

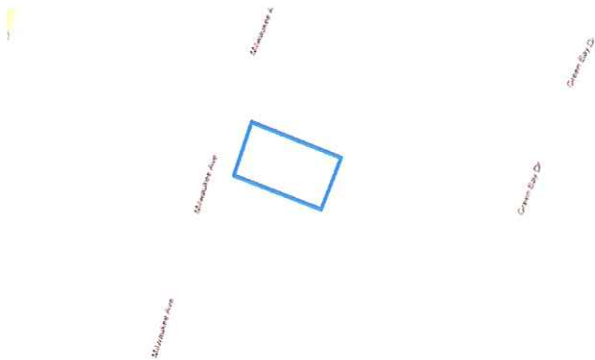


VARIANCE REQUEST
Presented to the
BOARD OF ADJUSTMENT
February 14, 2013

CASE NO.: BOA# 7-13-3	AGENDA ITEM #: 3
OWNERS & APPLICANTS: Fred Mummaw and Boothe Walshaw	

REQUESTED ACTION: The owners are requesting a variance from Lake County Land Development Regulations, Section 1.08.04.A (1) and (3) **Non-conforming Development, Termination of Non-conforming Development** to allow an expansion of a non-conforming structure by enclosing an existing carport into living area (+/- 0.14 acres).

GENERAL LOCATION: Tavares area – SR19 S, ESE on Milwaukee Ave. to site on left, #12635, AK# 1404088 (Sec. 31, Twp. 19, Rng. 26).



FUTURE LAND USE DESIGNATION: Urban Low Density

EXISTING ZONING: RM (Mixed Home Residential)

<u>Direction</u>	<u>Future Land Use</u>	<u>Zoning</u>	<u>Existing Use</u>
North	Urban Low Density (4 du / net acre)	RM (Urban Residential District) (6 du / acre)	single-family dwelling unit
South	Urban Low Density (4 du / net acre)	RM (Urban Residential District) (6 du / acre)	single-family dwelling unit
East	canal	canal	canal
West	railroad	railroad	railroad
Posted:	January 24, 2013 at Lake Dora Circle and Milwaukee Avenue, Tavares		

14.15.02 Granting Variances and Appeals

Variations shall be granted when the person subject to the Land Development Regulation demonstrates that the purpose of the Land Development Regulation will be or has been achieved by other means, and when application of a Land Development Regulation would create a substantial hardship or would violate principles of fairness.

For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance. For the purposes of this section "principles of fairness" are violated when the literal application of a Land Development Regulation affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the Land Development Regulation.

Variations may also be granted to allow for the reconstruction, rehabilitation, or restoration of structures listed on, or classified as contributing to a district listed on the National Register of Historic Places, Florida Master Site File or local surveys of historical resources. In such instance, the variance shall be the minimum necessary to protect the historical integrity of the structure and its site.

ANALYSIS: The owners are requesting a variance to allow them to enclose an existing carport attached to a non-conforming dwelling unit, converting it into living area. The Code (1.08.04.1&3) does not allow expansion, change, enlargement, or alteration of a use or development in any way which increases its nonconformity or structure alterations of non-conforming structures.

The parcel is located in Wisconsin-Michigan Shores, a residential subdivision that was platted in 1968. A majority of the lots in the subdivision are developed with single-wide mobile homes. This subdivision was designed with lake access by canals in the rear of the homes. The owner's home was placed on site in 1970; a carport, screen room and utility room were permitted the same year. A copy of the survey showing the location of all improvements is attached (Exhibit "A").

The owners were cited in October 2012 by the Code Enforcement Division for enclosing the carport without a permit. They are attempting to resolve the case by obtaining a zoning clearance and building permit for the new construction. A door, glass windows and two walls were erected to enclose the area. The enclosed area meets all zoning setback requirements.

The parcel to the north and south are developed with single-family dwelling units; a canal is located east of the parcel and a railroad is to the west. The parcel is approximately 60 feet wide by 83 feet deep and is serviced by central water and septic tank.

