



**AGENDA**  
**COMMUNITY DEVELOPMENT BOARD MEETING**  
**FEBRUARY 21, 2024 AT 5:00 PM**  
**116 FIRST STREET**  
**NEPTUNE BEACH, FL 32266**

1. Special Meeting of the Historic Preservation Committee
2. Special Meeting of the Code Committee
3. Call to Order and Roll Call
4. Pledge of Allegiance
5. Approval of Minutes for January 17, 2024 meetings
6. V24-03 Application for variance as outlined in Chapter 27 Article III Division 8 of the Unified Land Development Code of Neptune Beach for Lejeune Irene Mann for the property at 205 Myra St (RE# 172603-0000). The applicant requests a variance from Table 27-239 Building Height Maximum Stories of two floors, to permit a habitable interior third floor in an existing structure. The property is in the R-4 in the RC Overlay zoning district.
7. Board training: Roles and Variances. Presented by the City Attorney
8. Open Discussion
9. Adjourn

Residents and Board Members attending public meetings can validate their parking at no cost by using the parking code

**DD14**

After 5:30 on the date of the meeting, follow these steps:

- Make sure you are parked in a North Beaches public parking space – we can't validate valet parking or parking in private lots.
- • To use a kiosk: Press the Start button and then select 2 to enter your plate and the validation code.
- • To use the Flowbird app: Tap the nearest yellow balloon and tap "Park here." From the payment screen, select "Redeem a code" at the top. Confirm your information and tap "Purchase"
  - the price will show "Free."



**AGENDA**  
**COMMUNITY DEVELOPMENT BOARD MEETING**  
**HISTORICAL SUBCOMMITTEE**  
**FEBRUARY 21, 2024 AT 5:00 PM**  
**116 FIRST STREET**  
**NEPTUNE BEACH, FL 32266**

1. Call To Order and Roll Call
2. Board Discussion
3. Staff Observations and Suggestions
4. Public Comment
5. Adjourn

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**AGENDA**  
**COMMUNITY DEVELOPMENT BOARD MEETING**  
**CODE SUBCOMMITTEE**  
**FEBRUARY 21, 2024 AT 5:30 PM**  
**116 FIRST STREET**  
**NEPTUNE BEACH, FL 32266**

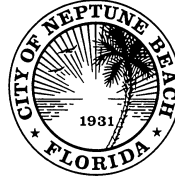
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**MINUTES**  
**COMMUNITY DEVELOPMENT BOARD**  
**JANUARY 17, 2024 AT 6:00 P.M.**  
**COUNCIL CHAMBERS**  
**116 FIRST STREET**  
**NEPTUNE BEACH, FLORIDA 32266**

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Pursuant to proper notice a public hearing of the Community Development Board for the City of Neptune Beach was held in person January 17, 2024, at 6:00 p.m. in the Council Chambers.

Attendance

Board members were in attendance:

Greg Schwartzenberger, Chair  
Rene Atayan, Vice-Chair  
Tony Mazzola, Member  
William Hilton, Member  
Charley Miller, Member  
Corrine Bylund, Member  
Marc Boran, Alternate Member

Lynda Padrta and Rhonda Charles, Alternate Members were also in attendance.

The following staff members were present:

Heather Whitmore, Community Development Director  
Zachary Roth, City Attorney  
Piper Turner, Code Compliance Supervisor

Call to Order/Roll  
Call

Chair Schwartzenberger called the meeting to order at 6:00 p.m.

Pledge

Pledge of Allegiance.

Minutes

Approval of Minutes for November 8 and December 13, 2023 meetings

**MOTION: TO APPROVED THE NOVEMBER 8TH AND DECEMBER 13<sup>TH</sup>, 2023 MEETING MINUTES AS SUBMITTED.**

Made by Hilton, seconded by Bylund.

Roll Call Vote:

Ayes: 7 -Miller, Mazzola, Atayan, Boran, Bylund, Hilton  
Schwartzenberger

Noes: 0

**MOTION APPROVED.**

January 17, 2024

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- Swearing in                      Mr. Roth, City Attorney, asked anyone appearing before the board tonight to raise their right hand to be sworn in.
- Variance V24-01                V24-01 Application for variance as outlined in Chapter 27 Article III Division 8 of the  
1420 First Street              Unified Land Development Code of Neptune Beach for David and Jill Zimmerman for  
David & Jill                      the properties at 1420 First Street. The applicants are requesting a variance from  
Zimmerman                      Table 27-239 a north side yard variance to allow 3-foot setback rather than the  
    required 7 foot and the south corner side yard of .04 leaving 7.8 in lieu of the required  
    8 feet. The property is in the R-4 in the RC overlay zoning district.

Heather Whitmore, Community Development Director, presented the staff report.

3.        **BACKGROUND:** An application for two variances requesting relief for:
- a.        RC Overlay R-4 Side Yard setbacks (Table 27-239)
  - b.        RC Overlay R-4 Exterior Side Yard setbacks (Table 27-239)

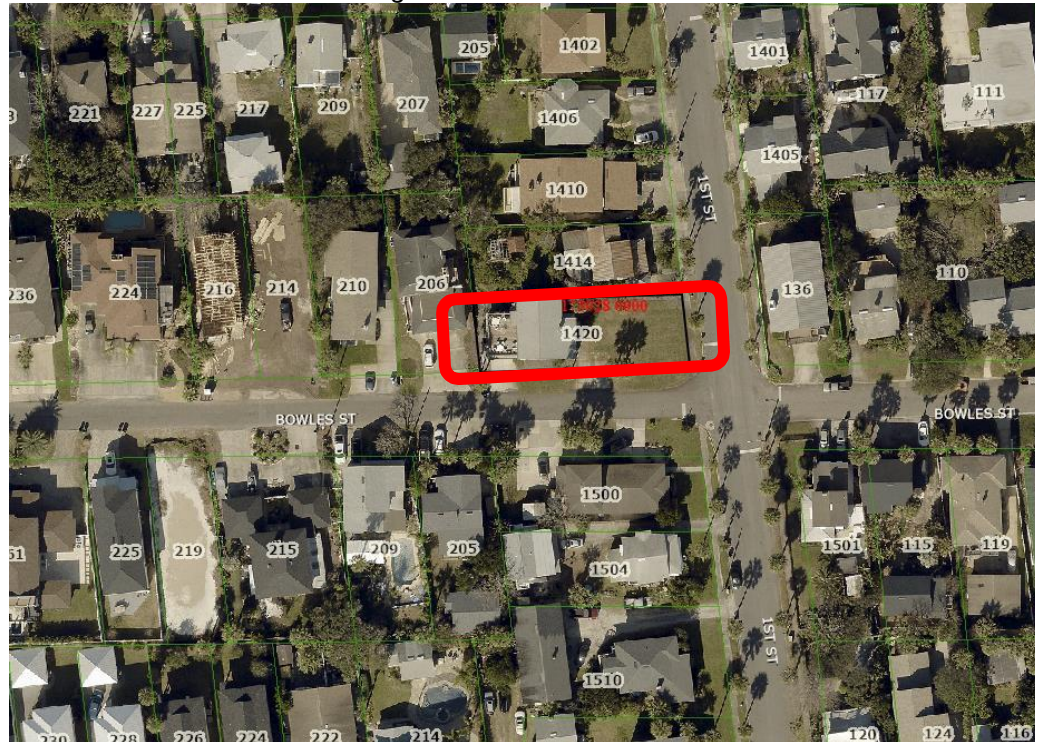
4.        **DISCUSSION:**

The property owner of 1420 1<sup>st</sup> Street requests a variance from Table 27-239 for the north side yard to allow a three-foot setback rather than the required seven foot, as well as a variance on the south exterior side yard along Bowles Street to allow a 7' 8" setback rather than the required eight feet. The property is in the R-4 in the RC overlay zoning district.

