

**LAKE COUNTY OFFICE OF PLANNING AND ZONING
BOARD OF ZONING ADJUSTMENT STAFF REPORT**

Board of Adjustment



August 9, 2018

VAR-18-31-1 Da Rosa Property	Commissioner District 1	Agenda Item #2
--	--------------------------------	-----------------------



Requested Action: Variance to Land Development Regulation (LDR) Section 6.01.04.A.1, to allow a single family residence, two-story carport, proposed addition, and brick walkway/patio to be located less than fifty (50) feet from the jurisdictional wetland line; Variance to LDR Table 3.02.05, to allow a single-family dwelling unit to be located 19.4 feet from the western property line in lieu of twenty-five (25) feet from the property line; Variance to LDR Section 6.01.04.2, to allow a septic system to be located less than one hundred (100) feet from the jurisdictional wetland line; and Variance to LDR Section 3.02.01.A.1. a, to allow a single-family dwelling unit to have a width less than twenty-three (23) feet four (4) inches at the narrowest point.

Owners and Applicants: Elias Da Rosa and Sandra Da Rosa (the "Owners")

- Site Location & Information -

Size	9.97 +/- acres
Location	6130 Millstream Drive, Groveland
Alternate Key No.	3778860
Future Land Use	Green Swamp Rural Conservation
Existing Zoning District	Agriculture (A)
Overlay Protection Area	Green Swamp Area of Critical State Concern (GSACSC)
Commissioner District	1

-Land Use Table-

<u>Direction</u>	<u>Future Land Use</u>	<u>Zoning</u>	<u>Existing Use</u>	<u>Comments</u>
North	Green Swamp Rural Conservation	Agriculture (A)	Residential	Single Family Residences on large tracts with wetlands
South	Green Swamp Rural Conservation	Agriculture (A)	Wetlands	Wetlands
East	Green Swamp Rural Conservation	Agriculture (A)	Residential	Single Family Residences on large tracts with wetlands
West	Green Swamp Rural Conservation	Agriculture (A)	Residential	Single Family Residences on large tracts with wetlands

- Summary of Staff Determination -

STAFF RECOMMENDATION: Staff recommends **APPROVAL with Conditions** of Variance to Land Development Regulation (LDR) Section 6.01.04.A.1, to allow a single-family dwelling unit, two-story carport, proposed addition, and brick walkway/patio to be located less than fifty (50) feet from the jurisdictional wetland line; Variance to LDR Table 3.02.05, to allow a single-family dwelling unit to be located 19.4 feet from the western property line in lieu of twenty-five (25) feet from the property line; Variance to LDR Section 6.01.04.2, to allow a septic system to be located less than one hundred (100) feet from the jurisdictional wetland line; and Variance to LDR Section 3.02.01.A.1. a, to allow a single-family dwelling unit to have a width less than twenty-three (23) feet four (4) inches at the narrowest point.

- Background -

The subject property is identified as Alternate Key Number 3778860 and is located within the Green Swamp Area of Critical State Concern (GSACSC). The survey provided by the Owner shows that approximately 8.7 acres of the 10-acre tract are wetlands.

In 1998, the property was issued a permit for electric to well pump. In 1998, Code Enforcement cited the property for filling in the wetlands without approval from St. John's Water Management District, land clearing without a tree removal permit, and the construction of structures without zoning or building permits (Code Case #1998070160). The property owner applied for a building permit (Permit #1999090096) for a pump house and storage building. The permit was voided when the construction plans were updated to reflect that the storage building was being converted to a single family residence. There are three (3) building permit associated with the additions to the 24' by 15' existing shed to create a single family residence but none of the permits had any approved inspections or received a certificate of occupancy (Permits #2001040149, #2002110674, and 2002110675). Multiple code cases were open on the expired permits (Code Cases #2002110063, 2004060190, 2005040328, 2010050114, and 2013030121) but the structures

never obtained certificate of occupancy from the Office of Building Services.

– Reason for Request –

On October 25, 2016, the property owner was issued a notice of code violation (Code Case #2016100105) for building without a permit, specifically the addition to the 24' by 15' storage shed to convert the structure into a single family residence.