The **intent** of the Code (1.08.04.1&3) is to allow legally existing non-conforming development to remain in its current state. The Code does not allow any expansions, changes, enlargements, or alterations of a use or development in any way which increases its nonconformity, or structure alterations of non-conforming structures.

Allowing unlimited expansion of non-conforming structures does not encourage the transition to conforming structures. The intent of the Code is to replace non-conforming structures, not increase the non-conformity by allowing expansions. A single-wide mobile home cannot be converted into a conforming structure by

building rooms on the exterior of the structure; it is a nonconforming dwelling unit because the Code (3.01.02.A.1.a.) requires dwelling units to be at least 23 feet 4 inches wide at the narrowest point.

The owners submitted the following reasons as proof of meeting the **intent of the Code**:

"The enclosure has no negative environmental impact in that

There is no increase in impervious area (roof, floor and two sides are existing)

There is no increase in housing capacity. IE no additional bedroom, bath, heat or air conditioning

Existing enclosures in the area have had no negative environmental impacts

The lot size easily accommodates the enclosure in that

No variance is needed for county, fire etc setbacks

Usage remains unchanged (sitting and entertainment area)

Shape would be consistent with double wide structures (squared off)

The structural integrity remains unchanged in that

Roof supports remain unchanged

Existing two sides remain unchanged

Existing roof and floor remain unchanged

Proposed enclosure is comprised of two non load bearing walls

Increased taxable base in that

The taxable of this property will be increased

The taxable of neighboring properties may be increased

The community as a whole benefits from higher valued properties

Conformity with regulations

Section 3.01.02.A.1.a indicates single family dwelling units shall have a minimum width of 23 feet 4 inches. This enclosure makes the total width 24 feet."

The owners submitted the following as proof that the application of the Land Development Regulation would create a **substantial hardship or would violate principles of fairness**:

"Runoff water due to the elevated street began to flood the existing concreted patio area.

The patio was a sitting and entertaining area. Insects of all types invaded the area making the area unusable and unsafe.

Noise from the close proximity of the road made the area less than ideal for entertaining.

Privacy from the close proximity of the road made the area less than ideal for entertaining.

Various wild animals have unrestricted access to the area.

By erecting two walls, these problems were corrected."

FINDINGS OF FACT: Staff has reviewed the application for this variance request and found:

1. This request is inconsistent with LDR 1.08.04, which attempts to promote replacement of non-conforming development.
2. Enclosing the carport does not make the structure more conforming.

The owners have not shown proof of a substantial hardship or that the application of the Code would violate principles of fairness. The owners have not submitted proof of meeting the intent of the Code. Based on the

Findings of Fact and Analysis, staff recommends **denial** of the variance request to allow a 21' x 12' addition to an existing non-conforming structure.

LAND DEVELOPMENT REGULATION:

1.08.00 - Nonconforming Development.

1.08.04 Termination of Nonconforming Development.

A. Generally. Nonconforming development Shall be brought into full compliance with the other requirements of these Regulations, in conjunction with the following activities:

1. **Any expansion, change, enlargement, or alteration of a use or development in any way which increases its nonconformity. This Shall not be construed to include normal maintenance and incidental repair (e.g., painting, providing for a new roof, rescreening an existing porch, etc), nor Shall it include the modification or rebuilding of a nonconforming communication tower in order to accommodate co-location of additional communication antennas so long as the tower is of the same type which existed and there is no increase in height.**
2. Reconstruction of the principal or accessory structure after the structure has been substantially destroyed by fire or other natural disaster. A structure is "substantially destroyed" if the cost of reconstruction is fifty (50) percent or more of the fair market value of the structure before the fire or natural disaster. If there are multiple principal structures on a site, the cost of reconstruction Shall be compared to the combined fair market of all the structures. A nonconforming development may continue if, within two (2) years from the date that the principal structure was substantially destroyed, a Certificate of Occupancy is issued for the rebuilt principal structure.
3. **Structural alteration, as defined in Chapter II.**
4. Any change in the use of the property, whereby a change from one Use Classification identified in Subsection 3.01.03 to another Use Classification constitutes a change in the use of the property. This Shall not be construed to include normal maintenance and incidental repair (e.g., painting, providing for a new roof, rescreening an existing porch, etc.).
5. The discontinuance of any nonagricultural use or development for twelve (12) consecutive months or the registration of a business tax receipt for which the expiration has exceeded one (1) year.

