



VARIANCE STAFF REPORT

OFFICE OF PLANNING & ZONING

Tab Number: 5

Public Hearing Date: March 11, 2021

Case No. and Project Name: VAR-20-79-1, Davis Property

Owners: Martiel deNoyelles Davis, Trustee of the Martiel deNoyelles Davis Family Trust

Applicant: Gulfstream Towers, LLC – Mike Burkhead

Requested Action: Variance to Lake County Land Development Regulations (LDR) Section 3.13.09.B.1, to allow a 195-foot tall communication tower to not be centered within the boundaries of the subject parent parcel.

Case Manager: Heather N. Cronney, Planner

Subject Property Information

Size: 16 +/- acres

Location: Along the South side of Lake Erie Road, East of Bay Lake Road, in the Groveland area

Alternate Key No.: 3809826

Future Land Use: Green Swamp Rural Conservation

Current Zoning District: Agriculture (A)

Flood Zones: "A" and "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 Conservation	Agriculture (A)	Street, Agriculture	Lake Erie Road, Adjoined by Pasture Land
South	Green Swamp Rural Conservation	Agriculture (A)	Agriculture	Agriculture, Pasture Land
East	Green Swamp Rural Conservation	Agriculture (A)	Agriculture	Single-Family Dwelling Unit
West	Green Swamp Rural Conservation	Agriculture (A)	Agriculture	Single Family Dwelling Unit

Summary of Request.

The subject 16 +/- acre parcel is identified by Alternate Key Number 3809826. The parcel is zoned Agriculture (A) and is part of the Green Swamp Rural Conservation Future Land Use Category (FLUC). The subject parcel is currently undeveloped. The parcel is generally located along the South side of Lake Erie Road, East of Bay Lake Road, in the unincorporated Groveland area.

The Applicant is seeking to construct a 195-foot tall communication tower on the southwest portion of the subject property. The application states that there is an underground gas easement that runs through the center of the property that creates a hardship in being able to center the tower on the parent parcel. Land Development Regulations (LDR) Section 3.13.09.B requires that a communication tower must be centered within the parent parcel boundaries. As such, the Applicant is requesting a variance to this provision to accommodate his development plans. The concept plan is included as Attachment "A".

The variance application was sent to the Public Works Department for review. The Department of Public Works reviewed the variance application and does not support the proposed location for the communication tower as the location is in the flood zone "A" and part of the 100 year flood plain. Since there is buildable area outside of the flood zone, it is preferred that the tower be placed in that location. If the applicant is wanting to pursue this location, there will be additional requirements that include a flood study and base flood elevation determination required at site plan by the applicant. Amendment of the FEMA map would be an included requirement. Additional flood construction requirements will be required that could limit the construction and require mechanical and electrical equipment to be raised above the flood elevation. Any fill within the floodplain will require compensating storage.

The rezoning application was sent to the Florida Department of Economic Opportunity (DEO) for a courtesy review of consistency with Green Swamp Area of Critical State Concern regulations. DEO did not provide any objections to this variance request.

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.

