

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

<b>DRC Date:</b> February 10, 2024	<b>CASE #:</b> LDLVAR-2024-2 (Fraser Dr Variance)
<b>LUHO Date:</b> March 28, 2024	<b>LDC Section:</b> PUD 71-10

**Request:** The applicant is seeking a reduction to the rear primary structure setback from twenty (20) feet to twelve (12) feet for a screen room with a solid roof.

**Applicant:** Carlos Joel Rodriguez Lopez

**Property Owner:** Carlos Joel Rodriguez Lopez

**Location:** 895 Fraser Dr, north of Des Moines Dr, east of Fraser Pl, south of Nelson Park Ct, Poinciana, in Section 15, Township 28, and Range 28.

**Parcel ID#:** 282815-935360-090040

**Size:** ±0.18 acres

**Land Use Designation:** Development of Regional Impact/PUD 71-10

**Development Area:** Utility Enclave Area (UEA)

**Case Planner:** Aleya Inglima, Planner II

**Summary:**

The applicant is seeking a reduction to the rear primary structure setback from twenty (20) feet to twelve (12) feet for a screen room with a solid roof. The structure will be approximately 31 feet by 10 feet. It is within a Development of Regional Impact and in the Utility Enclave Area (UEA). A variance to deviate from the PUD requirements can be approved by the Land Use Hearing Officer pursuant to Section 930 and 931.

The property is Lot 4 is within recorded Poinciana Neighborhood 6, Village 7. The lot was first recorded on February 22nd, 1974 (BK 61, PG 29). Poinciana was established through a planned unit development (PUD) 71-10 which requires rear setback of twenty (20) feet.

Staff finds this request will cause no harm to the community or immediate neighbors. PUD 71-10 set the rear setback at twenty (20) feet. If the screen porch did not have a solid roof, it would be considered an accessory structure and meet setbacks. Accessory structures in PUD 71-10 are allowed a setback of 10 feet at the rear. Rear setbacks exist for primarily aesthetics and separation from neighboring properties. The subject property is fenced in the rear and so is the neighbor to the rear. Four rear setback variances have been approved in this neighborhood since 2018.

Staff recommends approval of LDLVAR-2024-2 as it 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.** The screen porch is in the backyard away from public view. It will maintain a 12-foot setback from the rear and will meet the side setbacks. If the screen porch did not have a solid roof, it would be considered an accessory structure and would meet setbacks. Four rear setback variances have been approved in this neighborhood since 2018.

### **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-2024-2**.

### **CONDITIONS OF APPROVAL:**

1. The approval of this variance is for the reduction from twenty (20) feet to twelve (12) feet for a screen room with a solid roof. Further additions or structures placed on the property shall be required to meet the setback requirements of PUD 71-10 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 is under an acre and created prior to the adoption of the Comprehensive Plan documented by a 1974 plat (BK 61, PG 29). The screen porch will meet all side setbacks for the Poinciana Development of Regional Impact. Granting the subject request will not be injurious to the area. The rear of the property has a tall fence surrounding the proposed screen porch. If the screen porch did not have a solid roof, it would be considered an accessory structure and meet setbacks. Accessory structures in PUD 71-10 are allowed a setback of 10 feet at the rear. Rear setbacks exist for primarily aesthetics and separation from neighboring properties. The applicants rear neighbor has a six-foot opaque fence.

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 comprised of Lot 4 recorded on February 22nd, 1974. PUD 71-10 set the rear setback as twenty (20) feet. This property is located in the Poinciana Development of Regional Impact and is approximately 0.18 acres. Housing styles are different today from 1974. The small lot size makes it hard to add additions to the home without requesting a variance.

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 on September 27th, 2021, according to the Polk County Property Appraiser. The single-family residence was constructed in 2021 and originally constructed at 1,738 sq. ft. The small lot depth relative to the requirements of the PUD places a greater burden on the reasonable use of this land. The PUD approved with strict setbacks is not the result of the actions of the applicant.

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. Attached accessory structures are permitted by the LDC but must adhere to principal setback guidelines. This request will allow the applicant to have a screen porch with a hard roof twelve feet from the rear property line. If the screen porch did not have a solid roof, it would be considered an accessory structure and meet setbacks. All other setbacks will be met. There are no easements around the entire parcel. Since 2018 the Board of Adjustment has approved three variance requests for rear setback relief in Poinciana Neighborhood 6, Village 7. Land Use Hearing Officer has approved one.

5. *Whether the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure;*

This request is for an enclosed patio that will allow the homeowner reasonable use of land. These patios are common in many single-family home developments. This request will allow a hard roof so the area can be enjoyed while providing protection from the weather. The patio in question is 31' x 10'. This structure will exist in the backyard of the home.

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.