The purpose of the request is to demolish the existing two-family dwelling unit and replace it with a new two-family dwelling. The lot is approximately 6,136 square feet and 46.87 feet wide by 133.79 feet deep. The existing two-family dwelling has non-conforming setbacks. The existing two-family dwelling is setback .9 feet from the northern side yard setback and 5.9 feet from the southern exterior side yard along Bowles Street.

January 17, 2024

Figure 1: 1420 1st Street



### III. FINDINGS:

1. The property has unique and peculiar circumstances, which create an exceptional and unique hardship. For the purpose of this determination, the unique hardship shall be unique to the parcel and not shared by other property owners in the same zoning district.

**Applicant Response:** “The existing residence is developed with a .9 foot northern side yard setback and dual driveways along the southern boundaries of the property resulting in two separate curb cuts for the same lot. Applicant seeks to improve upon the existing condition by redeveloping the property with a three-foot northern yard setback. In order to create adequate parking and living space, as well as keep with the current aesthetics of the surrounding neighborhood (avoiding a row of four garages), a maximum three-foot northern side yard setback can be provided.”

**Staff Response:** The property is not unique in size or peculiar in circumstances. All the homes in the RC/R-4 district share the same corner side setbacks. All the homes on the block share the same circumstances as this home shares (specifically a lot less than 50 feet wide). This home does not have unique hardship.

2. The proposed variance is the minimum necessary to allow the reasonable use of the parcel of land.

**Applicant Response:** “As indicated above, the new duplex residence and garage have been designed to comply with front rear and within three inches of southern side setbacks as well as with coverage height limitations established in the zoning code. In order to facilitate redevelopment of a comparably sized residence that satisfies these criteria and allows for adequate parking, the maximum size step back that can be provided along the northern boundary is feet three feet and the southern boundary being 7.75 feet”

**Staff Response:** The requested variance for the side setbacks is not the minimum necessary to allow for construction of a single-family home expansion. The narrow lot conditions are not unique.

**3. The proposed variance would not adversely affect adjacent and nearby properties or the public in general.**

**Applicant Response:** “The requested variance will provide a greater setback along the northern and southern boundary line than exists today. Moreover, the requested variance will improve safety for pedestrians and vehicles by eliminating the need for designing the residents within new 1st street curb cut. It will also improve the ability for cars park in the driveway and off the street.”

**Staff Response:** It’s unknown if the proposed variances to the side setbacks would negatively impact adjacent and nearby properties or the public in general. The new home would have a smaller north-south footprint than the existing home, and thereby be setbacks more than the existing structure.

**4. The proposed variance will not substantially diminish property values in, nor alter the essential character of the area surrounding the site.**

**Applicant Response:** “The requested variance would be consistent with the development pattern in the area in terms of side yard setbacks and will improve upon the existing condition of the property and of the surrounding area in terms of off-street parking and access. The survey of properties along 1st St. South St. Bowles Street and Davis St. reveals that side yard encroachment typical for the area with many structures built at or very near to the lot line. Additionally, many lots have wide or multiple access points. The requested variance will provide a greater side yard setback than exists on the site today, will allow for improved parking and access to the property.”

**Staff Response:** It is unknown if the proposed variance would diminish property value. The new home would have a smaller north-south footprint as the existing home, and thereby be setback more than the existing structure.

**5. The effect of the proposed variance is in harmony with the general intent of the ULDC and the specific intent of the relevant subject area(s) of the ULDC.**

**Applicant Response:** “The proposed variance will bring the property into greater overall compliance with the zoning code and provide for improved safety through better vehicle access and parking. Permitting applicant to develop the property as a new residence will reinforce Neptune Beach as a residential community and improve the property appearance and values for the site and surrounding area.”

**Staff Response:** The variance requests are not in harmony with the general intent of the LDC.

**6. The need for the variance has not been created by the actions of the property owner or developer nor is the result of mere disregard for the provisions from which relief is sought.**

**Applicant Response:** “Residents that encroach upon side yard setbacks are typical in the surrounding area as are wide or multiple access points in the right of way. Applicant seeks to redevelop the property with a duplex

residence that is consistent with this established development pattern but in greater compliance with the zoning code than the existing structure.

**Staff Response:** The variance request for side setbacks is created through the actions of the property owner.

**7. Granting the variance will not confer upon the applicant any special privilege that is denied by the ULDC to other lands, buildings, or structures in the same zoning district.**

**Applicant Response:** "Far from conveying a special privilege, the requested setback variance will result in maintaining the status quo for the neighborhood. As detailed above the pattern of development in the area gives rise to a significant portion of the properties that are not in compliance with the side yard setbacks for the R-4 zoning district. Redevelopment of these properties within the existing building would require each of the properties to obtain the same type of variance requested here. Otherwise, property owners would be required to reduce the square footage of residents, and thus reduce the taxable value of the properties in the area.

**Staff Response:** Granting the variance requests for side setbacks would confer upon the applicant special privileges not granted in the zoning district.

**CONCLUSION:** Staff recommends denial of the variance requests to build in the required side setbacks as requested.

**RECOMMENDED MOTION:**

- I recommend approval of V24-01
- OR
- I recommend denial of V24-01

Mr. and Mrs. Zimmerman, property owners, addressed the board. They have looked at their options and in order to remodel the duplex would require a new foundation. The hardship is the width. Currently the driveway is on Bowles and would prefer to have the driveways on Bowles rather than have a curb cut and driveway backing out onto First Street. The width makes it hard to design reasonable size rooms and have an accessible garage. The garage will have the second living unit above it. The driveway at 1414 First St goes the full length of the lot to the detached garage which would give a reasonable distance between the two structures. There are no current plans to rent the apartment. It will be used for families and for the child once they are in college.

Public Comments

Chairperson Schwartzenberger opened the floor for public comments.

Shellie Thole, 310 Oleander Street, was opposed to the variance request. If you keep giving variances for smaller side yard setbacks it would change the character. Every lot in that block is the same size.

There being no comments, the public hearing was closed.

Mrs. Bylund stated: That if you are building a new structure it should comply with the current code.

Mr. Mazzola stated: Every variance request sets on its own merit.



January 17, 2024

Mr. Miller stated: It was a “no” for him. If you take a non-conforming property and demolish it, you need to build a new one to the codes.

Made by Hilton, seconded by Boran.

**MOTION: MOVE TO RECOMMEND DENIAL OF VARIANCE 24-01.**

Roll Call Vote:

Ayes: 7 -Bylund, Charles, Mazzola, Atayan, Boran, Miller, Schwartzenberger

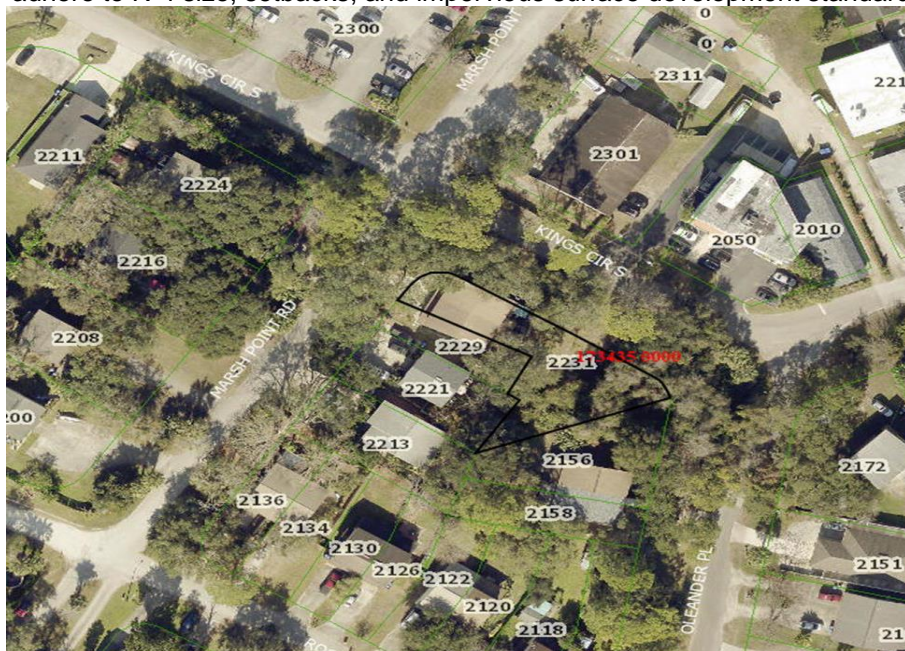
Noes: 0

**MOTION APPROVED.**

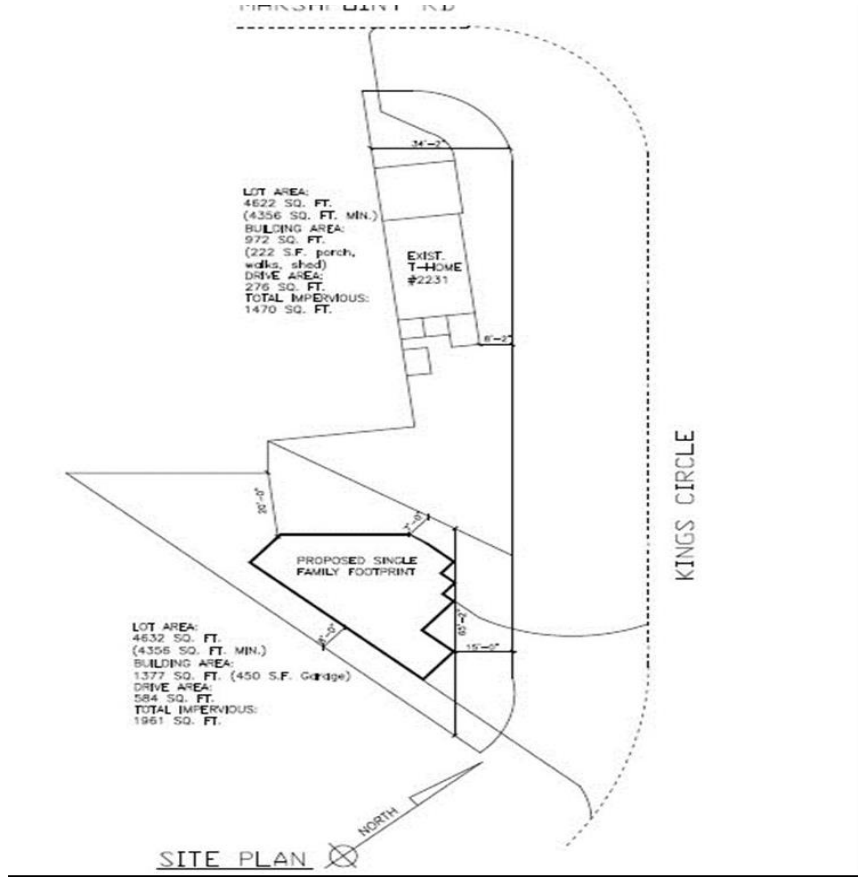
Replat DP 24-01  
2231 Marsh Point  
Road  
(RE#173435-  
0000)

**Background**

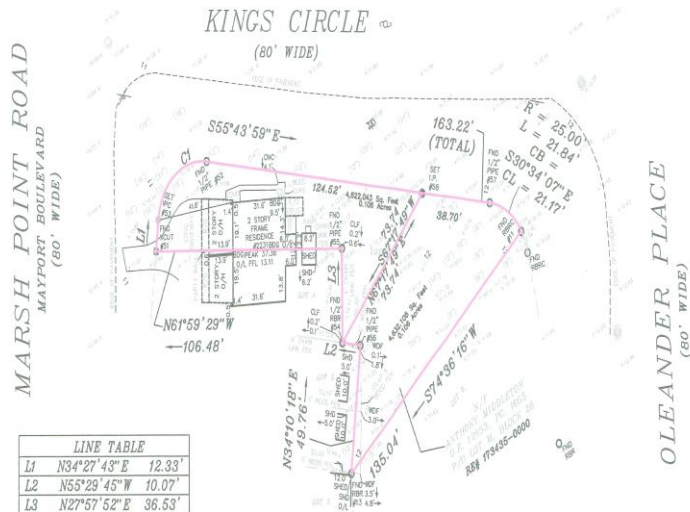
Application DP 24-01 is a request for a subdivision plat approval as outlined in Chapter 27, Division 3. - Platting Requirements of the Unified Land Development Code. The property is located at the southeast corner of Marsh Point Road and Kings Circle S. The subject lot is a large irregularly shaped nonconforming “flag” lot with an existing condominium. The property is approximately 9,254 square feet and is located in the R-4 district. The R-4 district has a minimum lot width requirement of 50 feet, and a minimum lot area of 4,356 square feet. The applicant is requesting to subdivide the .21-acre (9,254 square feet) parcel into two lots. The granting of the subdivision would create two lots (lot 1 being 4,622 square feet) and (lot 2 being 4,632 square feet). The subject lot split was approved by the Community Development Board for variance V23-10 on October 11, 2023 to permit the subdivision of an existing nonconforming lot. The subdivision will split the lot to create a conforming lot with approximately 60 feet of frontage along Kings Circle S. The new lot will have 4,632 square feet in lot area. The remaining lot will maintain its existing 34-foot frontage along Marsh Point Road and have 4,622 square feet in lot area. The newly created lot will adhere to all R-4 development standards. The remaining lot will continue to adhere to R-4 size, setbacks, and impervious surface development standards.



January 17, 2024



BEARINGS SHOWN HEREON ARE BASED ON AN UNRECORDED SURVEY BY ASSOCIATED SURVEYORS, INC. JOB NO. 47662, DATED 11/2/2005



\* ALL ELEVATIONS REFER TO NAVD88' DATUM

SURVEYORS CERTIFICATE  
 I UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION AND



GRAPHIC SCALE

- TITLE AND BOUNDARY NOTES
1. DISTANCES SHOWN HEREON ARE GROUND DISTANCES UNLESS OTHERWISE NOTED AS GRID.
  2. THERE MAY BE ADDITIONAL EASEMENTS AND/OR RESTRICTIONS THAT ARE NOT SHOWN ON THIS MAP THAT MAY BE FOUND IN PUBLIC RECORDS OF THIS COUNTY.
  3. UNDERGROUND FOOTINGS, FOUNDATIONS, UTILITIES, OR OTHER FEATURES WERE NOT LOCATED OR SHOWN.
  4. FENCE OWNERSHIP IS NOT DETERMINED.
  5. THE LOT SHOWN HEREON IS LOCATED IN FLOOD ZONE X (AREA OF MINIMAL FLOOD HAZARD) AS SHOWN ON COMMUNITY PANEL NO. 120130A08L, EFFECTIVE DATE OF 10/22/08.

Public Comments

Chairperson Schwartzenberger opened the floor for public comments.

January 17, 2024

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John Atkins, builder, stated that the newly created parcel will conform to the code and that the new house he plans to build will conform and no variances will be needed.

There being no comments, the public hearing was closed.

**Staff Recommendation**

Staff recommends approval of application DP24-01 for 2231 Marsh Point Road.

**Recommended Motion**

I recommend approval of DP24-01

OR

I recommend denial of DP24-01

Made by Atayan, seconded by Hilton.