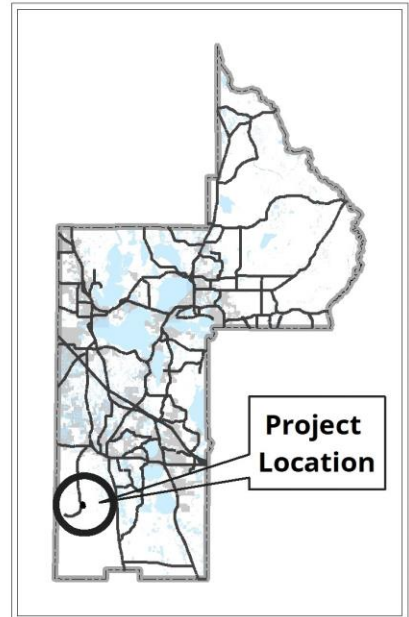
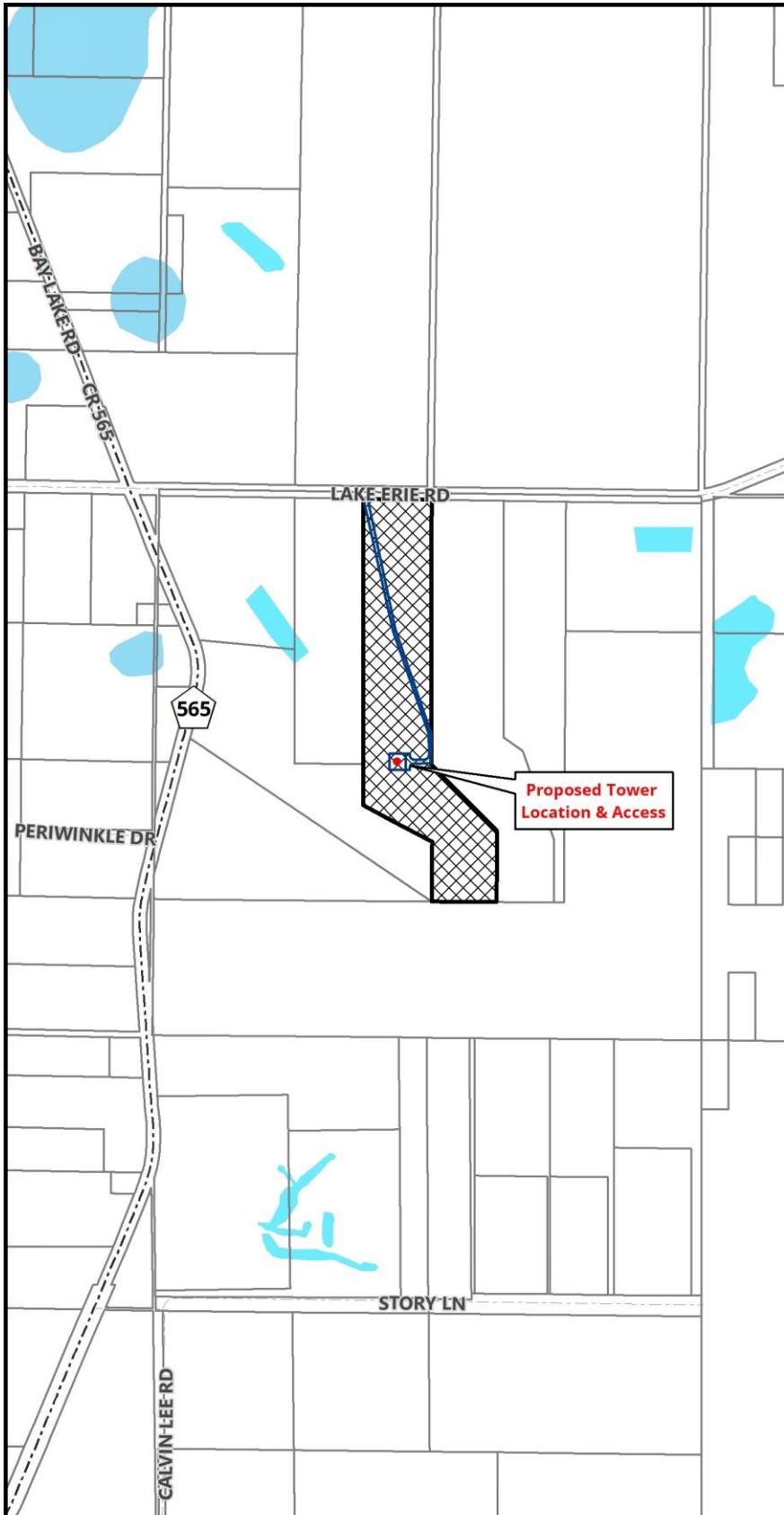
The intent of the Code, LDR Section 3.13.00, is to adapt to the growing need for wireless communication antennas and towers by being able to act upon requests to place, construct and modify any Wireless Communications Antenna and/or Tower within a reasonable amount of time; to reasonably accommodate amateur Communications and to represent the minimum practicable Regulation thereof; to Protect existing Land Uses from potential adverse visual impacts through sound planning, careful review of applications, proper permitting and adherence to appropriate Regulations; to allow for Wireless Communications competition following the adoption of the Federal Telecommunications Act of 1996; and to preserve and enhance radio communications throughout Lake County in times of emergencies which threaten the life, safety and welfare of Lake County residents, businesses and properties to include the establishment of easements, covenants and agreements necessary to address issues, such as fiber-optic cabling, associated with the provisions of emergency communication(s).

