

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

DRC Date	January 7, 2024	CASE #:	LDLVAR-2024-3 (Fox Lane Variance)
LUHO Date	March 28, 2024	LDC Section:	Table 2.2

Request: The applicant is requesting a variance to reduce the western side setback from 15 feet to six (6) feet and the eastern right-of-way setback from 25 feet to six (6) feet to build a single-family home.

Applicant: Francisco Caracheo

Property Owner: Francisco Caracheo

Location: Southwest corner of Little Orange Avenue and Fox Lane, east of Cain Street, west of Old Highway 37 in Bradley, south of the city of Mulberry in Section 11, Township 31, Range 23.

Parcel ID#: 233111-158500-007162

Size: 0.35 +/- acres

Land Use Designation: Rural Cluster Center – Residential (RCC-R)

Development Area: Rural Development Area (RDA)

Case Planners: Ian Nance

Summary:

The applicant is requesting a variance to reduce the western side setback from 15 feet to six (6) feet and the eastern right-of-way setback from 25 feet to six (6) feet to build a single-family home. This is a legal non-conforming lot of record that is smaller than the minimum lot sizes mandated by the RCC-R land use district (20,000 sq. ft.).

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. Despite the setback reductions, the home will be at least 26 feet from the nearest home. The property has dual frontage that is restrictive on how to align the home and fit within the required setbacks. The legal lot size is not commensurate with the underlying land use district. Finally, the property has long-standing hardships that are not the fault of the applicant, rather caused by the age in which it was first platted and development changes since then.

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-2024-3**.

CONDITIONS OF APPROVAL:

1. Approval of this variance is to reduce the western side setback from 15 feet to six (6) feet and the eastern right-of-way setback from 25 feet to six (6) feet to build a single-family home. 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.

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 requesting a variance to reduce the western side setback from 15 feet to six (6) feet and the eastern right-of-way setback from 25 feet to six (6) feet to build a single-family home. Staff finds no reason this request would be injurious to the surrounding area or detrimental to the public welfare.

The subject lot is located within a neighborhood consisting of site-built single-family homes. With the reduced setbacks, the proposed home will be a minimum of 40 feet from the property to the east and 26 feet from the property line to the west. The property to the east is separated from the site by a County local residential roadway, Fox Lane, with 34 feet of right-of-way. The property to the west is separated by what was once a 20-foot platted right-of-way that appears to have been vacated and acquired by tax deed. Though this is owned fee-simple, it is not a buildable piece of property. These distances easily meet fire code setbacks standards (10 feet between structures), and single-family homes are the dominate structures in the area.

Finally, the reduction of the RW setback from Fox Lane will have little practical implications. Fox Lane dead-ends approximately 90 feet south of the subject site. It provides access to four other lots. Lots south of the dead end are not eligible for building permits as they lack frontage on a County roadway.

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;*

Fox Lane was once a 20-foot-wide platted right-of-way. On March 7, 1984, the County acquired the right-of-way (MB 7 Page 290) and additional land from the subject site to increase the RW width to 34 feet. This was not taken equally from other adjacent properties (*Exhibit 4*) with homes that were already present at this time.

The site also has dual frontage. Footnotes in LDC Table 2.2 require garage entrances for vehicles to be set back a minimum of 25 feet from the property line. This is not eligible for a variance. This forces the orientation of the home to face Little Orange Avenue where the north-south depth of the property allows room to meet this requirement. To face Fox Lane would utilize 1/3 of the property width.

Finally, there is the 20-foot vacated right-of-way to the west. The paper trail is incomplete to determine how this happened, but it was once platted right-of-way. It appears to have been vacated and purchased by tax deed in December of 1996 (OR Book 3775 Page 1824). Had this RW been vacated today, property owners on either side of it would acquire half of the property. Had this situation occurred, no variance on the west side would be necessary. On the other hand, had the RW been left open, a 25-foot setback from this would have been here required, too.

To summarize, this home was destined for a variance and has been squeezed by former

RW actions either by the County or through private mechanisms. This is not true of other lots within this neighborhood.