Between October 25, 2016 and March 31, 2017 the property was sold twice. On November 15, 2017, the case went before the Lake County Special Master (SM2016100105) and the property owners at the time were ordered to obtain permits within 180 days or they would be fined \$100.00 every day the violation continued past the date specified in the order (Attachment B). After the Order was issued and recorded in Lake County Public Records, the property owners sold the property to Elias and Sandra Da Rosa on March 28, 2018. The deed was prepared without a title search (Attachment C).

When applying for the zoning permit, it was discovered by staff that none of the structures met the fifty (50) foot wetland setback, the side setback for the Agriculture zoning district, the minimum structure width for a single family residence and the septic system does not appear to be located a minimum of one hundred (100) feet from the jurisdictional wetland line (JWL) (Attachment A). The survey shows the single family residence is 19.4 feet from the side property line instead of the required twenty-five (25) feet from the side property line. The single family residence is located 24.1 feet from the JWL and the two-story garage/carport is located 19.8' from the JWL. The septic area is located approximately 70 feet from the JWL and a brick walk/patio is located approximately 10 feet from the JWL.

– Staff Analysis –

LDR Section 14.15.02 states that variances will 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

1. The purpose of the Land Development Regulation will be or has been achieved by other means.

The **intent of the Code**, LDR Section 6.01.04, is to protect the wetland area from erosion, sedimentation, water pollution, and other negative impacts that may be associated with land use.

LDR Section 14.15.04 entitled 'Variance to the setback requirement from an ordinary high water line, mean high water line, or jurisdictional wetland line,' provides the following five requirements for allowing a variance to the setback requirements from the JWL:

1. The lot is a developable Lot of Record, or the lot was legally created through a development order prior to March 2, 1993; and
2. All other remedies have been exhausted, such as a variance to all other setback requirements; and
3. The maximum developable area shall be limited to 30 feet in width or depth; and
4. The first one inch (1") of storm water runoff shall be captured on site; and
5. Development is constructed as far landward on the lot as possible.

The subject property is part of the Groveland Farms subdivision which was platted in 1912. The property is also part of the Millstream Estates Development and received a certificate of vesting from the Comprehensive Plan in 1994. As such, the property meets the first criteria. The second, third, and fifth criteria are not applicable and unable to be fulfilled since the structures are existing and the applicant is seeking after-the-fact permits. The

applicant will need to demonstrate compliance with the fourth criteria prior to applying for a zoning permit for the structures.

The **intent of the Code**, LDR Table 3.02.05, is to ensure the adherence of safe distance between structures and right-of-ways. The applicant is proposing to keep the residence 19.4 feet from the western property boundary in lieu of twenty-five (25) feet from the side property line. The subject property is 10 acres and is surrounded by single family residences on large lots. Maintaining the existing setback will provide a sufficient safe distance between structures.

The **intent of the Code**, 3.01.02.A.1.b, is to provide a minimum architectural standard for single-family dwelling units to ensure compatibility with the surrounding neighborhood, while allowing a mixture of architectural styles. The subject property is heavily wooded and the residence is not visible from the property boundaries. Allowing the single-family dwelling unit to remain with its reduced width will not adversely affect the character of the surrounding neighborhood. In addition, the Applicants are proposing to add an addition to square off the residence which will make the residence more conforming to this provision.

The Owners provided the following means on meeting the purpose of Land Development Regulations: *“Residential – bought the problem – existing home and existing garage.”*

- 2. The 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.**

The Owners provided the following hardship statement: *“After the fact structure – removing financial hardship and would devalue property. Bought the problem – existing home and existing garage.”*

Removing all the non-conforming structures would be a financial and economic hardship.