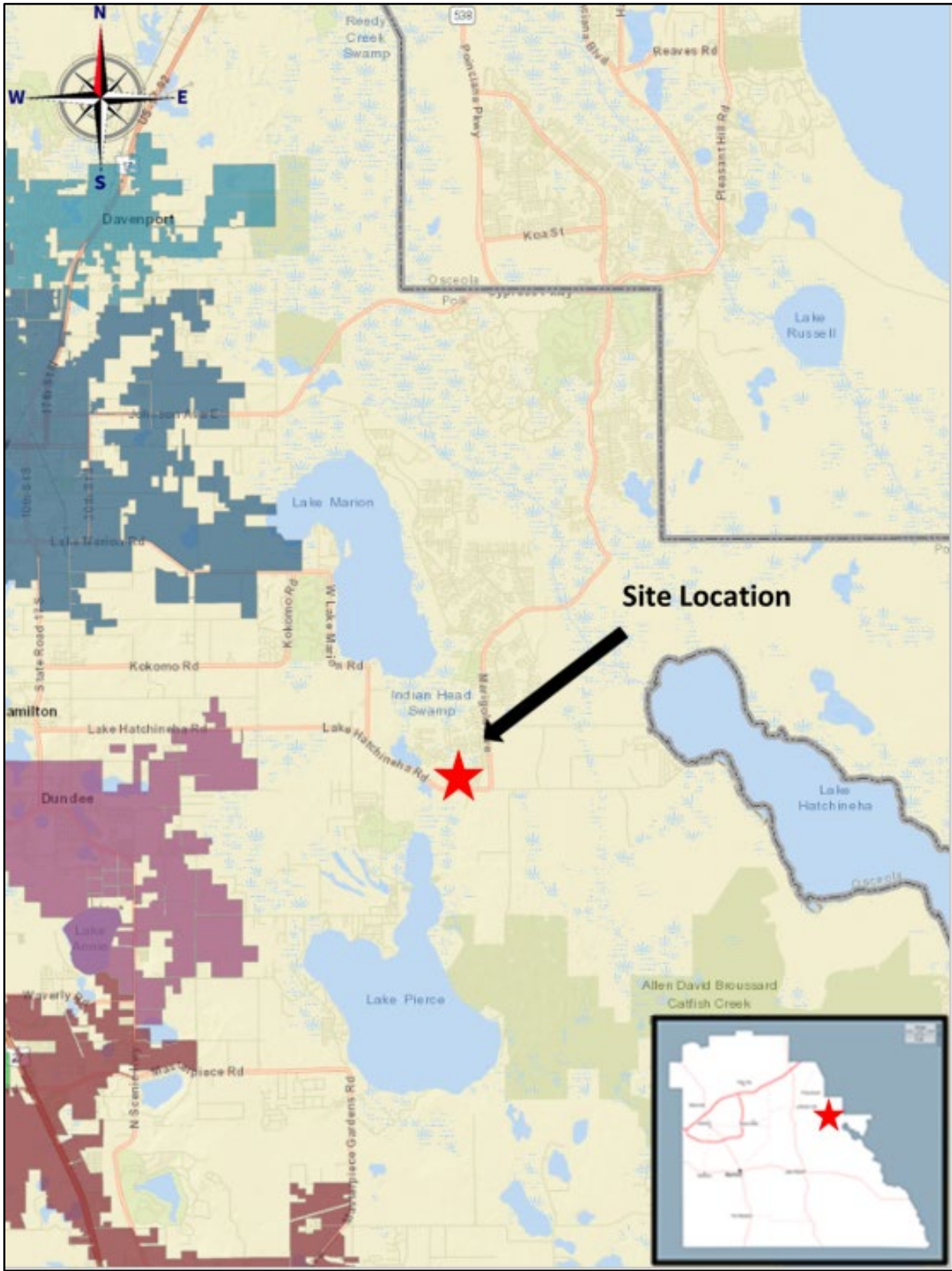
**Surrounding Future Land Use Designations and Existing Land Use Activity:**

<b>Northwest:</b> PUD 71-10/Lot 7 Fraser Place Single-family home	<b>North:</b> PUD 71-10/Lot 8 Fraser Place Single-family home	<b>Northeast:</b> PUD 71-10/Lot 3 Fraser Drive Single-family home
<b>West:</b> PUD 71-10/Lot 7 Fraser Place Single-family home	<b>Subject Property:</b> PUD 71-10 Lot 4 Single-family home	<b>East:</b> PUD 71-10/Lot 18 Fraser Drive Single-family home
<b>Southwest:</b> PUD 71-10/Lot 5 Fraser Drive Single-family home	<b>South:</b> PUD 71-10/Lot 16 Fraser Drive Vacant	<b>Southeast:</b> PUD 71-10/Lot 17 Fraser Drive Single-family home

This property is a single-family home on Lot 4 in Poinciana Neighborhood, 6 Village 7, located on Fraser Dr in Poinciana, Florida. Staff did not find other variance approvals on this street but four in the subdivision since 2018. Numerous other homes within this neighborhood do have additions to the primary structures in their rear yards with similar placement. The subject property is fenced in the rear and so is the neighbor to the rear.

