



VARIANCE STAFF REPORT

OFFICE OF PLANNING & ZONING

Tab Number: 1

Public Hearing Date: May 14, 2020

Case No. and Project Name: VAR-19-23-1, Hughes Property

Applicant: Philip Hughes

Owner: Philip and Stephanie Hughes

Requested Action: Variance to Lake County Land Development Regulations (LDR) Section 3.02.05(l)(2) and 3.02.05(l)(3), to allow a portion of an existing pool deck and concrete walk to be located within a drainage and utility easement.

Case Manager: Janie Barrón, Senior Planner

Subject Property Information

Size: 1.94 +/- acres

Location: 12908 Bellerive Drive, Clermont, FL 34711

Alternate Key No.: 3787589

Future Land Use: Green Swamp Rural

Current Zoning District: Planned Unit Development (PUD) by Ordinance 2018-06

Flood Zone: "X"

Joint Planning Area/ ISBA: None

Overlay Districts: Green Swamp Area of Critical State Concern

Adjacent Property Land Use Table

| Direction | Future Land Use | Zoning | Existing Use | Comments |
|-----------|-------------------|--------------------------------|-------------------|--|
| North | Green Swamp Rural | Planned Unit Development (PUD) | Residential | Single-Family Dwelling Units |
| South | Green Swamp Rural | Planned Unit Development (PUD) | Residential | Single-Family Dwelling Units |
| East | Green Swamp Rural | Planned Unit Development (PUD) | Pond, Residential | Large Tract with Manmade Pond, Adjoining by Single-Family Dwelling Units |
| West | Green Swamp Rural | Planned Unit Development (PUD) | Residential | Bellerive Drive, Adjoining by Single-Family Dwelling Units |

Summary of Request.

The application seeks relief from Land Development Regulations (LDR) Section 3.02.05(1)(2) and (3), to allow a portion of an existing pool deck and concrete walk to be located within a drainage and utility easement. The Owners were unable to obtain financing as a small portion of the pool deck and concrete walk were constructed within a drainage and utility easement.

A search of our records revealed that on March 29, 2005, a zoning approval was granted to Blue Haven Pools to construct a 15' x 30' pool to be located fifty-six (56) feet from the rear property line (Attachment B). The pool construction plans that were submitted with the building permit (Permit #2005031941) indicated that the paver deck would be completed by others (Attachment C). However, it appears that the pool deck and concrete walk were installed without obtaining the proper permits.

The variance application was sent to the Public Works Department for determination of consistency with lot grading/drainage regulations. Public Works visited the site, took pictures of the existing conditions, and provided a statement indicating that the existing drainage easement encroachment does not appear to impact the drainage. However, they recommend that no further encroachment be permitted.

The variance application was sent to the Florida Department of Economic Opportunity (DEO) for a determination of consistency with Green Swamp Area of Critical State Concern regulations. DEO did not provide any comments. DEO withholds the ability to appeal any development permit, pursuant to Chapter 380, Florida Statutes 380.05.

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 3.02.05, is to promote a logical development pattern, provide for safe setbacks between structures, encourage a visually pleasing environment and ensure stormwater runoff does not adversely impact adjacent property owners.

Pursuant to LDR Section 3.02.05(1)(2), building appurtenances shall be prohibited from encroaching into a drainage easement unless specifically required as a condition of a government-issued permit. Additionally, pursuant to LDR Section 3.02.05(1)(3), building appurtenances may be placed in the utility easement with the understanding that the temporary remove and replacement may be necessary during servicing of the utilities located within said easement. However, a portion of the existing pool deck was constructed within a drainage and utility easement.

The Applicant provided the following statement as proof that the intent of the Land Development Regulation will be or has been achieved by other means, "We are unable to obtain Mortgage on the property as the pool on the property is just inside the easement area. This is something that occurred when the builder built the home and put in the swale easement in 2006. The property in question was built by Grimm Construction. All of the houses and pools were staked out by Pierre Grimm, who decided their location. We were unaware that there was a problem until now. We would like the variance to the easement to enable us to sell or mortgage the home. The builder who built the home died years ago so will not be able to help with this problem. We were totally unaware of any problem with the property lines when we purchased the home."

