



# VARIANCE STAFF REPORT

OFFICE OF PLANNING & ZONING

Tab Number: 4

Public Hearing Date: September 8, 2022

Case No. and Project Name: VAR-22-20-1, Palka Property

Owners: David M. & Andrea Palka

Applicant: Artesian Pools

Requested Action: Variance to Land Development Regulations (LDR) Section 6.01.04(A)(1) to allow a pool and associated accessory structures to be located thirty-three (33) feet from the jurisdictional wetland line (JWL), in lieu of the required fifty (50) foot setback.

Case Manager: Marellys Moreno, CRA Coordinator

### Subject Property Information

Size: 0.37 +/- acres

Location: 11014 Crescent Bay Boulevard, in unincorporated Clermont area of Lake County

Alternate Key No.: 2922974

Future Land Use: Urban Low Density

Current Zoning District: Urban Residential (R-6)

Flood Zones: "AE" and "X"

Joint Planning Area (JPA) / ISBA: Clermont JPA and Clermont ISBA

Overlay Districts: N/A

### Adjacent Property Land Use Table

| Direction | Future Land Use   | Zoning                  | Existing Use           | Comments   |
|-----------|-------------------|-------------------------|------------------------|--|
| North     | Urban Low Density | Urban Residential (R-6) | Residential            | Single-Family Dwelling Unit                                |
| South     | Urban Low Density | Urban Residential (R-6) | Residential            | Single-Family Dwelling Unit                                |
| East      | Urban Low Density | Urban Residential (R-6) | Residential and Street | Single-Family Dwelling Unit, adjacent to Crescent Bay Blvd |
| West      | N/A               | N/A                     | Lake                   | Crescent Lake  |

### Summary of Request.

The subject property, identified as Alternate Key Number 2922974, contains 0.37 +/- acres, is zoned Urban Residential (R-6), and is designated with an Urban High Density Future Land Use Category by the 2030 Comprehensive Plan. The subject property is located at 11014 Crescent Bay Boulevard, in the unincorporated Clermont area of Lake County. The subject parcel is currently developed with a single-family residence and a lanai.

The applicant has requested a variance to LDR Section 6.01.04(A)(1) to allow for a pool and associated accessory structures to be located 33-feet from the jurisdictional wetland line (JWL) in lieu of the required fifty (50) foot setback. The location of the proposed pool is depicted on the Site Plan (Attachment "A").

The subject property is recognized as Lot 104 of Crescent Bay Subdivision (Plat Book 28, Pages 98-100), the plat of which was recorded on August 17, 1987. Pursuant to Comprehensive Plan Policy III-2.2.7, Protection of Shorelines, a variance may be granted to the setback requirement of fifty (50) feet from the ordinary high water line (OHWL), mean high water line (MHWL) or jurisdictional wetland line (JWL), whichever is further landward, for residential lots and non-residential development approved prior to March 2, 1993, so long as the development does not adversely impact the natural water body or wetlands, and provided that the first one inch (1") of stormwater runoff shall be captured on site and the development must be constructed as far landward on the lot as possible.

The variance application was sent to the Public Works Department for a determination of consistency with their regulations. The Public Works Department had no objections to the request and provided the following conditions for inclusion in the draft development order:

1. An interceptor/environmental swale that is sized to capture the first 1-inch of stormwater runoff from the imperious area of the parcel shall be provided on site. The proposed structures roof drainage will need to be direct to this swale. An engineered design that includes a plan and calculations must be submitted with the permit application for the improvement/addition for the site.
2. Flood permitting may be required at time of building permit application. Any compensating storage for fill within the floodplain shall be provided onsite.

### 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 activities. The Development Order includes a condition to mitigate any potential negative impacts.