**MOTION: MOVE TO RECOMMEND APPROVAL OF THE REPLAT TO CITY COUNCIL AS SUBMITTED. .**

Roll Call Vote:

Ayes: 7 -Bylund, Charles, Mazzola, Atayan, Boran, Miller, Schwartzenger

Noes: 0

**MOTION APPROVED.**

The applicants were informed that the City Council must make the final approval and they should attend the meeting on Tuesday February 2, 2024 at 6:00 pm.

January 17, 2024

Board Training

Zach Roth, City Attorney presented the Board's annual training.

## FLORIDA'S OPEN MEETINGS & PUBLIC RECORDS LAWS & FORM 6



January 10, 2024

### The Laws

- Florida Statutes, Chapter 286, the “Open Meetings Law,” often referred to as the “Sunshine Law” protects the public from “closed door” decision making and provides a right of access to governmental meetings
- Florida Statutes, Chapter 119, the “Public Records Law,” creates a right of access to records made or received in connection with official business of a public body

2

*Sunshine and Open Meetings*


3



## Open Meetings (Sunshine) Law Requirements

- Florida Statutes Chapter 286 applies to all meetings of “any board or commission of any state agency or authority”
- If the Sunshine Law is applicable, it requires:
  - ❖ All meetings must be *open meetings*
  - ❖ *Reasonable notice* of meetings must be given
  - ❖ *Minutes* of meetings must be kept

4



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4

## What does the law actually say?

Sec. 286.011, Fla. Stat.

All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

## What is an Open Meeting?

- Meetings
  - ❖ Must be open to the public; public has a right to attend and to comment as provided in the Board's procedures
  - ❖ Include any discussions or deliberations, formal or casual, between two or more Board members about a matter on which the Board might foreseeably take action
  - ❖ Include workshops, telephone conversations, e-mail communications, text messages, seeing each other at the grocery store or a party, walking past each other on the beach...
  - ❖ So long as not delegated authority of the Board, meetings of staff are not covered

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7

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## “Don'ts” to Live By

- Don't talk about matters before meetings
- Don't talk about matters during recesses
- Don't talk about matters after meetings
- Don't talk about matters between meetings (even at City Hall)
- Don't whisper or pass notes during meetings
- Don't talk about City business at private gatherings
- Don't talk to each other about anything related to the CDB between meetings

## What about separate conversations?

- A school district advisory committee violated the Sunshine Law when it conducted “breakout sessions” where the members discussed committee business at two separate tables which meant that members at one table could not hear what was being discussed at the other table and members of the public could not hear what was being discussed at the sessions. *Linares v. District School Board of Pasco County*, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018).
- ***If everything said by the Board cannot be heard by the audience, the meeting is not truly open!***

## Social Events

- No prohibition under Sunshine Law of board members gathering together socially – just as long as matters which may come before the board are not discussed
- May be difficult for some to comply





## Reasonable Notice and Meeting Location

- Reasonable Notice of Meetings
  - ❖ Reasonable notice is ample notice given to the public and press which reasonably and timely conveys all information necessary to enable them to choose to attend
  - ❖ “Reasonable” depends upon situation’s circumstances
- Meeting may not be held at facility/location inaccessible to public or which discriminates due to presence of physical barriers
- Appearance by telephone only permitted in very limited and specific circumstances

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## Meeting Minutes

- Minutes must be recorded and open to public inspection
- Minutes are not verbatim transcript—but brief summary of meeting’s events
- Sound recordings may be used in addition to written minutes, but if used, must be retained.

14



## Votes and Ballots

- Votes must be publicly taken
- No secret ballots
- Roll call vote not required by statute, but are required by the Board’s procedures
- All members must vote (unless they have a conflict of interest) and the Minutes must so reflect by recording of the vote *or* counting a vote for each member
- One other exception: Sec. 286.012
  - “If the official decision, ruling, or act occurs in the context of a quasi-judicial proceeding, a member may abstain from voting on such matter if the abstention is to assure a fair proceeding free from potential bias or prejudice.”

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## Sunshine Law Principles

- Sunshine Law broadly construed—exemptions narrowly construed
- No use of evasive devices
  - ❖ Circulation of written reports
  - ❖ Single staff member reporting *to one member* what the other members think about an issue which may foreseeably come before the entire body for vote
  - ❖ AKA No Conduits

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## Everyday Examples of Violations

- Texting a fellow Board member about a fence that might require a variance
- Riding together to look at a property coming before the Board for a special exception
- Meeting for coffee to go over the meeting agenda
- Asking another Board member their thoughts on an ordinance to see how they are leaning

## What about different boards?

Can a Council member speak with a CDB Member?

The Sunshine Law does not apply to a meeting between individuals who are members of different boards unless one or more of the individuals has been delegated the authority to act on behalf of his or her board. *Rowe v. Pinellas Sports Authority*, 461 So. 2d 72 (Fla. 1984).

## Penalties for Noncompliance

- Second degree misdemeanor to knowingly violate Sunshine Law
- Possible removal from position
- Fine of \$500 or less
- Reasonable attorneys' fees
- Declaratory and injunctive relief
- Action taken at illegal meeting invalid
  - *Void ab initio* – like it never happened!

19

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Are the penalties real?



## *Childers sentenced to 60 days in jail*

PENSACOLA -- Former Florida Senate President W.D. Childers was sentenced to 60 days in jail Monday for one count of violating the state's open-government "sunshine" law... A second count drew a \$500 fine and orders to pay \$376 for court costs and \$3,227.85 to cover the cost of the state's investigation and prosecution... Former Escambia Commissioner Mike Bass also was sentenced for two sunshine offenses. He escaped jail time, but was told to pay \$4,143.69 in total costs... Each was convicted of discussing public business in private with other commissioners.

**By THE ASSOCIATED PRESS**

Posted May 13, 2003 at 2:44 AM

## Public Records Law

- Florida Statutes Chapter 119 defines "public records" as:
  - ❖ All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material
  - ❖ *Regardless of physical form or means of transmission*
  - ❖ Made or received pursuant to law in connection with transaction of official business by the agency



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  - ❖ *Regardless of physical form or means of transmission*
  - ❖ Made or received pursuant to law in connection with transaction of official business by the agency

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## Public Records Law Application

- Public Records Law applies to Board records
  
- Applies to all types of written records including letters, notes, e-mails, and ***text messages***
  
- Law to be broadly construed, exemptions narrowly construed

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If in doubt, it is probably  
a public record!

## Public Records Exemptions

Records exempt from public disclosure include:

- Social Security Numbers
- Medical information
- Certain personnel information (but very little)
- *Note how limited!*

## Record Maintenance

- Emails and texts made or received in connection with official business are public records and subject to disclosure in the absence of a specific statutory exemption. Emails and texts are also subject to the statutory restrictions on the destruction of public records requiring records be retained for a certain period of time. Email addresses of constituents are also public records, necessitating a disclosure statement on City emails. Any City related email or text received on personal computers should be forwarded to the City Clerk for proper retention.

Unless you want your personal phone becoming subject to public records, don't text anyone about Board business!

You are responsible for ensuring any communications on your phone are maintained!



## Penalties

- If a requestor files suit, and a court determines that the agency unlawfully refused to provide records or a timely basis, then the plaintiff is entitled to attorney's fees.
- Attorney's fees are also awarded where access is denied in good faith but it turns out the documents are not exempt from disclosure.
- A violation of Chapter 119 is a noncriminal infraction, punishable by a fine not exceeding \$500.
- Certain knowing violations can subject the member to suspension and removal or impeachment and are a misdemeanor of the first degree.