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.

LDR Section 14.15.04, states that for the purposes of this section "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requested the variance.

The Applicant provided the following statement, "We believe that this variance does not violate code LDR section 3.02.05 for the following reasons: 1. There are safe setbacks between the structures. 2. Visually the Variance is unnoticeable to the surrounding environment and is in keeping with surrounding properties. 3. The variance does not affect the adjacent homes to the left or right of the property in any manner."

Attachment A – Concept Plan

Description—Overall property:

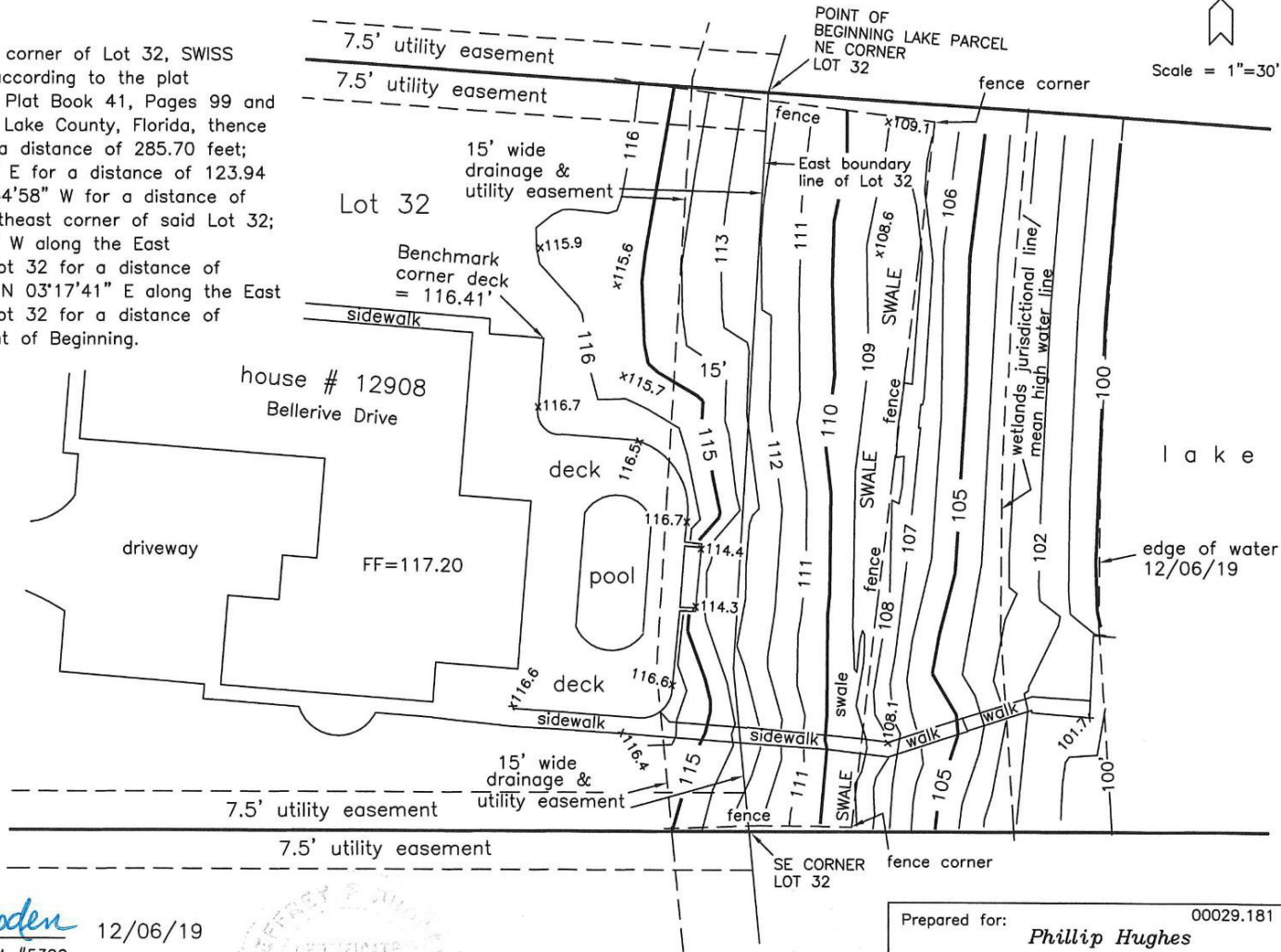
Lot 32, SWISS FAIRWAYS PHASE TWO, according to the plat thereof, as recorded in Plat Book 41, Pages 99 and 100, Public Records of Lake County, Florida.