The applicant provided the following statement in regards to how the intent of the code will be or has been achieved by other means: *"The intent of LDR 3.13.09.B is to mitigate the impact of communication towers on adjacent properties by centering the tower within the parent tract, away from the property boundaries. This variance will further mitigate the tower's impact on surrounding properties by placing the tower further south on the subject property closer to an existing wooded/wetland buffer area."*

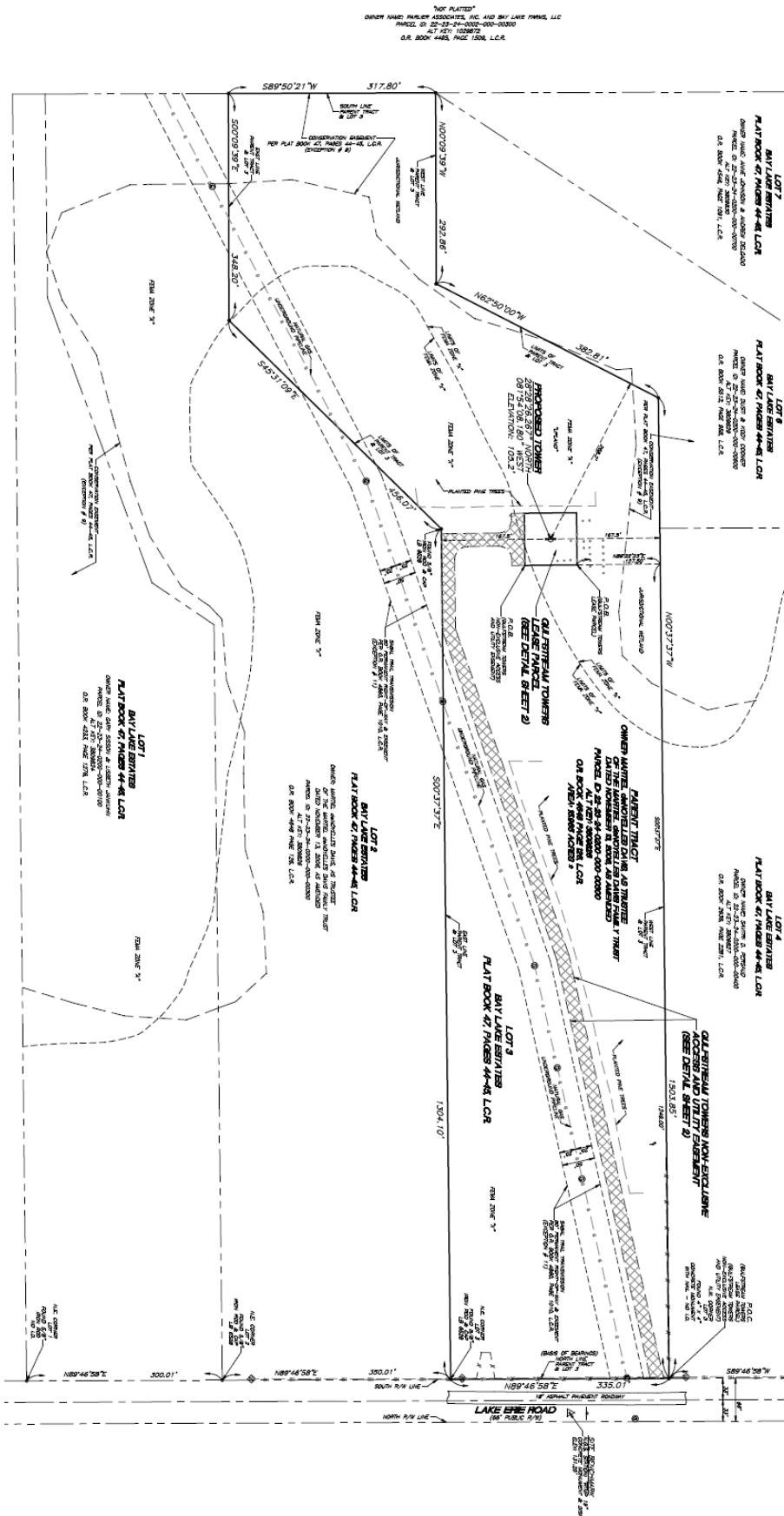
2. The application of a Land Development Regulation would create a substantial hardship or would violate principles of fairness. For purposes of this Section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance. For 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 Applicant provided the following statement as proof of a substantial hardship: *"There is an existing underground gas easement that runs thru [sic] the center of the property."*