The applicant provided the following statement as proof that the intent of the code will be or has been achieved by other means: *"Although we are not within the parameters of the setbacks for the swimming pool, we are mitigating any adverse effects. The swimming pool will be built on the house side of the existing berm. We are also designing it to make sure there is sufficient water retention in the back yard for those heavy rain showers. We do not anticipate any runoff into the lake because of the pool. As we utilize the lake, we definitely do not want fertilizers to flow into them and negatively affect them. In addition, most of the houses in the neighborhood have pools. Not having a pool will affect the resale of our house (although many years down the road). Many of those on the lake are closer to the water than what we are asking for. Others have gotten variances for the same thing and as we have noticed, some of the new pools are both closer than what we are asking for, and lower (as our elevation is much higher). There are also homes in the area with less set backs*

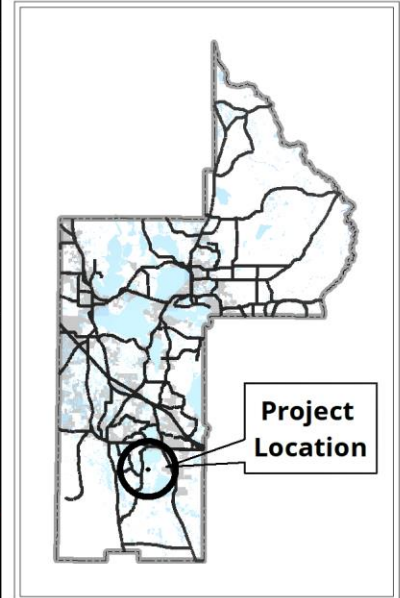
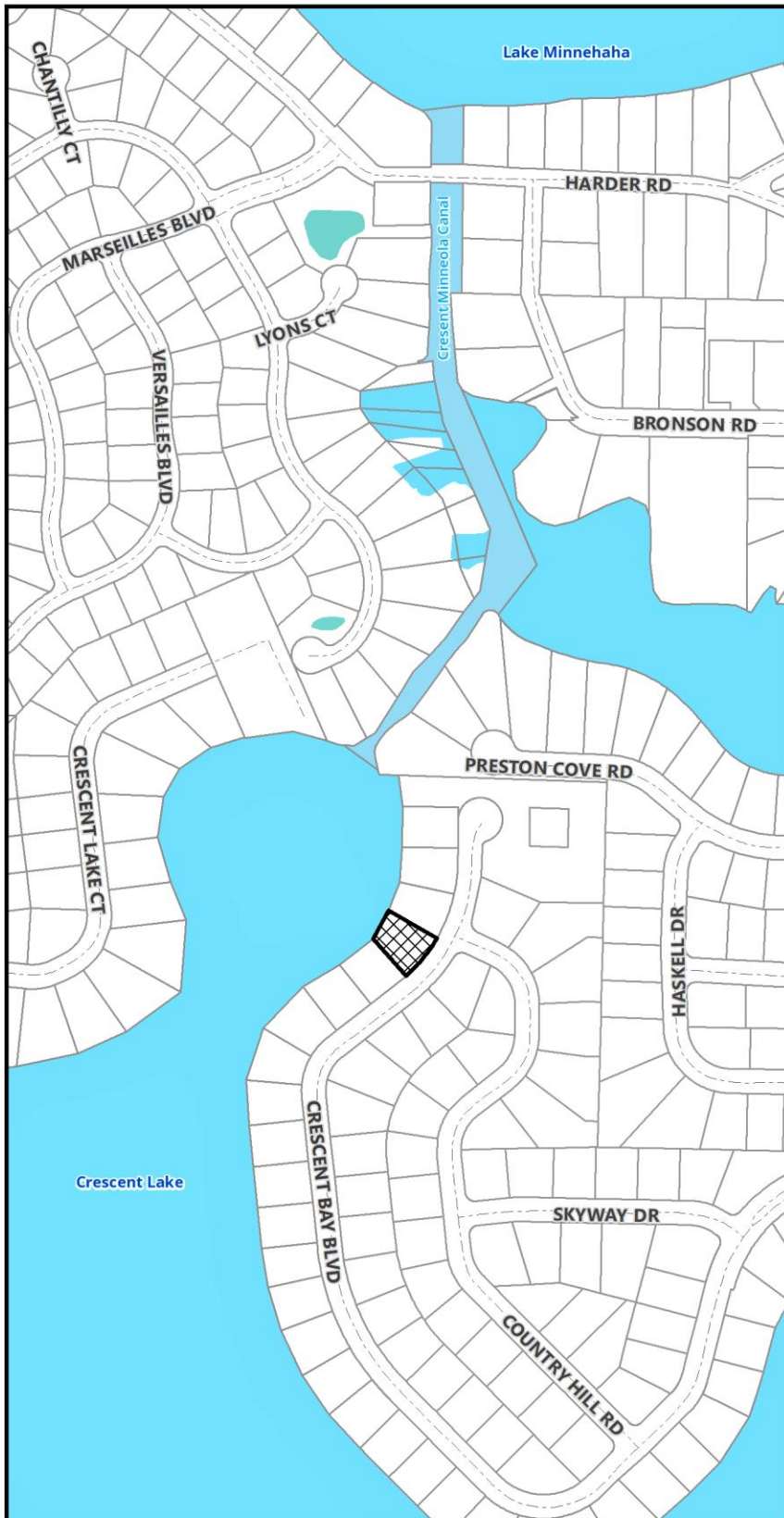
*than what we are asking. Andrea was in a car accident a couple years ago. She has had and continues to have a bi weekly appointments with an Osteopathic doctor to treat her neck and back. Before she was rear ended she was an avid runner and competed in races and triathlons. She can no longer do that. Swimming for exercise is really her only option as the impact from other exercises causes pain and more damage.”*