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

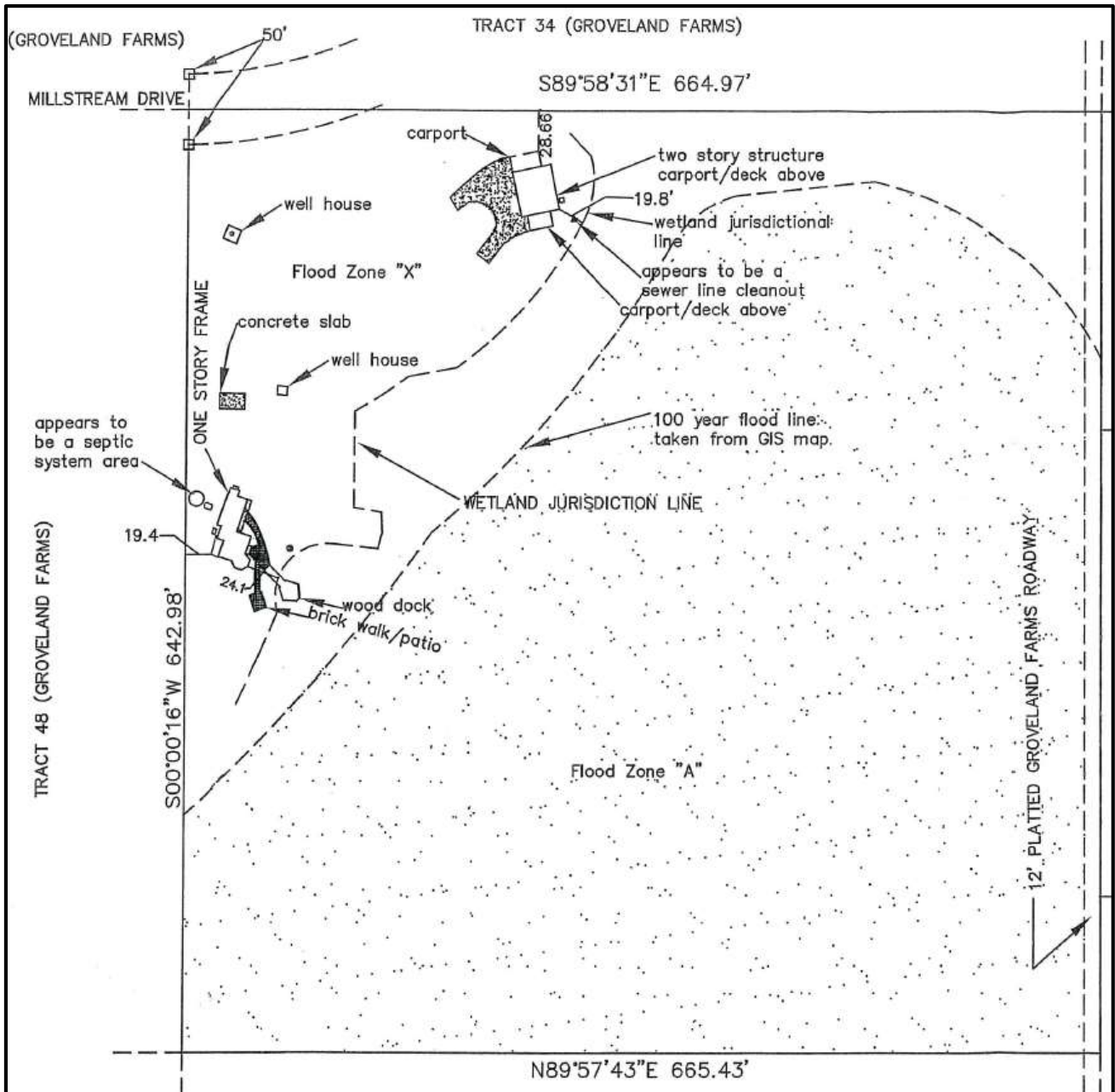
- The Applicants have demonstrated how the intent of the code will be satisfied; and
- The Applicants have demonstrated that removing the structures would be a substantial hardship.

The owner/applicant has submitted evidence of meeting the intent of the Code and has provided evidence of a substantial hardship indicating that the application of the Code would violate principles of fairness. Based on the Findings of Fact and Analysis stated above, staff recommends **Approval with Conditions** of the Variance requests to Lake County Land Development Regulations (LDR).

Written Comments Filed: **Supportive: -0-** **Concern: -0-** **Opposition: -0-**

Case Manager: Michele Janiszewski, Chief Planner

Attachment A. Survey.



Attachment B. Special Master Order of Enforcement (2 Pages).