AND

BEGIN at the Northeast corner of Lot 32, SWISS FAIRWAYS PHASE TWO, according to the plat thereof, as recorded in Plat Book 41, Pages 99 and 100, Public Records of Lake County, Florida, thence run S 86°10'52" E for a distance of 285.70 feet; thence run S 01°15'43" E for a distance of 123.94 feet; thence run S 89°54'58" W for a distance of 291.15 feet to the Southeast corner of said Lot 32; thence run N 05°34'17" W along the East boundary line of said Lot 32 for a distance of 31.71 feet; thence run N 03°17'41" E along the East boundary line of said Lot 32 for a distance of 111.99 feet to the Point of Beginning.

Map of Topographic Survey

Elevations based on NAVD 1988 datum.



Scale = 1"=30'

Jeffrey P. Rhoden

12/06/19

JEFFREY P. RHODEN PSM #5322
STATE OF FLORIDA

UNLESS IT BEARS THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER, THIS MAP/REPORT IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT VALID.

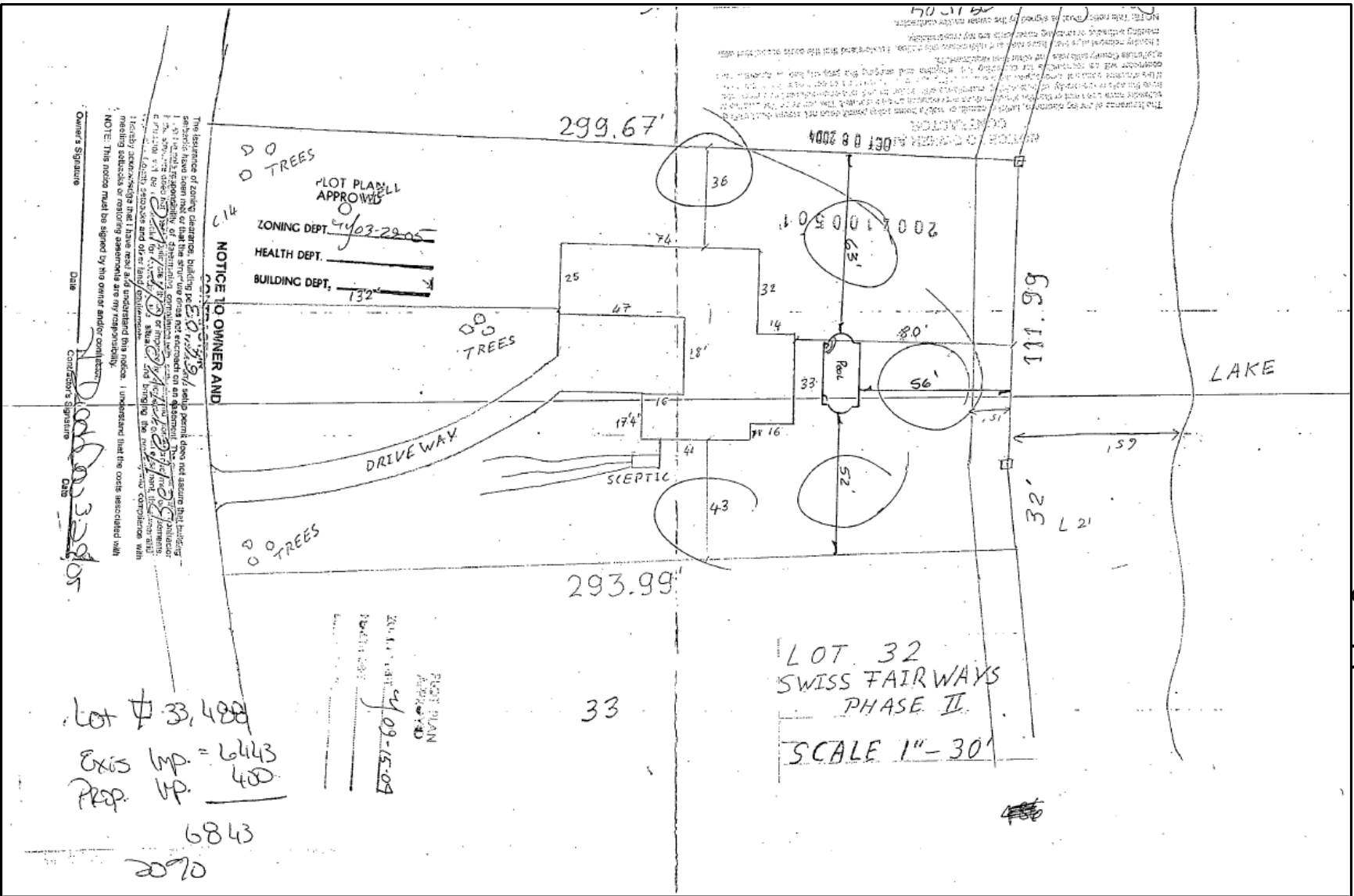


Prepared for: Phillip Hughes 00029.181

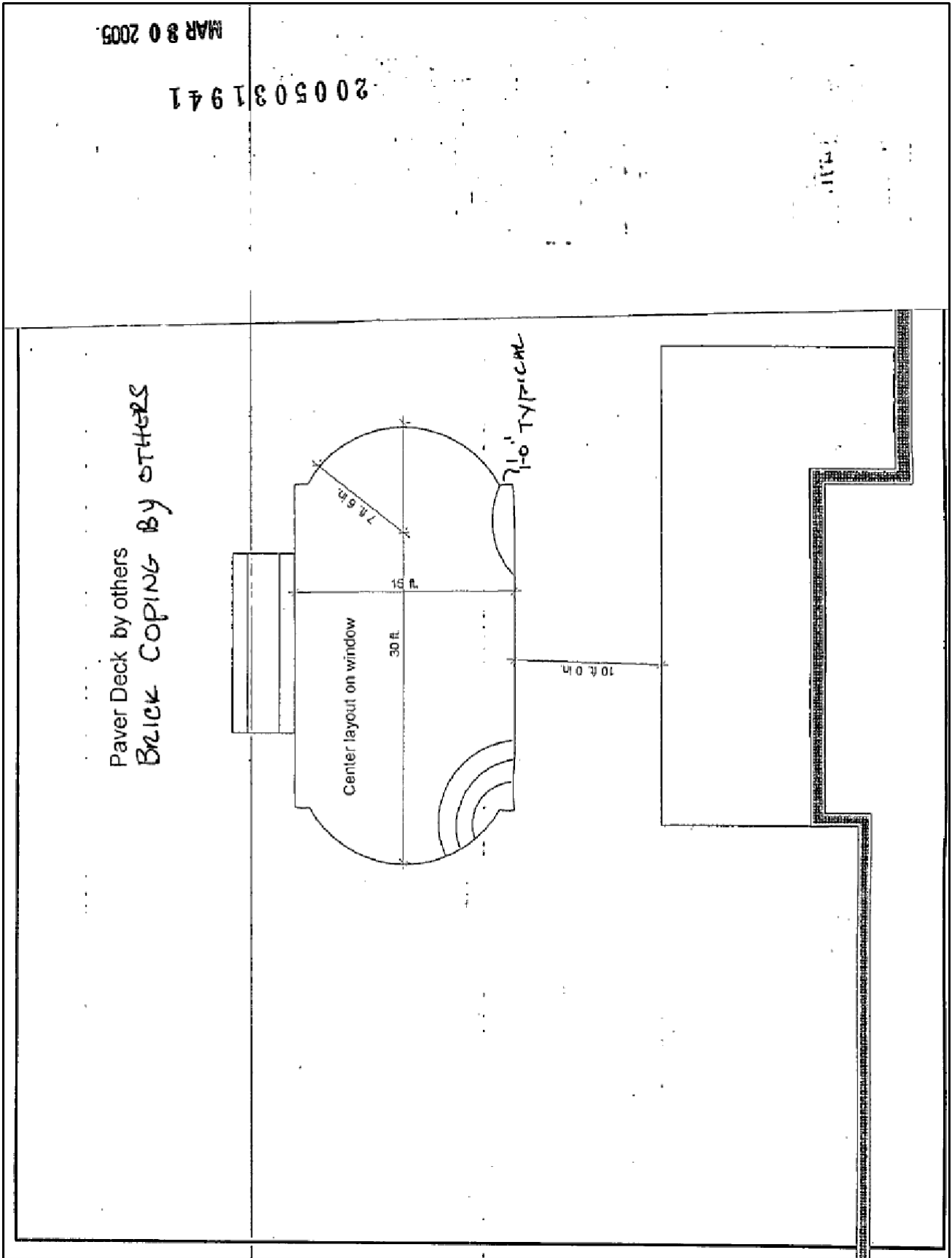
Rhoden Land Surveying, Inc.