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

Through the best available resources, staff has concluded this site is a lot-of-record whose lot size was determined prior to the adoption of the Comprehensive Plan and the RCC-R land use category in 1991. During this period, lot sizes were determined by a previous zoning ordinance which placed it in a Residential (R-3) district, which required lot sizes of 6,000 sq. ft. The side setbacks in R-3 were 7.5 on the sides; 20 feet to the rear; and 15 feet from the RW. When the RCC-R land use was adopted and this property was assigned this designation, the lot size requirements more than tripled while the side setback doubled. The right-of-way requirements also increased to 25 feet. The lot width is 74 feet. To apply the RCC-R setback standards would consume 54% of the width of the property, which is unnecessary given the distance to other property lines and intervening rights-of-way, as described above.

Given that this site is a legal non-conforming lot of record, it is eligible for administrative setback reductions provided in LDC Section 208.E which states, “principal and accessory structure setbacks for infill development and non-conforming lots shall conform with the setbacks of the land use district where the equivalent minimum lot size is met as determined by Table 2.2.”

The subject lot is approximately 15,250 sq. ft. which aligns it with the RL-2 land use district. In RL-2, the minimum lot size is 15,000 sq. ft. with seven (7) foot side setbacks, and 15-foot right-of-way setbacks. Given the proposed layout of the home and the request, it would still require a variance, but the reduction does not appear as dramatic as when applying RCC-R standards.

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;*

Many of the homes in the immediate vicinity of the site do not meet current setbacks, including the neighbors to the east and west. From the original application and site plan, staff requested the applicant to reconfigure the layout of the proposed home so the garage would be setback 25 feet from the Fox Lane right-of-way, which is not eligible for a variance. Other hardships on the property have been described above. Otherwise, single-family homes are permitted uses in RCC-R land use districts.

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. It is constrained relative to other lots by the right-of-way dedication on Fox Lane.

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 going to result in the creation of a lot or parcel that does not meet the requirements of the Code. The subject lot is combined with another lot of record within the same Parcel ID Tax Code. Allowing a single-family home here will not deprive the other lot of development rights; however, the southern lot (*See Exhibit 3*) does not have road frontage or an easement that would permit the construction of another home. It will be ineligible for a building permit until either is achieved, but that is immaterial to this request.

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, Planned Development, or other Conditional Use. This is reasonable development of an infill property, which the County supports.

Surrounding Future Land Use Designations and Existing Land Use Activity:

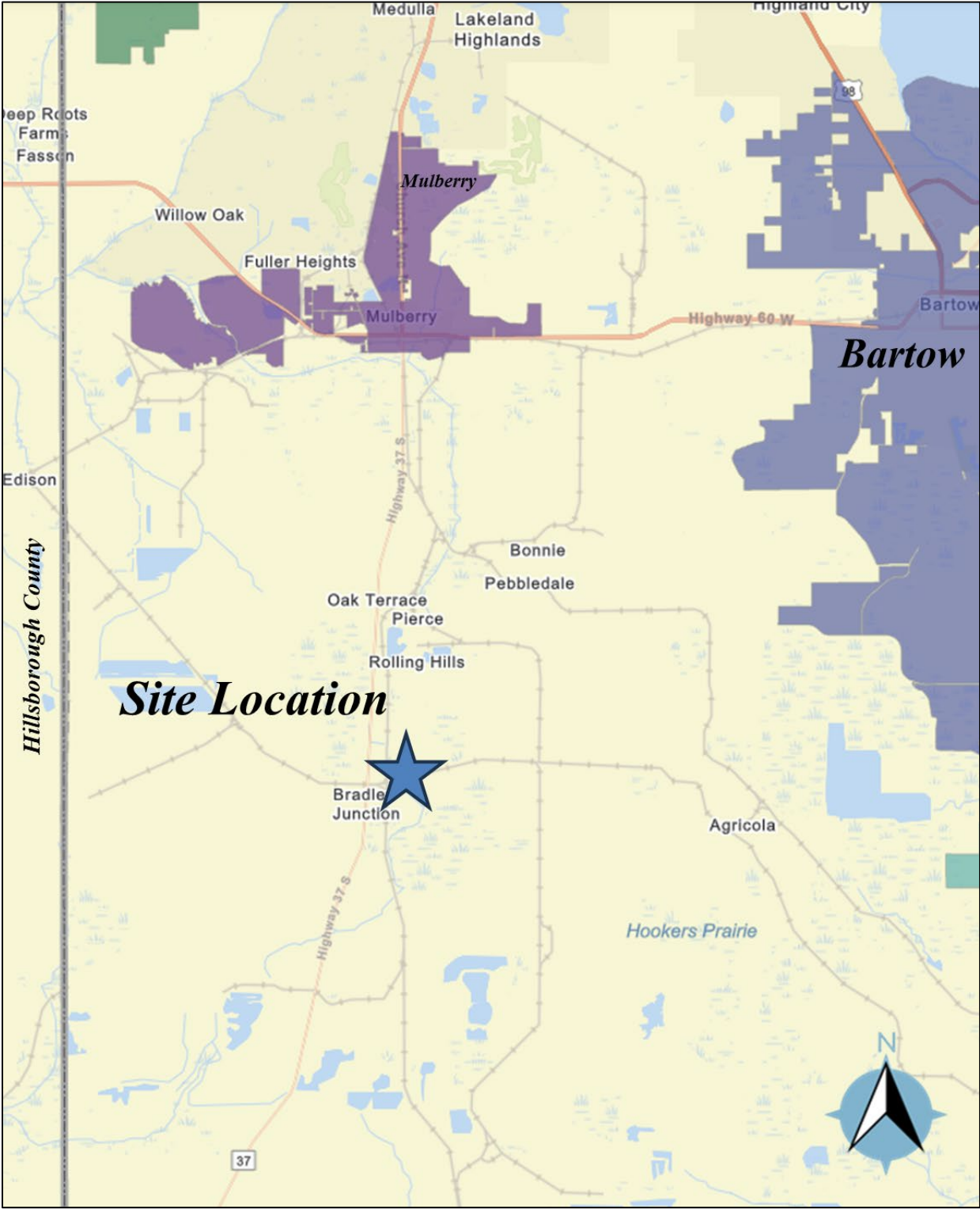
<p>Northwest: RCC-R Little Orange Avenue Single-Family Home</p>	<p>North: RCC-R Little Orange Avenue Vacant Lot</p>	<p>Northeast: RCC-R Little Orange Avenue Vacant Lot</p>
<p>West: RCC-R Old RW Single-Family Home</p>	<p>Subject Property: RCC-R Vacant</p>	<p>East: RCC-R Fox Lane Single-Family Home</p>
<p>Southwest: RCC-R Old RW Single-Family Home</p>	<p>South: RCC-R Single-Family Home</p>	<p>Southeast: RCC-R Fox Lane Single-Family Home</p>

This site is in the Bradley Area south of Mulberry. The Bradley community was built around the present railroads lines and was incorporated as Bradley Junction in 1912. It was platted well before any County zoning rules or ordinances and was one of several townships that housed workers for the phosphate industry once dominant in the surrounding area. Over time, the original plats have been re-platted and/or development occurred with little oversight. Records of changes throughout the years have been poorly maintained. This is an area of the County that has had little development or improvements to infrastructure since mining activity left the area in the late 1990's and early 2000's. Once the RCC-R land use designation was placed on this area, most of the existing lots became non-conforming to Comprehensive Plan and LDC standards. On November 16, 2015, VAR 15-93 was approved by the former Board of Adjustments to allow a single-family home at 550 Palmetto Bend Avenue, located approximately 0.29 miles north of the subject site. Approval of this variance was for a reduction of the right-of-way setback requirement from twenty-five (25) feet to eighteen (18) feet, and a reduction to the interior rear setback requirement from twenty (20) feet to seven (7) feet. Since these are non-conforming lots of record, the LDC allows homes here

to be rebuilt in their original footprint within two years without a variance in the event of a demolition.