INSTRUMENT#: 2017125721 OR BK 5031 PG 2002 PAGES: 2 11/28/2017 9:00:31 AM
NEIL KELLY, LAKE COUNTY CLERK OF THE CIRCUIT COURT
REC FEES: \$18.50

BEFORE THE SPECIAL MASTER
LAKE COUNTY, STATE OF FLORIDA

LAKE COUNTY, FLORIDA,
Petitioner,

Case No. SM2016100105

vs.

JOHN LEON &
CHARLIE PERRY,

Respondent(s),
_____ /

ORDER OF ENFORCEMENT

This cause came on for hearing on November 15, 2017, before the Lake County Special Master, upon the petition of the Building Services Division Manager/Building Official, and the Special Master having heard the testimony of the respective parties present and having reviewed the evidence presented, the following Findings of Fact and Conclusions of Law are made:

Findings of Fact

- Respondent(s) ~~was~~ was not properly served with notice of these proceedings prior to the hearing herein; and ~~(circle on) was~~ was not present at the hearing.
- That _____ who stated he/she is the _____ of the Respondent(s), was present at the hearing and offered testimony.
- Respondent(s), JOHN LEON & CHARLIE PERRY is/are the owner(s) of the real property located in Lake County, Florida, AK#3778860, more particularly described in the legal description below, hereinafter referred to as the "Property".
Tract 47, GROVELAND FARMS, Section 31, Township 22 South, Range 25 East, according to the Plat recorded in Plat Book 2, Pages 10 and 11, Public Records of Lake County, Florida.
- On October 12, 2016 and continuing until the date of this hearing, the Respondent(s) has/have violations on the property.

Conclusions of Law

- Respondent(s) is/are in violation of the following section(s) of the Lake County Code/Land Development Regulations (check box):
 - Section 6-22(2)(g) "Permits"
 - Section 6-22 Adoption and Enforcement-International Property Maintenance Code Section 108.1.1 Unsafe Structures and 108.1.5 Dangerous Structures.
 - Section _____
- Based on the facts and evidence presented, an Order of Enforcement is warranted.

ORDER

A. It is hereby ORDERED that Respondent(s) take the following corrective action(s):

By obtaining required permits for all work done/to be done or remove all unpermitted work and restore to original state. *And the County is ordered to not request the Power to be shut off.*

Page 2
Case#SM2016100105

B. In the event that Respondent(s) does not comply with this Order within 180 days of the date of this Order, then and in that event, there shall be imposed a fine of \$ 100.00 for each and every day the violation(s) continues past the date specified in this Order. Pursuant to Section 8-10 (a), Lake County Code, a hearing shall not be necessary for issuance of an Order of Fine.

If this box is checked and if Respondent(s) are not in compliance with the time started in paragraph B above, but have made diligent effort to come into compliance during such time, Respondent(s) may request additional time to come into compliance if make a request prior to expiration of the time stated.

C. _____

It shall be the responsibility of the Respondent(s) to contact Building Services Division at (352) 343-9653 when the violation is cleared so that an inspection can be made to confirm compliance.

DONE and ORDERED at Tavares, Lake County, Florida, this 15 day of Nov, 2017.

**THE SPECIAL MASTER
OF LAKE COUNTY, FLORIDA**



Charles D. Johnson, Special Master

Pursuant to Section 286.0105, Florida Statutes, if any person desires to appeal any decision with respect to a matter considered at a public meeting or hearing of the Special Master of Lake County, Florida, such person will need a record of the proceedings, and such person may need to ensure that a verbatim record for such purpose is made, which record includes the testimony and evidence upon which the appeal is based.

Pursuant to Section 14.17.00, Lake County Code Appendix E, Land Development Regulations, any owner who believes an enforcement action is unreasonable or unfairly burdensome to the use of the owner's real property may request a Special Master proceeding within thirty (30) days of receipt of the order.

Pursuant to Section 162.11, Florida Statutes, either Lake County or a Respondent may appeal a final administrative order of the Special Master to the Circuit Court in Lake County, Florida. Such an appeal shall be filed within thirty (30) days of the execution of the Order to be appealed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order of Enforcement was forwarded by certified United States Mail to: JOHN LEON & CHARLIE PERRY, 1156 CAREY GLEN CIR, ORLANDO, FL 32724, this 20 day of November, 2017.