LB #6980
1009 East Ave
Clermont, FL 34711
352-394-6255

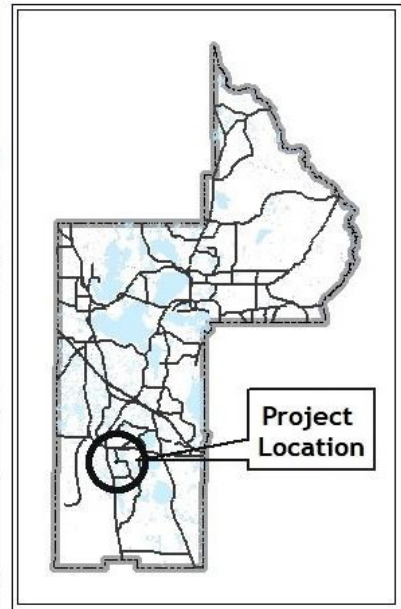
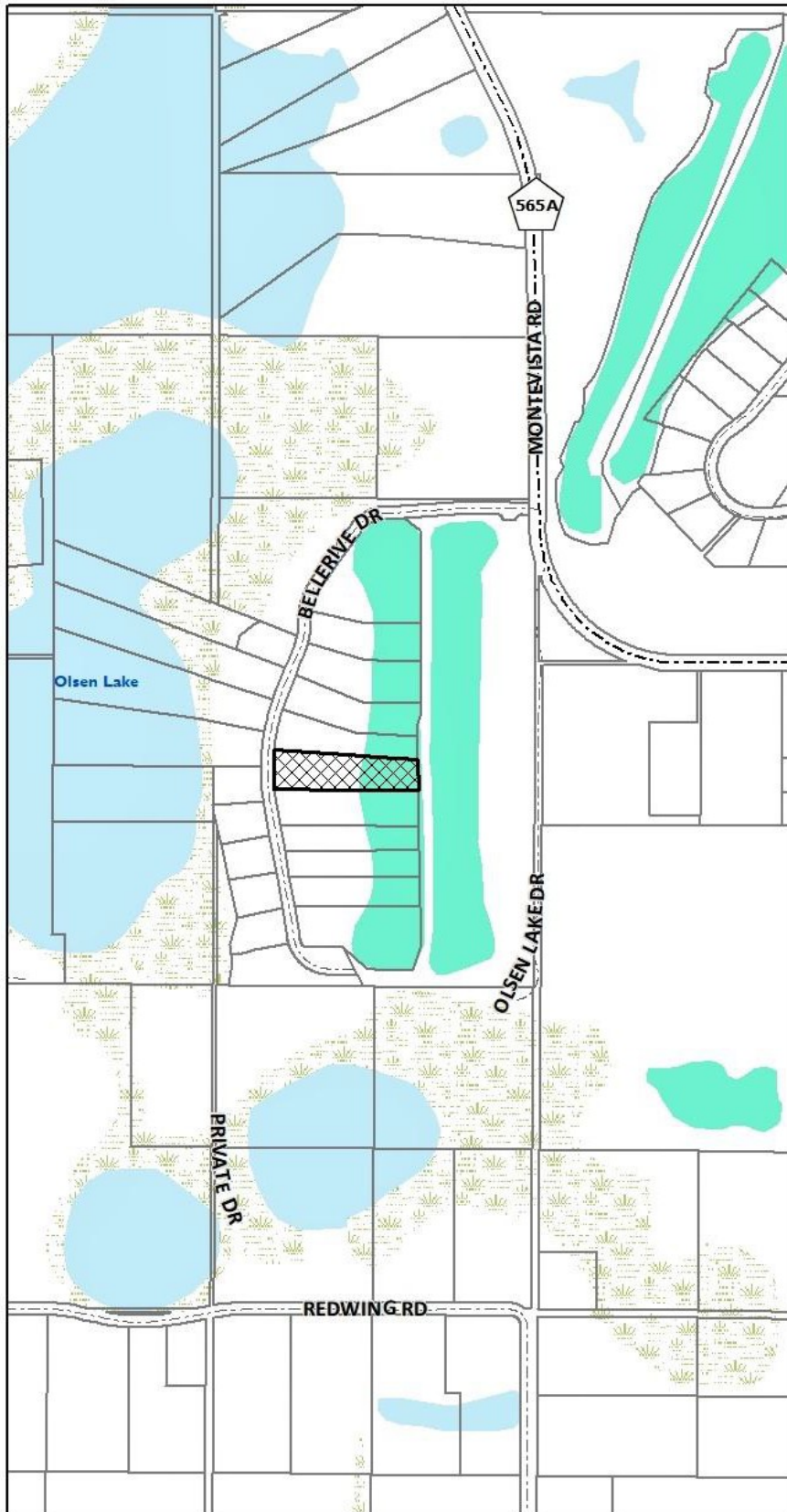
Attachment B - Pool Zoning Approval