- 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 as proof of a substantial hardship: *“Without variance we cannot put in a normal size useable pool. Most neighbors & people on our lake have pools in the area. Some are closer than 50’ as well. Many homes & pools on the lakes are closer than 50’.”*

# Map of Subject Property

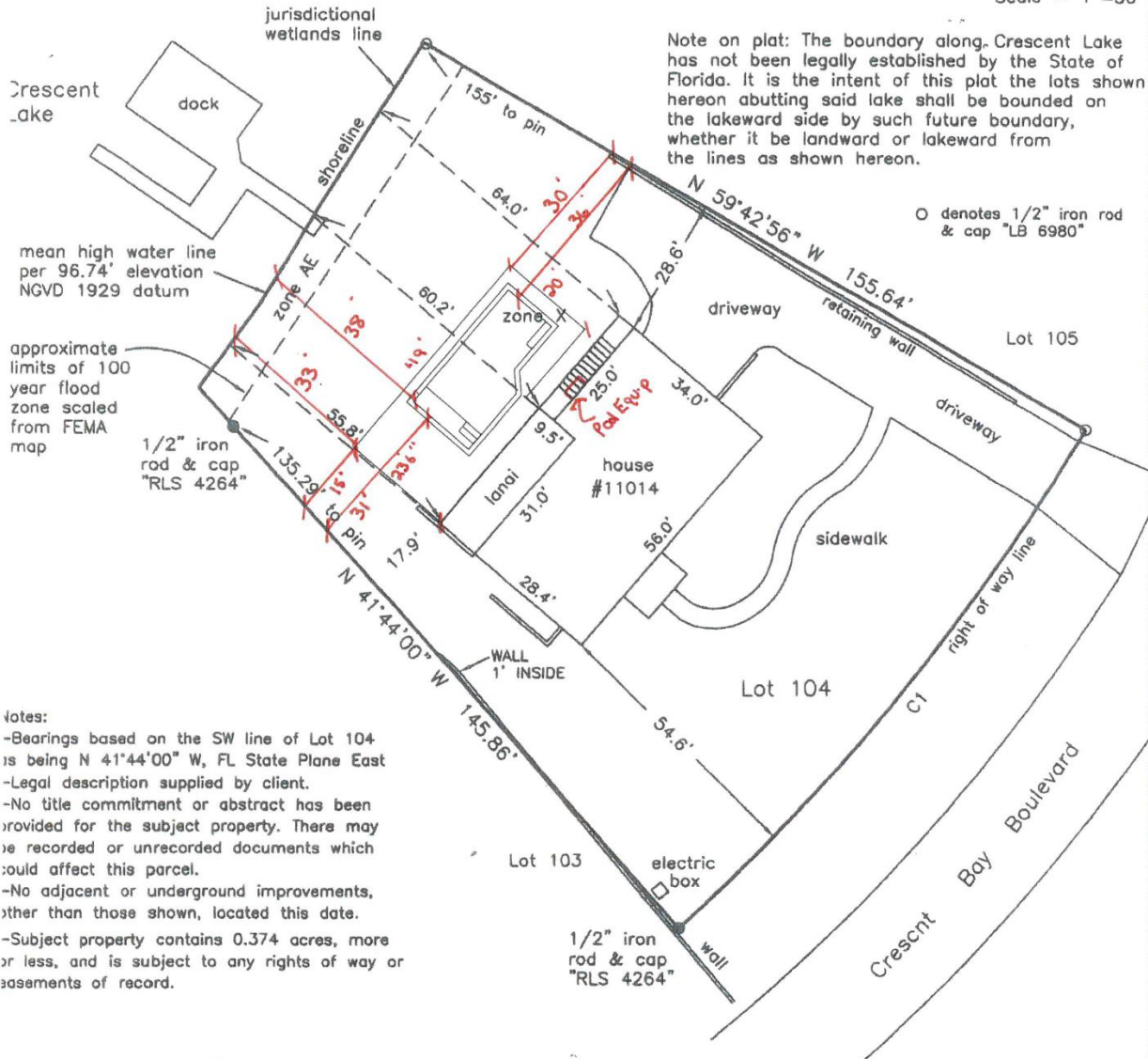


# Attachment "A" – Site Plan

## Map of Boundary Survey

belief and my professional opinion that the subject property lies within flood zones X and AE.

Scale = 1"=30'



Note on plat: The boundary along Crescent Lake has not been legally established by the State of Florida. It is the intent of this plat the lots shown hereon abutting said lake shall be bounded on the lakeward side by such future boundary, whether it be landward or lakeward from the lines as shown hereon.

○ denotes 1/2" iron rod & cap "LB 6980"

- Notes:
- Bearings based on the SW line of Lot 104 is being N 41°44'00" W, FL State Plane East
  - Legal description supplied by client.
  - No title commitment or abstract has been provided for the subject property. There may be recorded or unrecorded documents which could affect this parcel.
  - No adjacent or underground improvements, other than those shown, located this date.
  - Subject property contains 0.374 acres, more or less, and is subject to any rights of way or easements of record.

*Jeffrey P. Rhoden* 10/15/2021

JEFFREY P. RHODEN PSM #5322  
 STATE OF FLORIDA  
 UNLESS IT BEARS THE SIGNATURE AND THE ORIGINAL  
 IMPRINTED SEAL OF A FLORIDA LICENSED SURVEYOR AND  
 APPROVER, THIS MAP/REPORT IS FOR INFORMATIONAL  
 PURPOSES ONLY AND IS NOT VALID.

Prepared for: 00118.026  
 Dave Palka

**Rhoden Land Surveying, Inc.**  
 LB #6980  
 420 E. Minnehaha Ave.  
 Clermont, FL 34711  
 352-394-6255

**Final Development Order  
VAR-22-20-1  
Palka Property**

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