Traci Bates
Operations Compliance Specialist



**BUILDING SERVICES
315 WEST MAIN STREET
TAVARES FL 32778**

Attachment C. Quit Claim Deed (Only first page provided).

INSTRUMENT#: 2018035643 OR BK 5086 PG 1198 PAGES: 6 3/29/2018 10:18:58 AM
NEIL KELLY, LAKE COUNTY CLERK OF THE CIRCUIT COURT
REC FEES: \$52.50 DEED DOC:\$700.00

This instrument prepared by and return to:
Tyler Van Voorhees, Esquire
PO Box 120280
Clermont, FL 34712-0280
Property Appraisers Parcel I.D.: 01-22-24-510004700000
Grantee: Elinas & Sandra da Rosa, a married couple

Space Above This Line for Recording Data

QUIT CLAIM DEED

THIS QUIT CLAIM DEED executed this 28th day of March, 2018, by CHARLIE PERRY and CHARLIE PERRY as attorney-in-fact for JOHN PAUL LEON, husband and wife, whose address is 6130 Millstream Drive, Groveland, FL 34736, hereinafter called the grantor; and, ELIAS DA ROSA and SANDRA DA ROSA, husband and wife, whose address is 142 White Birch Drive, Kissimmee, FL 34743, hereinafter called the hereinafter called the grantee(s).



(Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations.)

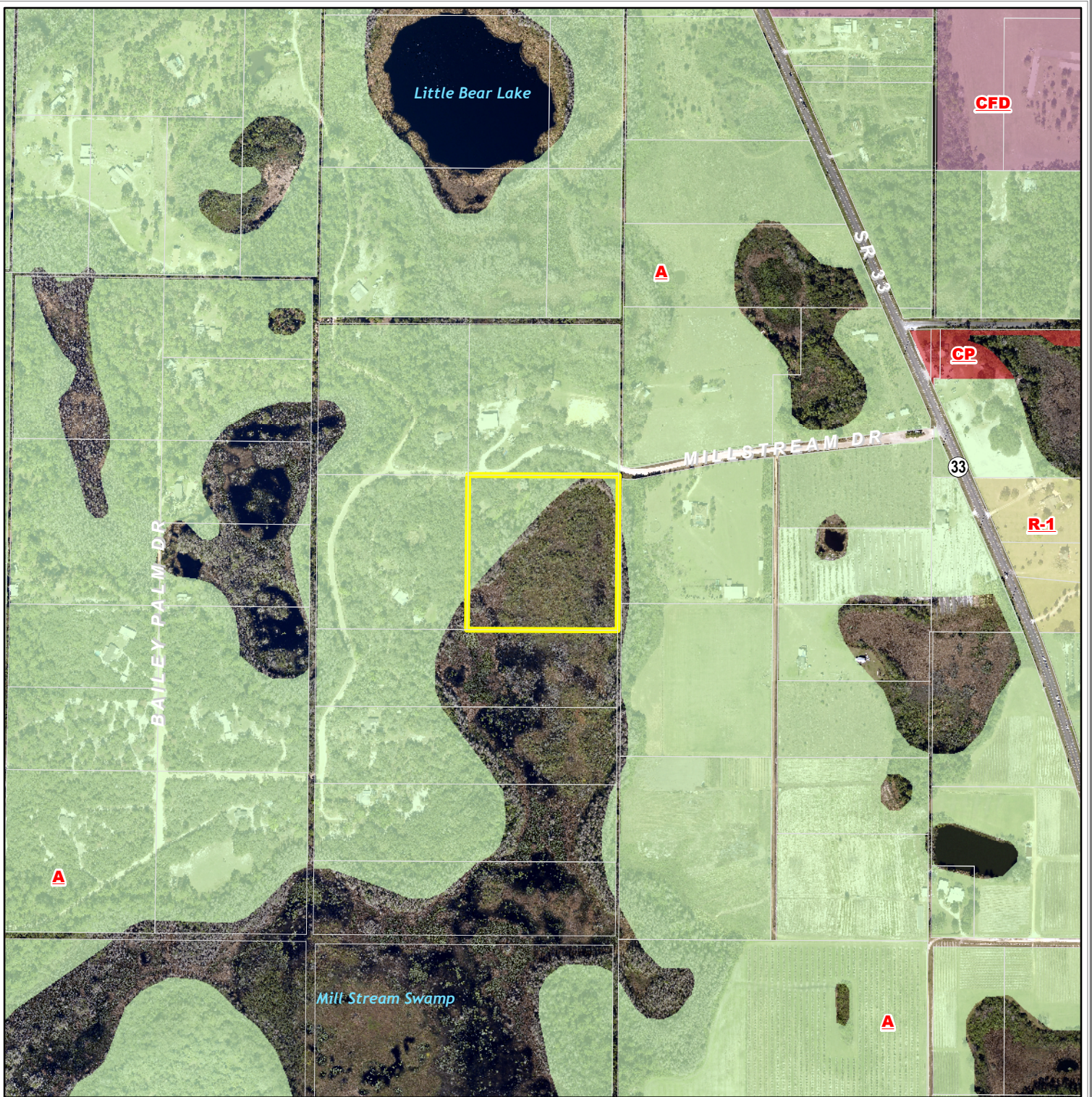
WITNESSETH, that the grantor, for and in consideration of the sum of \$10.00 and other valuable considerations, paid by the said grantee, the receipt whereof is hereby acknowledged, does hereby remise, release and quitclaim unto the said grantee forever, all the right, title, interest (including any homestead interest), claim and demand which the said grantors has in and to the following-described parcel of land and improvements and appurtenances situate, on the subject property lying, and being in Lake County, Florida, to-wit:

Tract 47, GROVELAND FARMS, Section 31, Township 22 South, Range 25 East according to the plat thereof as recorded in Plat Book 2, Pages 10 and 11 of the Public Records of Lake County, Florida

Property Appraisers Parcel I.D.: 01-22-24-510004700000

AT THE REQUEST of the parties, this deed was prepared without a title search, and the legal description was supplied by the parties; the preparer of this instrument assumes no liability for the state of the title or any inaccuracy in the legal description. One of the grantors is executing this instrument through his attorney-in-fact. The limited power of attorney setting forth the authority to execute this deed as attorney-in-fact is attached hereto as Exhibit A.

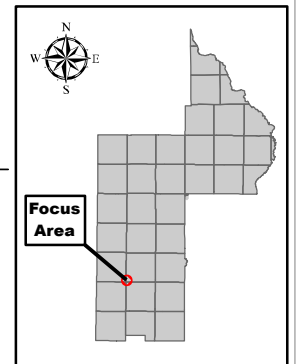
TO HAVE AND TO HOLD, the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of the grantors either in law or equity, to the only proper use, benefit and behoof of the grantees as joint tenants with a right of survivorship.

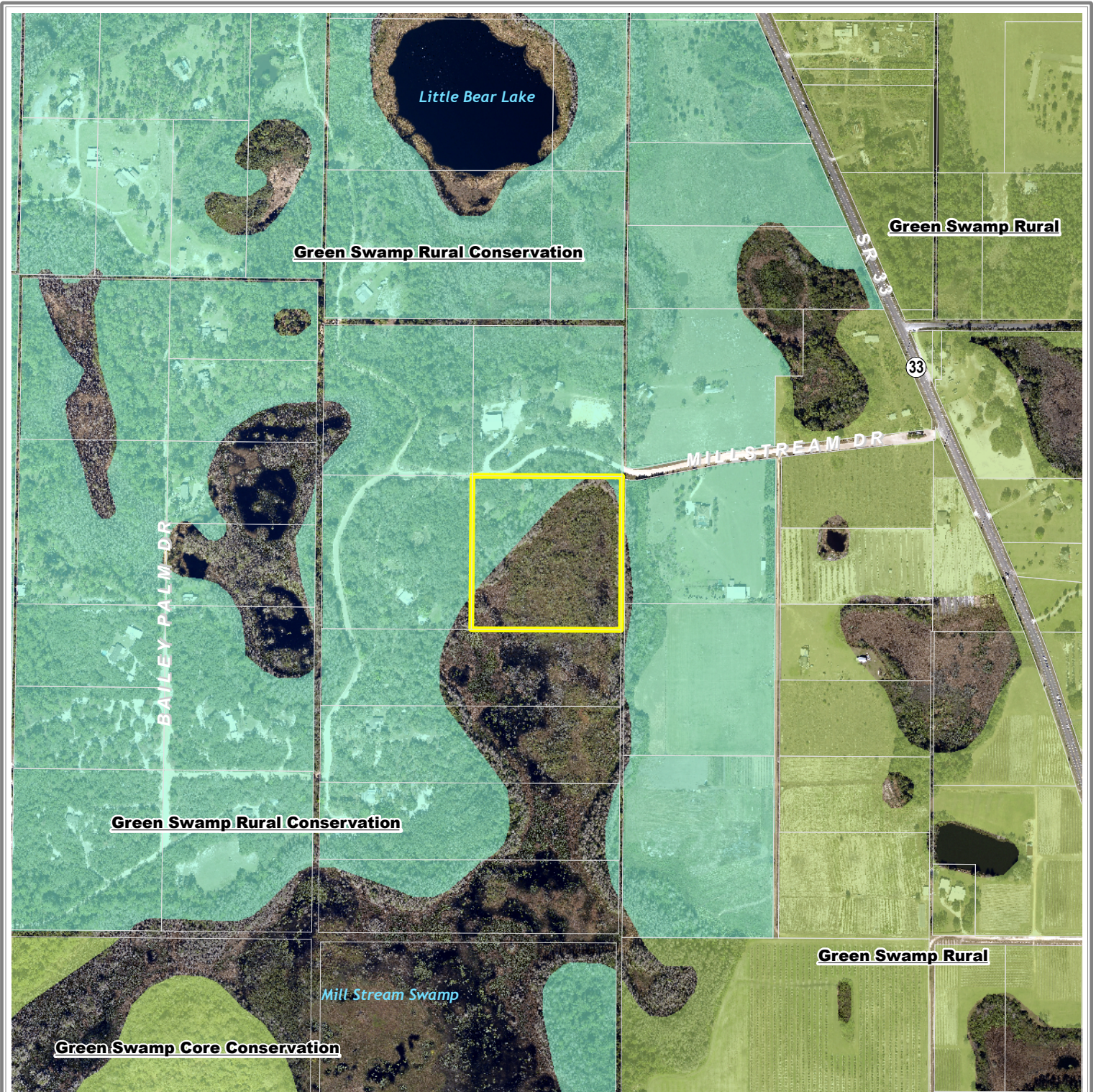


ZONING LEGEND

A	RA	R-2	R-4	R-7	RMRP	RV	C-2	LM	MP	PUD