6. The discontinuance of any agricultural uses (not requiring a CUP) for fifteen (15) consecutive years.
7. The substantial improvement of any nonconforming development that does not comply with the drainage and flood hazard area requirements of the Land Development Regulations.

14.15.00 Variances and Appeals.

14.15.01 Purpose of Variances. Strict application of uniformly applicable Land Development Regulations can lead to unreasonable, unfair, and unintended results in particular instances. The Board of County Commissioners finds that it is appropriate in such cases to adopt a procedure to provide relief to persons subject to the Land Development Regulations. The Board of Adjustment is authorized to grant variances to requirements of the Land Development Regulations consistent with the rules contained in these regulations. This Section does not authorize the Board of Adjustment to grant variances inconsistent with the Comprehensive Plan nor to grant a variance to permit uses not generally permitted in the zoning district involved or any use expressly or by implication prohibited by the terms of the Land Development Regulations in the zoning district. In addition, the existence of nonconforming use of neighboring lands or un-permitted use of neighboring lands shall not be considered grounds for authorization of a variance.

14.15.02 Generally. Variances shall be granted when the person subject to a Land Development Regulation demonstrates that the purpose of the Land Development Regulation will be or has been achieved by other means, and when application of a Land Development Regulation would create a substantial hardship or would violate principles of fairness. For purposes of this Section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance. For purposes of this Section, "principles of fairness" are violated when the literal application of a Land Development Regulation affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the Land Development Regulation. Variances may also be granted to allow for the reconstruction, rehabilitation, or restoration of structures listed on, or classified as, contributing to a district listed on the National Register of Historic Places, Florida Master Site File or local surveys of historical resources. In such instance, the variance shall be the minimum necessary to protect the historical integrity of the structure and its site.

ENVIRONMENTAL ISSUE: N/A

FLOODPLAIN: Flood Zone "AE" in the rear of the parcel.

JOINT PLANNING AGREEMENT: N/A

WEKIVA RIVER PROTECTION AREA: N/A

LAKE APOPKA BASIN: N/A

TRANSPORTATION IMPROVEMENTS: N/A

GREEN SWAMP AREA OF CRITICAL STATE CONCERN: N/A

**BOA# 7-13-3
Photo Evidence**



Views of the site



Views of the postings

**Final Development Order
Fred Mummaw and Boothe Walshaw
BOA # 7-13-3**

A VARIANCE OF THE LAKE COUNTY BOARD OF ADJUSTMENT AMENDING THE LAKE COUNTY ZONING MAPS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Fred Mummaw and Boothe Walshaw (the "Owners") requested a variance to allow a 21' x 12' addition to an existing non-conforming dwelling unit; and

WHEREAS, the subject property consists of 0.14 acres +/- and is generally located south of Tavares in Section 31, Township 19 South, Range 26 East, being composed of alternate key number 1404088 and is more particularly described as:

WISCONSIN-MICHIGAN SHORES LOT 19 PB 18 PG 6

AND, after giving Notice of Hearing on petition for a variance to the Lake County Land Development Regulations, including notice that said variance would be presented to the Board of Adjustment of Lake County, Florida, on February 14, 2013; and

WHEREAS, the Board of Adjustment reviewed said petition, staff report and any comments, favorable or unfavorable, from the public and surrounding property owners at a public hearing duly advertised; and

WHEREAS, on February 14, 2013, the Lake County Board of Adjustment approved the variance for the above property; and

NOW THEREFORE, BE IT ORDAINED by the Board of Adjustment of Lake County, Florida, that the Land Development Regulations of Lake County, Florida, be altered and amended as they pertain to the above subject property, subject to the following terms:

Section 1. Terms: The County Manager or designee shall amend the Official Zoning Map to reflect the approval of BOA# 7-13-3 to allow a 21' x 12' addition to an existing non-conforming dwelling unit.