Form 6

## What is Form 6 and why is it important?

- Form 6 is a state-created form required to be filled out by certain individuals serving in government regarding their personal financial worth.
- It contains broad disclosure requirements regarding amount and nature of financial worth.

## Should we, as the CDB, care about Form 6?

- Short answer: no
- The new changes in the statute only pertain to *elected* officials at the local government level
- CDB members are *not* required to fill out and submit such form.
- You will still fill out the Form 1.
- New this year – you will receive an email link to fill out the form on the Electronic Filing System.
  - You will not receive a physical copy like years past.

The meeting was adjourned at 7:15 pm.

\_\_\_\_\_  
Greg Schwartzenberger, Chairperson

ATTEST:

\_\_\_\_\_  
Piper Turner, Board Secretary





# STAFF REPORT

**MEETING DATE:** February 21, 2024  
**BOARD/COMMITTEE:** Community Development Board  
**APPLICATION NUMBER:** V24-03

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**TO:** Community Development Board  
**FROM:** Heather Whitmore, AICP, PTP Community Development Director  
**DATE:** February 16, 2024  
**SUBJECT:** Variance Request 205 Myra St (RE# 172603-0000)

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- I. **BACKGROUND:** An application for variance requesting relief for:
- RC Overlay R-4 Building Height Maximum Stories (Table 27-239)

II. **DISCUSSION:**

The property owner requests a variance from Table 27-239 Building Height Maximum Stories of two floors to permit a habitable interior third floor in an existing structure. The property is in the R-4/RC Overlay zoning district.

The existing single-family home is currently approximately 32 feet high and over the 28 foot maximum height permitted in the R-4/RC Overlay. The home has an existing unfinished third floor that the applicant would like to finish as an occupiable space. The exterior of the building's height would remain at approximately 32 feet.

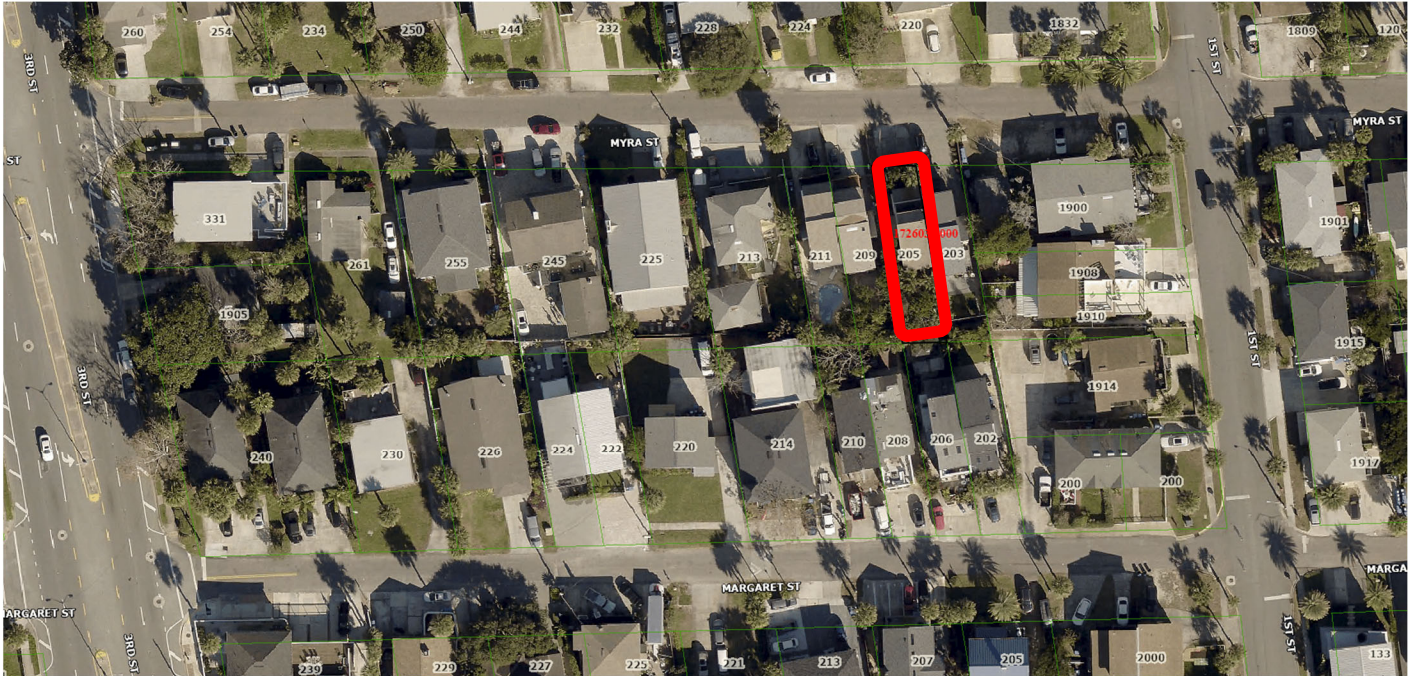


Figure 1: 205 Myra St

### III. FINDINGS:

1. **The property has unique and peculiar circumstances, which create an exceptional and unique hardship. For the purpose of this determination, the unique hardship shall be unique to the parcel and not shared by other property owners in the same zoning district.**
  - a. **Applicant Response:** “Set unit owner is deceased and the children of state managers wish to correct said deficiencies and bring the unit into harmony with the existing abutting and adjoining units.”
  - b. **Staff Response:** The property is not unique in size or peculiar in circumstances. All the homes in the RC/R-4 district share the same building height/maximum stories. This home does not have unique hardship. All residential buildings in Neptune Beach are limited to 28 feet in height and two stories.
2. **The proposed variance is the minimum necessary to allow the reasonable use of the parcel of land.**

- a. **Applicant Response:** “The proposed variance is the minimum necessary to reconstruct the existing unit to be consistent with the new Neptune beach land development code and architectural requirements, also allowing a square footage and configuration with nearby neptune beach residential construction. The proposed site is reasonable in any further constraints would potentially jeopardize the project's feasibility.
  - b. **Staff Response:** The requested variance to allow three finished foors is not the minimum necessary to allow for the improvement of the a single-family home expansion.
3. **The proposed variance would not adversely affect adjacent and nearby properties or the public in general.**
  - a. **Applicant Response:** “The proposed variance request will allow the unit to become a positive attribute to the neighborhood and will have a positive impact on said surrounding neighborhood. Additionally, new construction will be to current codes with improvements to safety, energy efficiency and handling high wind ratings during hurricanes and storms. All proposed and referenced improvements will benefit a budding in adjacent dwellings and the public.”
  - b. **Staff Response:** It’s unknown if the proposed variance to maximum stories would negatively impact adjacent and nearby properties or the public in general.
4. **The proposed variance will not substantially diminish property values in, nor alter the essential character of the area surrounding the site.**
  - a. **Applicant Response:** “The proposed improvements will bring the specific unit into compliance by addressing safety as well as aesthetics similar to other joining in abutting units.”
  - b. **Staff Response:** It is unknown if the proposed variance would diminish property value.
5. **The effect of the proposed variance is in harmony with the general intent of the ULDC and the specific intent of the relevant subject area(s) of the ULDC.**
  - a. **Applicant Response:** “The proposed corrections to said unit will bring the dilapidated unit into harmony with the surrounding units as well as close to the existing code violations which would also create harmony and correspond with the intent of Neptune beach land development codes by acknowledging the cultural importance and the beauty and visual interest.’
  - b. **Staff Response:** The variance request is not in harmony with the general intent of the LDC.

**6. The need for the variance has not been created by the actions of the property owner or developer nor is the result of mere disregard for the provisions from which relief is sought.**

a. **Applicant Response:** “Need for the requested variance was created by the natural elements which have dilapidated the vacant unit while going through probate and was not created by the owner.”

b. **Staff Response:** The variance request for three finished floors is created through the actions of the property owner.