Attachment C – Pool Construction Plans



Map of Subject Property



**Final Development Order
VAR-19-23-1
Hughes Property**

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

WHEREAS, Philip and Stephanie Hughes (the "Owners") requested a variance to Lake County Land Development Regulations (LDR) Section 3.02.05(l)(3), to allow a portion of an existing pool deck and concrete walk to be located within a drainage and utility easement; and

WHEREAS, the subject property consists of 1.94 +/- acres located at 12908 Bellerive Drive, in the unincorporated Clermont area of Lake County, Florida, in Section 32, Township 22 South, Range 25 East, having Alternate Key Number 3787589 and more particularly described as:

Lot 32, Swiss Fairways Phase Two, according to the plat thereof, as recorded in Plat Book 41, Pages 99 and 100, Public Records of Lake County, Florida.

WHEREAS, after giving notice of the hearing on the petition for a variance to the Lake County Land Development Regulations, including notice that the variance would be presented to the Board of Adjustment of Lake County, Florida, on May 14, 2020; 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 May 14, 2020, 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-19-21-1 to allow a portion of an existing pool deck and concrete walk to be located within a drainage and utility easement with the following conditions:
1. No further encroachment into the drainage and utility easement shall be permitted.
- 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 14th day of May, 2020.

EFFECTIVE May 14, 2020.

BOARD OF ADJUSTMENT
LAKE COUNTY, FLORIDA

Lloyd Atkins, Chairman or
James Argento, Vice-Chairman

State of Florida

County of Lake

Sworn to (or affirmed) and subscribed before me by means of physical presence or online
notarization, this _____ day of _____, 2020, by _____
_____.

Personally Known OR Produced Identification

Type of Identification Produced _____

Notary Signature

(SEAL)