Section 2. Severability: If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

Section 3. Effective Date. This Ordinance shall become effective as provided by law.

ENACTED this 14th day of February, 2013.

EFFECTIVE February 14, 2013.

BOARD OF ADJUSTMENT
LAKE COUNTY, FLORIDA

Donald Schreiner, Chairman

STATE OF FLORIDA
COUNTY OF LAKE

The foregoing instrument was acknowledged before me this February 14, 2013 by DONALD SCHREINER, who is personally known to me.
(SEAL)

Signature of Acknowledger

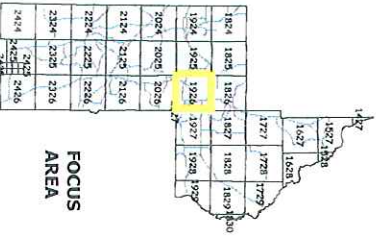
Serial Number: _____

My Commission Expires: _____

Legend

-  Tax Parcels
-  Zoning
-  Subject Property

Case Location (S-T-R):
31-19-26



Owners & Applicants: Fred Mummaw and Boothe Walshaw
BOA# 7-13-3

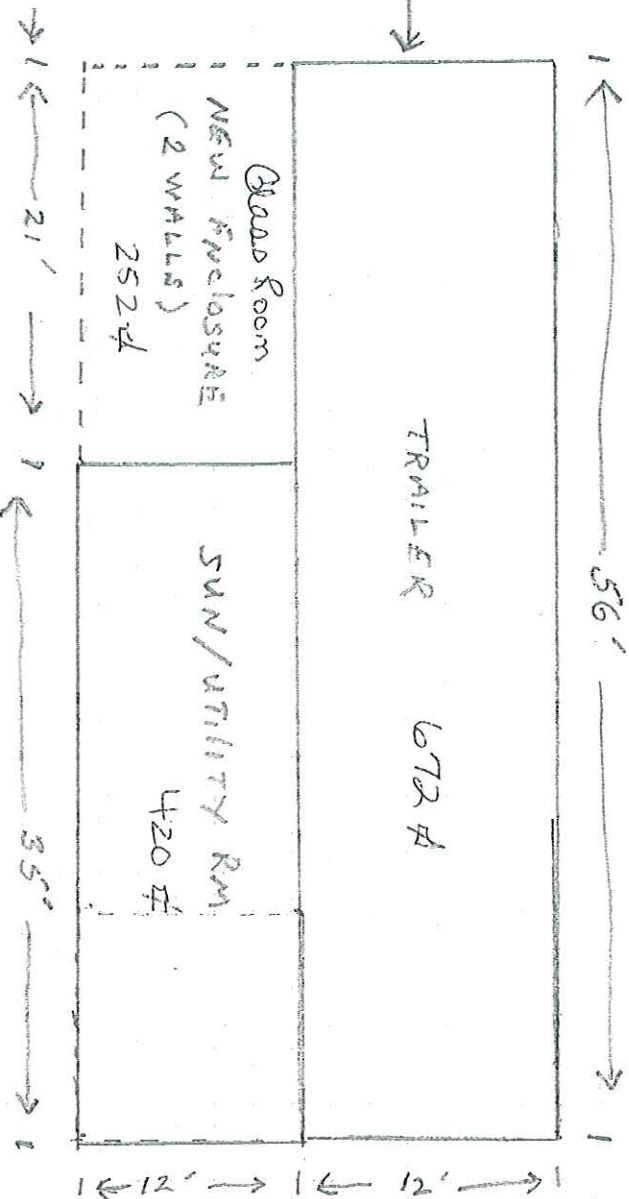
BERM OF ROAD

BOA# 7-13-3
EXHIBIT 'A'

Water Meter



28'



9'

26'

Total
1344 A

TOP OF SEAWALL