AR	R-1	R-3	R-6	RP	RM	C-1	CP	HM	CFD	

NAME: DA ROSA PROPERTY
CASE NUMBER: VAR-18-31-1
LOCATION (S-T-R): 31-22-25
REQUEST: WETLAND & SIDE SETBACK ADJUSTMENT

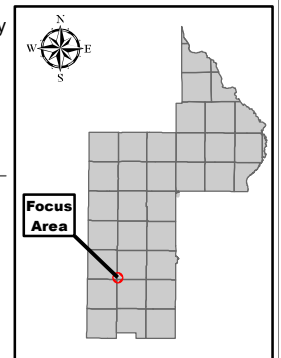




FUTURE LAND USE LEGEND

- | | | |
|--------------------------------|--|--------------------------|
| Bella Collina | Mt Plymouth-Sorrento Main Street District | Regional Commercial |
| Cagan Crossings | Mt Plymouth-Sorrento Neighborhood | Rural |
| Conservation | Mt Plymouth-Sorrento Receiving Area | Rural Transition |
| Green Swamp Core Conservation | Regional Office | Sending Area A-1-20 |
| Green Swamp Interlachen | Public Service Facility and Infrastructure | Sending Area A-1-40 |
| Green Swamp Ridge | Receiving Area A-1-20 | South Lake Regional Park |
| Green Swamp Rural | Recreation | Summer Bay |
| Green Swamp Rural Conservation | | Urban Low Density |
| Heavy Industrial | | Urban Medium Density |
| | | Urban High Density |
| | | Wellness Way 1 |
| | | Wellness Way 2 |
| | | Wellness Way 3 |
| | | Wellness Way 4 |
| | | Towncenter |