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



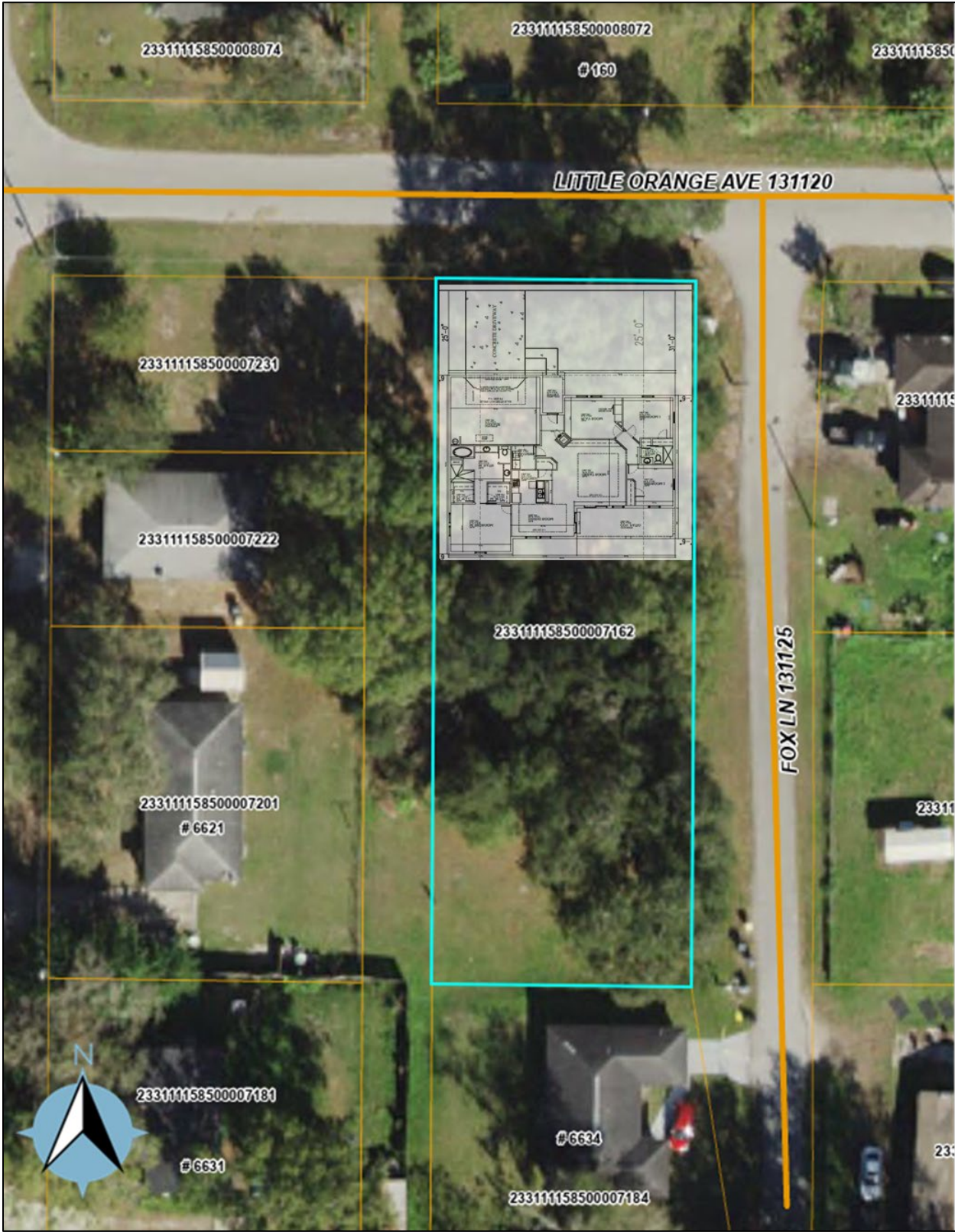
Location Map