**7. Granting the variance will not confer upon the applicant any special privilege that is denied by the ULDC to other lands, buildings, or structures in the same zoning district.**

a. **Applicant Response:** “Granting of the variance will neither confer any special privileges nor create precedent as the adjoining budding units have similar design elements existing and in place.”

b. **Staff Response:** Granting the variance request to permit three finishes floors would confer upon the applicant a special privilege not granted in the zoning district.

**IV. CONCLUSION:** Staff recommends denial of the variance request to permit three finishes floors as requested.

**V. RECOMMENDED MOTION:**

a. I recommend approval of V24-03

OR

b. I recommend denial of V24-03

PAID 1/10/24

V24-03

# APPLICATION FOR ZONING VARIANCE

TO THE CITY OF NEPTUNE BEACH COMMUNITY DEVELOPMENT DEPARTMENT  
116 FIRST STREET  
NEPTUNE BEACH, FLORIDA 32266-6140  
PH: 270-2400 Ext 34 Email: CDD@NBFL.US



**IMPORTANT NOTE: THE COMMUNITY DEVELOPMENT BOARD, IN CONSIDERING YOUR PETITION, IS ACTING IN A QUASI-JUDICIAL CAPACITY AND ANY DISCUSSION WITH MEMBERS, OTHER THAN AT A PUBLIC MEETING IS PROHIBITED AND ANY SUCH CONTACT MAY VOID YOUR PETITION.**

Date Filed: 1/8/24	Zoning District: R4 w RC overlay	Real Estate Parcel Number: 172603 0000
Name & Address of Owner of Record:  LEJEUNE IRENE MANN ET AL  205 MYRA ST, NEPTUNE BEACH 32266		Property Address:  205 MYRA ST 32266  Number of units on property _____ 1 _____  Have any previous applications for variance been filed concerning this property? _____ NO _____  If Yes, Give Date: ___ NA _____
Contact phone number#: 904-536-7227	e-mail address: JEFFREYTYER@COMCAST.NET	
Section 27-15 of the Unified Land Development Code (ULDC) defines a variance as follows: <i>Grant of relief authorized by the board of appeals, or the city council upon recommendation by the planning and development review board, that relaxes specified provisions of the Code which will not be contrary to the public interest and that meets the requirements set forth in article III, division 8 of this Code.</i>		
1. Explain the proposed relief being sought from the code(s):  1. EXPAND PORCH AND CONSTRUCT A 2ND FLOOR DECK 2. CONVERT EXISTING 3RD FLOOR TO HABITABLE SPACE WHERE 8' OR GREATER		
2. Explain the purpose of the variance (if granted)? 1. UNIT WOULD LIKE TO EXPAND THEIR BALCONY TO MATCH EXISTING ABUTTING AND ADJOINING UNITS. 2. EXISTING UNIT HAS AN UN-PERMITTED HABITABLE AREA ON THE 3RD FLOOR, THE OWNER WISHES TO CORRECT THIS DEFICIENCY.		
3. Based on the required findings needed to issue a variance in Section 27-147 explain the following (attach additional sheets as necessary):		



A. How does your property have unique and peculiar circumstances, which create an exceptional and unique hardship? Unique hardship shall be unique to the parcel and not shared by other property owners. The hardship cannot be created by or be the result of the property owner's own action.

SAID UNIT OWNER IS DECEASED AND THE CHILDREN (ESTATE MANAGERS) WISH TO CORRECT SAID DEFICIENCIES AND BRING THE UNIT INTO HARMONY WITH THE EXISTING ABUTTING AND ADJOINING UNITS.

B. How is the proposed variance the minimum necessary to allow reasonable use of the property?

THE PROPOSED VARIANCE IS THE MINIMUM NECESSARY TO RECONSTRUCT THE EXISTING UNIT TO BE CONSISTENT WITH THE NEW NEPTUNE BEACH LAND DEVELOPMENT CODE AND ARCHITECTURAL REQUIREMENTS, ALSO ALLOWING A SQUARE FOOTAGE AND CONFIGURATION WITH NEARBY NEPTUNE BEACH RESIDENTIAL CONSTRUCTION. THE PROPOSED SITE PLAN IS REASONABLE AND ANY FURTHER CONSTRAINTS WOULD POTENTIALLY JEOPARDIZE THE PROJECT FEASIBILITY.

C. Indicate how the proposed variance will not adversely affect adjacent or nearby properties or the public in general.

THE PROPOSED VARIANCE REQUESTED WILL ALLOW THE UNIT TO BECOME A POSITIVE ATTRIBUTE TO THE NEIGHBORHOOD AND WILL HAVE A POSITIVE IMPACT ON SAID SURROUNDING NEIGHBORHOOD. ADDITIONALLY, NEW CONSTRUCTION WILL BE TO CURRENT CODES WITH IMPROVEMENTS TO SAFETY, ENERGY EFFICIENCY AND HANDLE HIGHER WIND RATINGS DURING HURRICANES AND STORMS. ALL PROPOSED AND REFERENCED IMPROVEMENTS WILL BENEFIT ABUTTING AND ADJACENT DWELLINGS AND THE PUBLIC.

D. Indicate how the proposed variance will not diminish property values nor alter the character of the area.

THE PROPOSED IMPROVEMENTS WILL BRING THIS SPECIFIC UNIT INTO COMPLIANCE BY ADDRESSING SAFETY AS WELL AS AESTHETICS SIMILAR TO THE OTHER ADJOINING AND ABUTTING UNITS.

E. Explain how the proposed variance is in harmony with the general intent of the Unified Land Development Code.

THE PROPOSED CORRECTIONS TO SAID UNIT WILL BRING THIS DILAPIDATED UNIT INTO HARMONY WITH SURROUNDING UNITS AS WELL AS CLOSE THE EXISTING CODE VIOLATIONS WHICH WOULD ALSO CREATE HARMONY AND CORRESPOND WITH THE INTENT OF NEPTUNE BEACH LAND DEVELOPMENT CODES BY ACKNOWLEDGING THE CULTURAL IMPORTANCE AND OF BEAUTY AND VISUAL INTEREST.

F. Explain how the need for the proposed variance has not been created by you or the developer?

THE NEED FOR THE REQUESTED VARIANCE WAS CREATED BY THE NATURAL ELEMENTS WHICH HAVE DILAPIDATED THE VACANT UNIT WHILE GOING THRU PROBATE AND WAS NOT CREATED BY THE OWNER.

G. Indicate how granting of the proposed variance will not confer upon you any special privileges that is denied by the code to other lands, buildings or structures in the same zoning district.

THE GRANTING OF THIS VARIANCE WILL NEITHER CONFER ANY SPECIAL PRIVILEGES NOR CREATE A PRECEDENT AS THE ADJOINING ABUTTING UNITS HAVE SIMILAR DESIGN ELEMENTS EXISTING AND IN PLACE.