Map of Subject Property



Attachment "A" – Concept Plan



**Final Development Order
VAR-20-79-1
Davis Property**

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

WHEREAS, Gulfstream Towers, LLC (the “Applicant”), on behalf of Martiel deNoyelles Davis, Trustee of the Martiel deNoyelles Davis Family Trust (“the Owners”), requested a variance to Lake County Land Development Regulations (LDR) Section 3.13.09.B.1, to allow a 195-foot tall communication tower to not be centered within the boundaries of the subject parent parcel; and

WHEREAS, the subject property consists of 16 +/- acres, is located along the South side of Lake Erie Road, East of Bay Lake Road, in the unincorporated Groveland area of Lake County, Florida, in Section 22, Township 23, Range 24, having Alternate Key Number 3809826, and more particularly described in **Exhibit “A” – Legal Description**; and

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 March 11, 2021; 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 March 11, 2021, 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-20-73-5, to allow a 195-foot tall communication tower to not be centered within the boundaries of the subject parent parcel.

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 11th day of March, 2021.
EFFECTIVE March 11, 2021.**

**BOARD OF ADJUSTMENT
LAKE COUNTY, FLORIDA**

Bea L. Meeks, 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 11th day of March, 2021, by Bea L. Meeks, as Vice Chairman of the Lake County Board of Adjustment.

Personally Known OR Produced Identification

Type of Identification Produced _____

**Notary Signature
(SEAL)**

Exhibit "A" – Legal Description

DESCRIPTION OF GULFSTREAM TOWERS LEASE PARCEL

A PARCEL OF LAND BEING A PORTION OF LOT 3, BAY LAKE ESTATES, AS RECORDED IN PLAT BOOK 47, PAGES 44-45 OF THE PUBLIC RECORDS OF LAKE COUNTY, FLORIDA, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT NORTHWEST CORNER OF SAID LOT 3;
THENCE ON A PLAT BEARING OF $90^{\circ}37'37''$ E ALONG THE WEST LINE OF SAID LOT 3, A DISTANCE OF 1249.00 FEET;
THENCE $N89^{\circ}22'23''$ E A DISTANCE OF 127.50 FEET TO THE POINT OF BEGINNING;
THENCE CONTINUE $N89^{\circ}22'23''$ E A DISTANCE OF 80.00 FEET;
THENCE $500^{\circ}37'37''$ E A DISTANCE OF 80.00 FEET;
THENCE $S89^{\circ}22'23''$ W A DISTANCE OF 80.00 FEET;
THENCE $N00^{\circ}37'37''$ W A DISTANCE OF 80.00 FEET TO THE POINT OF BEGINNING;

SAID PARCEL OF LAND SITUATE WITHIN LAKE COUNTY, FLORIDA, CONTAINING 6,400.00 SQUARE FEET, MORE OR LESS.