**WHEREAS**, Artesian Pools (the “Applicant”), on behalf of David M. & Andrea Palka (the “Owners”), requested a variance to Land Development Regulations (LDR) Section 6.01.04(A)(1) to allow a pool and associated accessory structures to be located thirty-three (33) feet from the jurisdictional wetland line (JWL), in lieu of the required setback of fifty (50) feet; and

**WHEREAS**, the subject property consists of 0.37 +/- acres and is located at 11014 Crescent Bay Boulevard, in the Clermont area of unincorporated Lake County, in Section 01, Township 23, Range 25, having Alternate Key Number 2922974, and more particularly described below:

CRESCENT BAY LOT 104 PB 28 PGS 98-100 ORB 4356 PG 1967

**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 September 8, 2022; 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 September 8, 2022, 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-22-20-1, to allow a pool and associated accessory structures to be located 33-feet from the jurisdictional wetland line (JWL), in lieu of 50-feet; with the following conditions:

1. An interceptor/environmental swale that is sized to capture the first 1-inch of stormwater runoff from the imperious area of the parcel shall be provided on site. The proposed structures roof drainage will need to be direct to this swale. An engineered design that includes a plan and calculations must be submitted with the permit application for the improvement/addition for the site.
2. Flood permitting may be required at time of building permit application. Any compensating storage for fill within the floodplain shall be provided onsite.

**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 8<sup>th</sup> day of September 2022.**

**EFFECTIVE September 8, 2022.**

**BOARD OF ADJUSTMENT  
LAKE COUNTY, FLORIDA**

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**James Argento, Chairman**

**State of Florida**

**County of Lake**

**Sworn to (or affirmed) and subscribed before me by means of  physical presence or  online notarization, this 8<sup>th</sup> day of September 2022, by James Argento, as Chairman of the Lake County Board of Adjustment.**

**Personally Known OR Produced Identification**

**Type of Identification Produced \_\_\_\_\_**

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**Notary Signature**

**(SEAL)**