4. **Required Attachments**-Applicant must include the following: **(INCOMPLETE PACKAGES WILL BE RETURNED)**

A. 8 1/2" by 11" overhead site plan drawn to an appropriate scale showing the location of all existing and proposed improvements to the property and including all setback measurements from property lines.  
**WHICH HAS NOT BEEN REDUCED.**

B. Survey of the property certified by licensed surveyor and dated within one year of application date.  
**SURVEY MUST BE ORIGINAL SIZE AND CAN NOT BEEN REDUCED.**

C. Copy of Deed

D. Pictures of the property as it currently exists

5. Letter of authorization for agent to make application (Required only if not made by owner)

6. **NON-REFUNDABLE FEE:**

**\$500.00 (Residentially zoning property) / \$1000.00 (Commercially Zoned Property)**

**NO APPLICATION WILL BE ACCEPTED UNTIL ALL THE REQUESTED INFORMATION HAS BEEN SUPPLIED AND THE REQUIRED FEE HAS BEEN PAID. THE ACCEPTANCE OF AN APPLICATION DOES NOT GUARANTEE ITS APPROVAL BY THE COMMUNITY DEVELOPMENT BOARD. THE APPLICANT AND SURROUNDING PROPERTIES WILL BE NOTIFIED OF THE PUBLIC HEARING BY MAIL AND POSTING OF THE PROPERTY. THE APPLICANT OR HIS/HER AUTHORIZED AGENT MUST BE PRESENT AT THE MEETING.**

**\*If a residential zoning variance is granted, then a 30 day wait period must pass before any required building permits can be released, in order to allow time for appeals.**

**\*If a commercially zoned variance is granted by council, then a 30 day wait period must pass before any required building permits can be released, in order to allow time for appeals.**

I HEREBY CERTIFY THAT I HAVE READ AND UNDERSTAND THE INFORMATION CONTAINED IN THIS APPLICATION. THAT I AM THE PROPERTY OWNER OR AUTHORIZED AGENT FOR THE OWNER WITH AUTHORITY TO MAKE THIS APPLICATION, AND THAT ALL OF THE INFORMATION CONTAINED IN THIS APPLICATION, INCLUDING THE ATTACHMENTS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I HEREBY APPLY FOR A ZONING VARIANCE AS REQUESTED.

NAME (S) OF PROPERTY OWNER (S)

NAME OF AUTHORIZED AGENT

LEJEUNE IRENE MANN ETAL

JEFFREY TYER

**OWNER'S AUTHORIZATION FOR AGENT/AFFIDAVIT OF ASSENT**

**\*THIS FORM MUST BE FILLED OUT IN THE CASE THAT THE APPLICANT IS NOT THE OWNER OF THE PREMISES UNDER WHICH THE PARTICULAR APPLICATION IS BEING FILED.\***

Jeff tyer or Arthur Paz is hereby authorized TO ACT ON BEHALF OF LEJEUNE IRENE MANN ET AL, the owner(s) of those lands described within the attached application, and as described in the attached deed or other such proof of ownership as may be required, in applying to Neptune Beach, Florida, for an application related to a variance:

BY: Irene M. Lejeune  
Signature of Owner

Irene M. Lejeune  
Print Name

Yitzhak Ben-Moshe  
Signature of Owner

Yitzhak Ben-Moshe  
Print Name  
Daytime Telephone Number

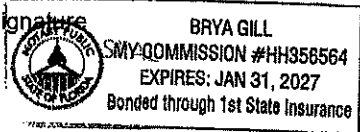
State of Florida  
County of Pinellas

Signed and sworn before me on this 03 day January of 2024.

By Irene M. Lejeune

Identification verified: PLDL Oath sworn:  Yes  No

[Signature]

Notary Signature  


My Commission expires: 3/31/24

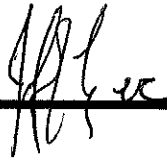
ADDRESS OF PROPERTY OWNER

ADDRESS OF AUTHORIZED AGENT

205 MYRA ST 32264

2443 FORT BRIDGE LANE 32224

SIGNATURE OF OWNER OR AUTHORIZED AGENT:



**OWNER'S AUTHORIZATION FOR AGENT/AFFIDAVIT OF ASSENT**

**\*THIS FORM MUST BE FILLED OUT IN THE CASE THAT THE APPLICANT IS NOT THE OWNER OF THE PREMISES UNDER WHICH THE PARTICULAR APPLICATION IS BEING FILED.\***

\_\_\_\_\_ is hereby authorized TO ACT ON BEHALF OF  
\_\_\_\_\_, the owner(s) of those lands described within the attached application, and as descri

BY: \_\_\_\_\_

Signature of Owner

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature of Owner

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Daytime Telephone Number

State of Florida

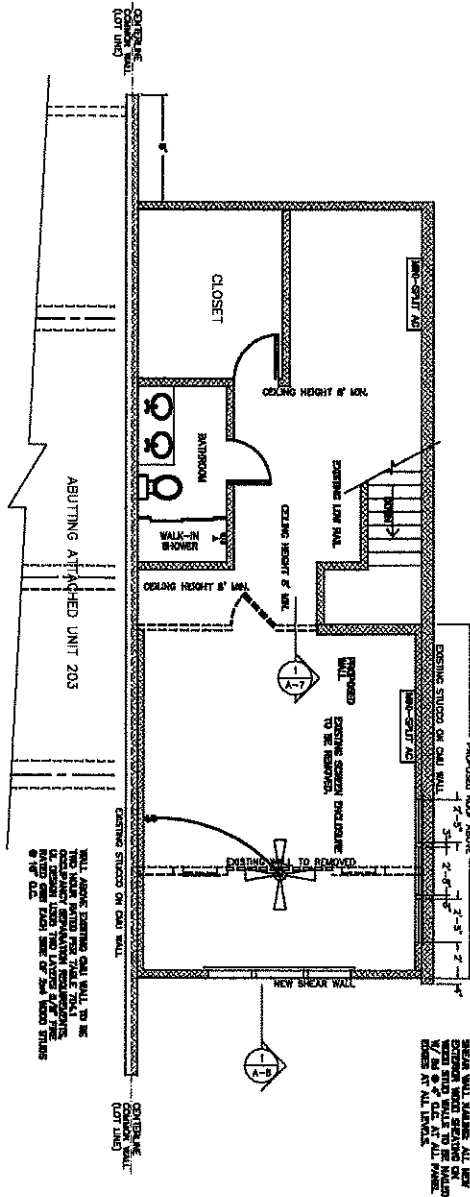
County of \_\_\_\_\_

Signed and sworn before me on this \_\_\_\_\_ day \_\_\_\_\_ of 2021.

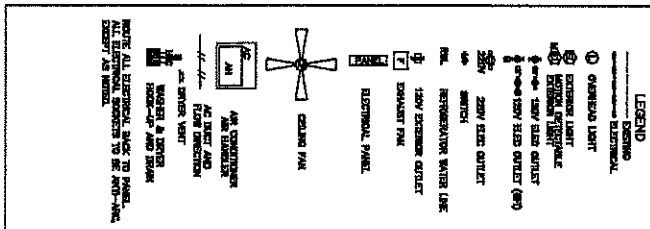
By \_\_\_\_\_



REVISIONS TO BE INDICATED BY NUMBER AND DATE. ALL CHANGES TO BE MADE BY THE ARCHITECT. THE ARCHITECT'S OFFICE SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION CONTAINED HEREIN. THE ARCHITECT'S OFFICE SHALL NOT BE RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION CONTAINED IN ANY OTHER DRAWINGS OR SPECIFICATIONS.