DESCRIPTION OF GULFSTREAM TOWERS NON-EXCLUSIVE ACCESS AND UTILITY EASEMENT

A PARCEL OF LAND BEING A PORTION OF LOT 3, BAY LAKE ESTATES, AS RECORDED IN PLAT BOOK 47, PAGES 44-45 OF THE PUBLIC RECORDS OF LAKE COUNTY, FLORIDA, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT NORTHWEST CORNER OF SAID LOT 3;
THENCE ON A PLAT BEARING OF $90^{\circ}37'37''$ E ALONG THE WEST LINE OF SAID LOT 3, A DISTANCE OF 1249.00 FEET;
THENCE $N89^{\circ}22'23''$ E A DISTANCE OF 127.50 FEET;
THENCE CONTINUE $N89^{\circ}22'23''$ E A DISTANCE OF 80.00 FEET TO THE POINT OF BEGINNING;
THENCE CONTINUE $N89^{\circ}22'23''$ E A DISTANCE OF 20.00 FEET;
THENCE $500^{\circ}37'37''$ E A DISTANCE OF 10.00 FEET TO A POINT OF CURVATURE OF A TANGENT CURVE CONCAVE TO THE NORTHEAST;
THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF $90^{\circ}00'00''$ AND A RADIUS OF 20.00 FEET FOR AN ARC DISTANCE OF 31.42 FEET (CHORD BEARING = $S45^{\circ}37'37''$ E AND CHORD DISTANCE = 28.28 FEET) TO A POINT OF TANGENCY;
THENCE $N89^{\circ}22'23''$ E A DISTANCE OF 47.50 FEET TO A POINT OF CURVATURE OF A TANGENT CURVE CONCAVE TO THE NORTHWEST;
THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF $90^{\circ}00'00''$ AND A RADIUS OF 20.00 FEET FOR AN ARC DISTANCE OF 31.42 FEET (CHORD BEARING = $N44^{\circ}22'23''$ E AND CHORD DISTANCE = 28.28 FEET) TO A POINT OF TANGENCY SAID POINT BEING ON A LINE 20.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID LOT 3;
THENCE $N00^{\circ}37'37''$ W A DISTANCE OF 105.80 FEET;
THENCE $N19^{\circ}10'11''$ W A DISTANCE OF 531.13 FEET;
THENCE $N12^{\circ}36'25''$ W A DISTANCE OF 664.24 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 3, SAID POINT ALSO BEING ON THE SOUTH RIGHT-OF-WAY LINE OF LAKE ERIE ROAD (66 FOOT PUBLIC RIGHT-OF-WAY);
THENCE $N89^{\circ}48'58''$ E ALONG SAID NORTH LINE AND SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 20.48 FEET;
THENCE $S12^{\circ}36'25''$ E A DISTANCE OF 658.70 FEET;
THENCE $S19^{\circ}10'11''$ E A DISTANCE OF 533.25 FEET TO A POINT ON THE EAST LINE OF SAID LOT 3;
THENCE $90^{\circ}37'37''$ E ALONG THE EAST LINE OF SAID LOT 3, A DISTANCE OF 148.87 FEET;
THENCE $S89^{\circ}22'23''$ W A DISTANCE OF 87.50 FEET TO A POINT OF CURVATURE OF A TANGENT CURVE CONCAVE TO THE SOUTH-EAST;
THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF $90^{\circ}00'00''$ AND A RADIUS OF 20.00 FEET FOR AN ARC DISTANCE OF 31.42 FEET (CHORD BEARING = $S44^{\circ}22'23''$ W AND CHORD DISTANCE = 28.28 FEET) TO A POINT OF TANGENCY;
THENCE $90^{\circ}37'37''$ E A DISTANCE OF 10.00 FEET;
THENCE $S89^{\circ}22'23''$ W A DISTANCE OF 20.00 FEET;
THENCE $N00^{\circ}37'37''$ W A DISTANCE OF 80.00 FEET TO THE POINT OF BEGINNING;
SAID PARCEL OF LAND SITUATE WITHIN LAKE COUNTY, FLORIDA, CONTAINING 30,425.63 SQUARE FEET, MORE OR LESS.