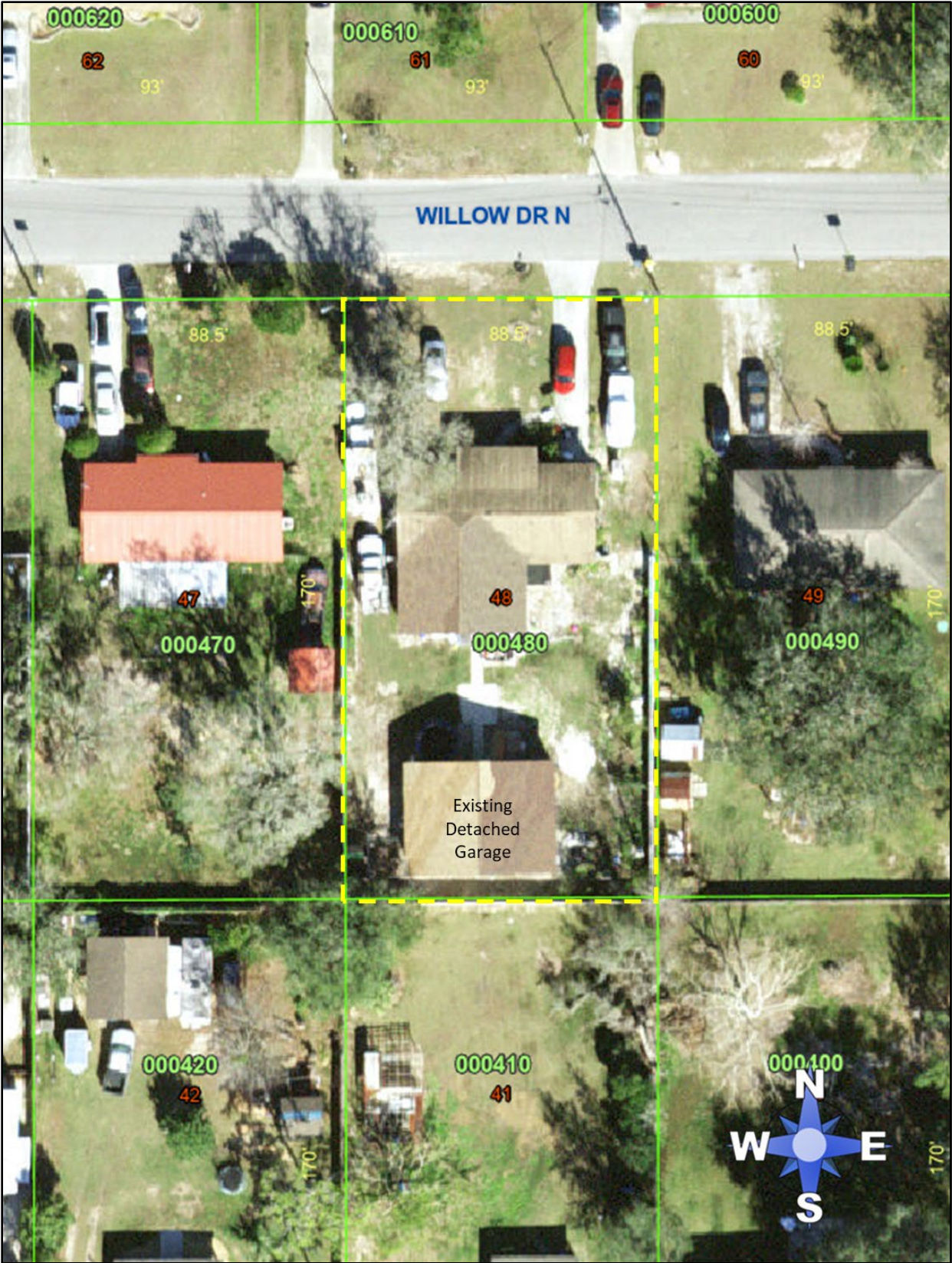
# Location Map



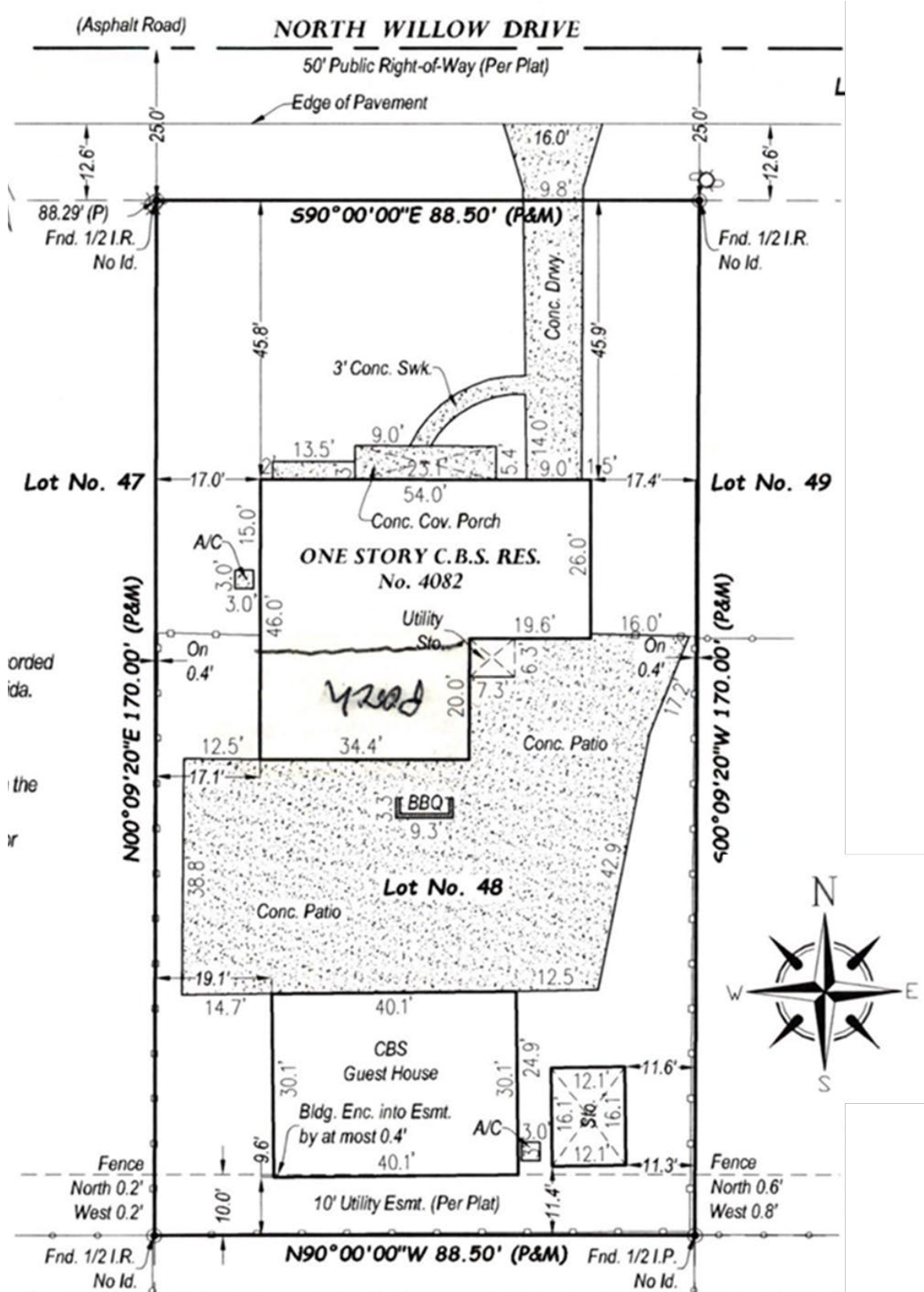
# Future Land Use Map



2025 Satellite Photo (context)



# 2023 Aerial Close-up



# Applicant's Site Plan

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**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?**

N/A

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

the property was bought approximately 2017 and

Structure was built approximately in 2020

br-2024-3296

**What is the hardship if the variance is not approved?**

the property consist of extra family members living.

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

I believe so.

**Do you have Homeowners Association approval for this request?**

n/a

## Applicant's Justification