**Exhibits:**

- Exhibit 1 Location Map
- Exhibit 2 Aerial Imagery (Context)
- Exhibit 3 Aerial Imagery (Close)
- Exhibit 4 Site Plan
- Exhibit 5 Justification
- Exhibit 5 Plat



Location Map

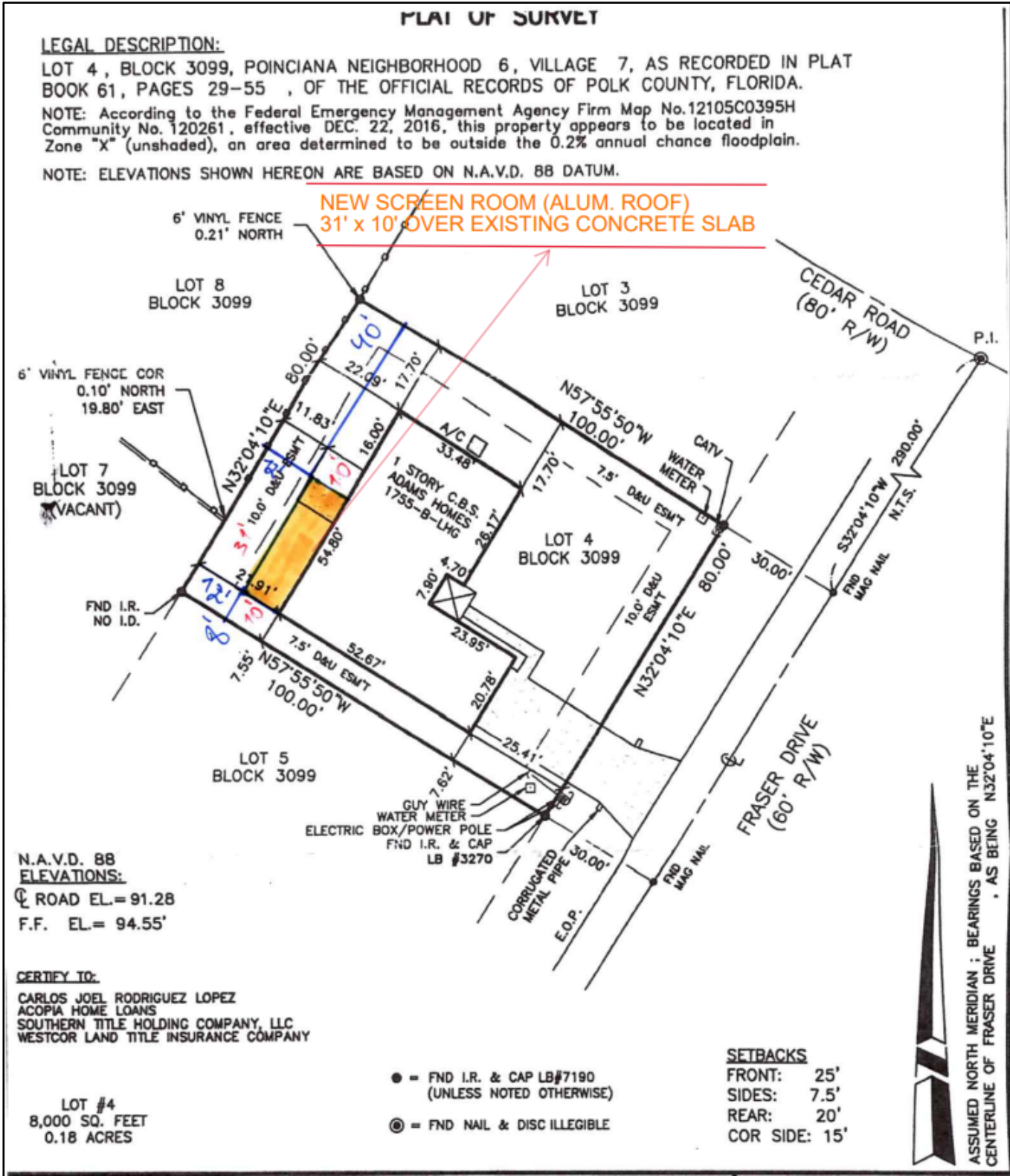


Aerial Imagery (Context)



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

What special conditions exist that are peculiar to the land, structure, or building involved?  
None

When did you buy the property and when was the structure built? Permit Number?  
09/2021

What is the hardship if the variance is not approved?  
None

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

Do you have Homeowners Association approval for this request?  
Yes

# Justification



# Poinciana Neighborhood 6 Village 7 Plat