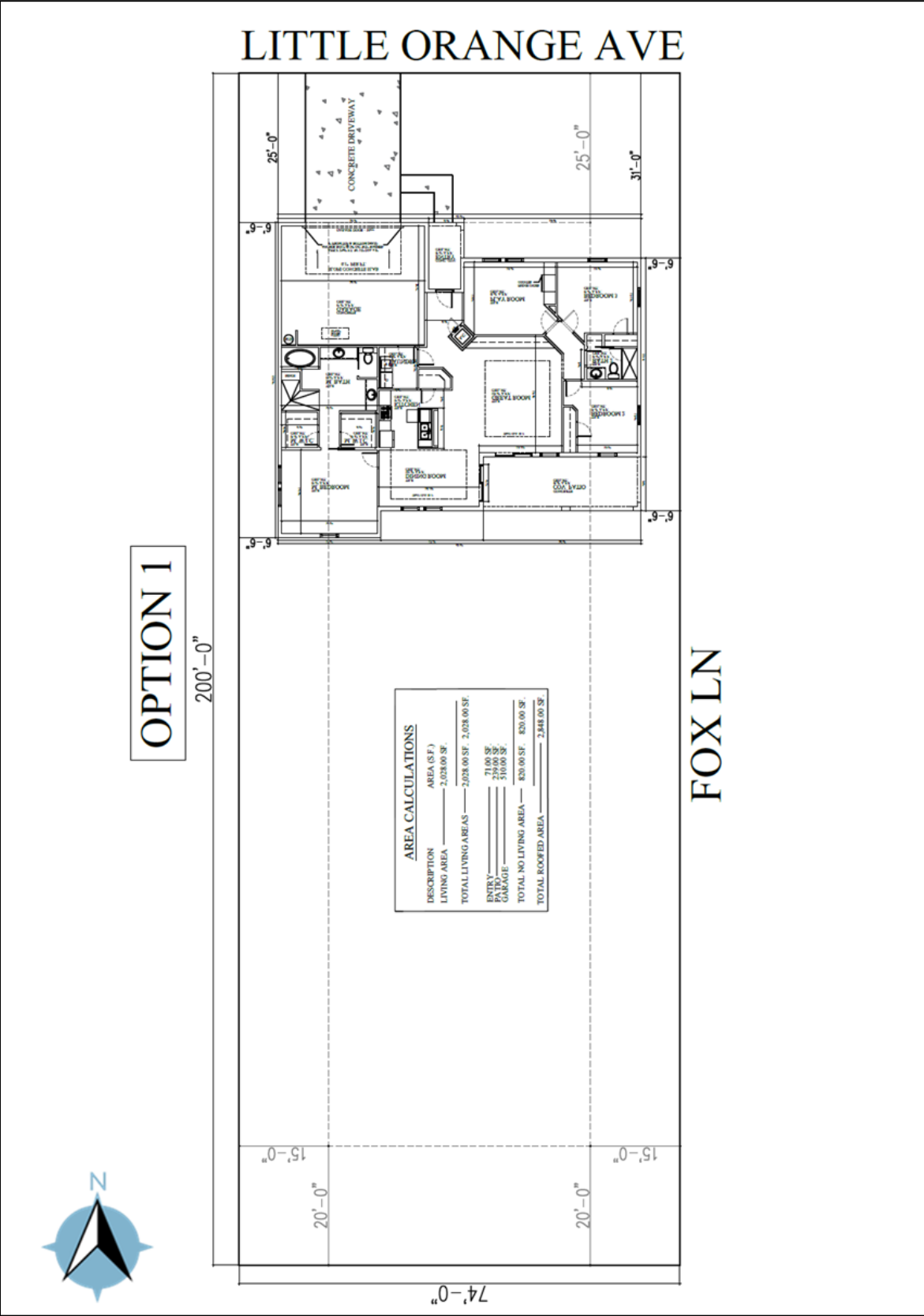
Future Land Use Map



Aerial Image – Context



Aerial Image - Close



Site-Plan