NAME: DA ROSA PROPERTY
CASE NUMBER: VAR-18-31-1
LOCATION (S-T-R): 31-22-25
REQUEST: WETLAND & SIDE SETBACK ADJUSTMENT



Final Development Order
VAR-18-31-1
Da Rosa Property

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

WHEREAS, Elias Da Rosa and Sandra Da Rosa (the “Owners”), have requested a variance to Lake County Land Development Regulations (LDR) Section 6.01.04.A.1, to allow a single-family dwelling unit, two-story carport, proposed addition, and brick walkway/patio to be located less than fifty (50) feet from the jurisdictional wetland line; Variance to LDR Table 3.02.05, to allow a single-family dwelling unit to be located 19.4 feet from the western property line in lieu of twenty-five (25) feet from the property line; Variance to LDR Section 6.01.04.2, to allow a septic system to be located less than one hundred (100) feet from the jurisdictional wetland line; and Variance to LDR Section 3.02.01.A.1. a, to allow a single-family dwelling unit to have a width less than twenty-three (23) feet four (4) inches at the narrowest point; and

WHEREAS, the subject property consists of 9.97+/- acres and is located east at 6130 Millstreat Dr, Groveland, in Section 31, Township 22 South, Range 25 East, having Alternate Key Number 3778860 and more particularly described below as:

Tract 47, Groveland Farms, Section 31, Township 22 South, Range 25 East according to the plat thereof as recorded in Plat Book 2, Pages 1- and 11 of the Public Records of Lake County, Florida.

WHEREAS, after giving notice of a hearing on a petition for a variance to the Lake County Land Development Regulations, including notice that the request for a variance would be presented to the Board of Adjustment of Lake County, Florida, on August 9, 2018; and

WHEREAS, the Board of Adjustment reviewed the 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 August 9, 2018, the Lake County Board of Adjustment approved the variance for the above property.

NOW THEREFORE, BE IT ORDAINED by the Board of Adjustment of Lake County, Florida, that:

Section 1. Terms. The County Manager or designee shall amend the Official Zoning Map to reflect the approval of VAR-18-31-1 to reflect the following variance requests to the Land Development Regulations for the structures shown in Exhibit A:

- A. Variance to LDR Section 6.01.04.A.1, to allow a single-family dwelling unit, two-story carport, proposed addition, and brick walkway/patio to be located less than fifty (50) feet from the jurisdictional wetland line;
- B. Variance to LDR Table 3.02.05, to allow a single-family dwelling unit to be located 19.4 feet from the western property line in lieu of twenty-five (25) feet from the property line;
- C. Variance to LDR Section 6.01.04.2, to allow a septic system to be located less than one hundred (100) feet from the jurisdictional wetland line; and

D. Variance to LDR Section 3.02.01.A.1. a, to allow a single-family dwelling unit to have a width less than twenty-three (23) feet four (4) inches at the narrowest point.

Subject to the following Conditions:

- A. All future structures and additions must be consistent with the Land Development Regulations, as amended.
- B. The garage must not have a kitchen or cooking accommodations unless the property owner complies with the provisions for Accessory Dwelling Units within the Land Development Regulations, as amended.
- C. The residence may be expanded as long as the 24.1 foot setback from the Jurisdictional Wetland Line is maintained.

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, the holding will in no way affect the validity of the remaining portions of this Ordinance.

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

ENACTED this 9th day of August, 2018.

EFFECTIVE August 9, 2018.

**BOARD OF ADJUSTMENT
LAKE COUNTY, FLORIDA**

Timothy Morris, Chairman

**STATE OF FLORIDA
COUNTY OF LAKE**

The foregoing instrument was acknowledged before me this 9th day of August, 2018, by Timothy Morris, who is personally known to me or who has produced _____, as identification and who did _____ or did not _____ take an oath.

(SEAL)

Signature of Acknowledger

Exhibit A. Survey.