THIRD FLOOR PLAN



DATE	10/02/2023
BY	NTS
CHECKED BY	JT
SCALE	AS SHOWN
PROJECT	205 MYRA STREET

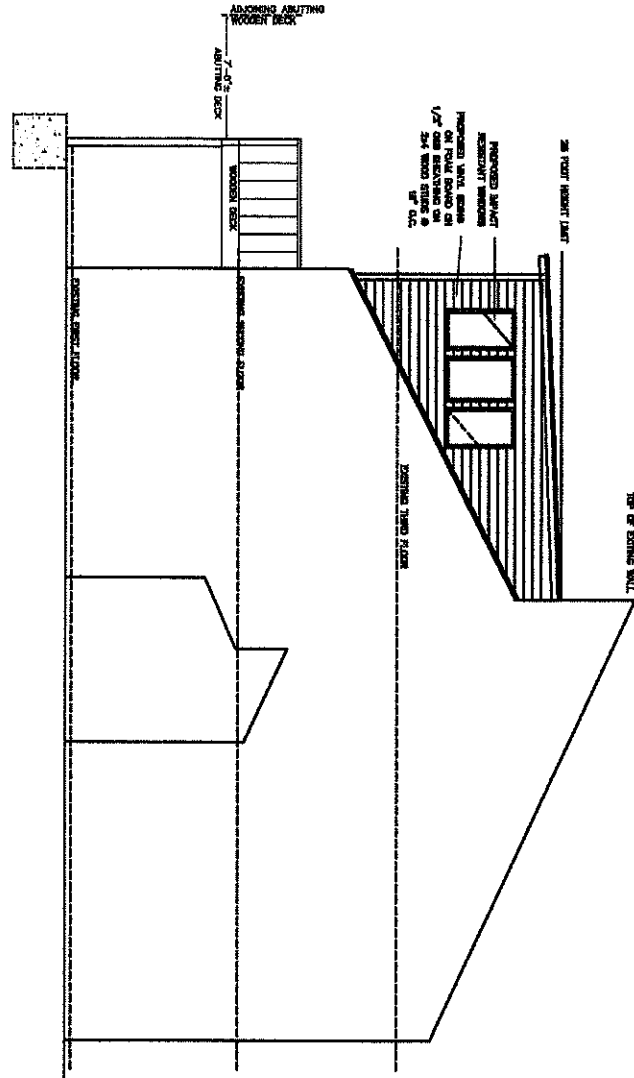
**Harold W. Coffield, P.E.**  
 8700-1 Jordan Road • Jacksonville, Florida 32244 • Telephone (904) 326-7887  
 We Design & Build Engineering & Land Planning in One Facility

205 MYRA STREET  
 ELEMENT DAMAGED RECONSTRUCTION DRAWINGS  
 DUVAL COUNTY, NEPTUNE BEACH, FLORIDA 32216

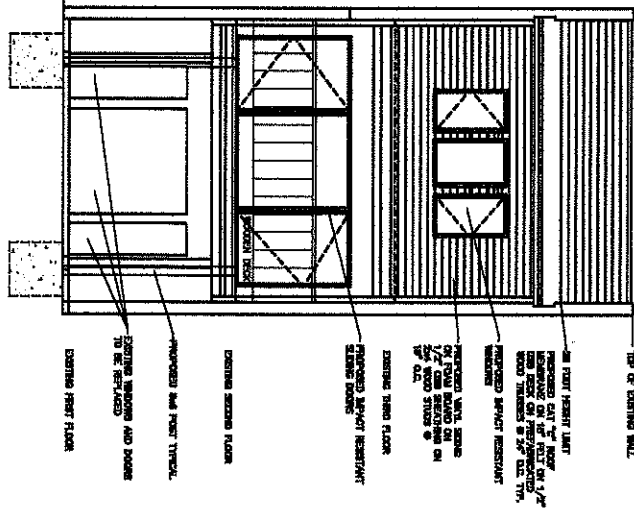
THIRD FLOOR PLAN

No.	Revision	By
1	CLASSIFIED FOR COUNCIL MEETING 12-31-23	J
2		
3		
4		
5		

EAST ELEVATION



NORTH ELEVATION



DATE: 10/18/2023  
 DRAWN BY: NIS  
 CHECKED BY: JT  
 DATE: 2023/05/03

**Harold W. Coffield, P.E.**  
 8742-1 Jordan Road • Jacksonville, Florida 32246 • Telephone: (904) 826-7587  
 We Build • We Engineer • We Land • We Plan • We Survey

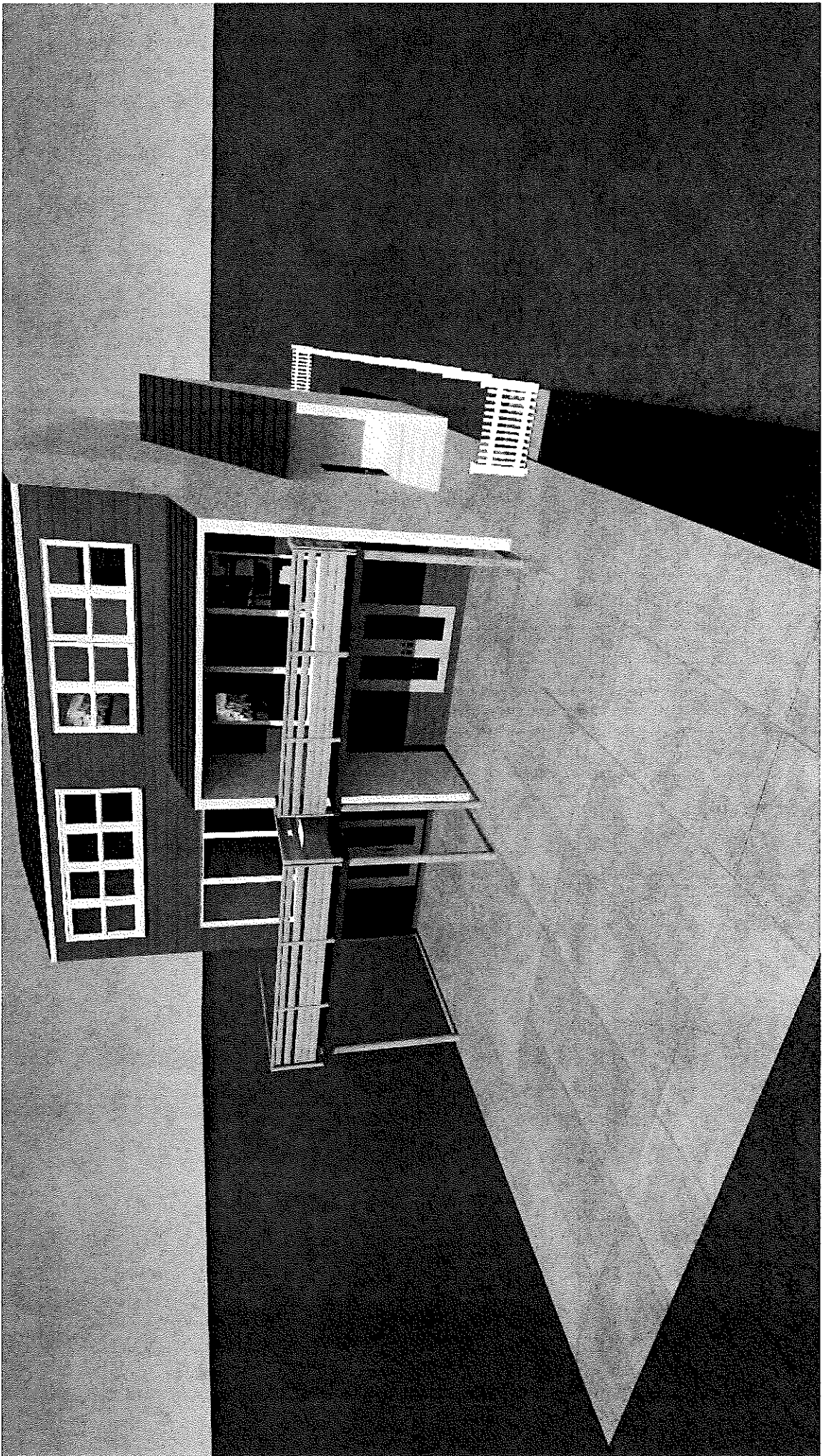
205 MYRA STREET  
 ELEMENT DAMAGED RECONSTRUCTION DRAWINGS  
 DUAL COUNTY, NEPTUNE BEACH, FLORIDA 32714

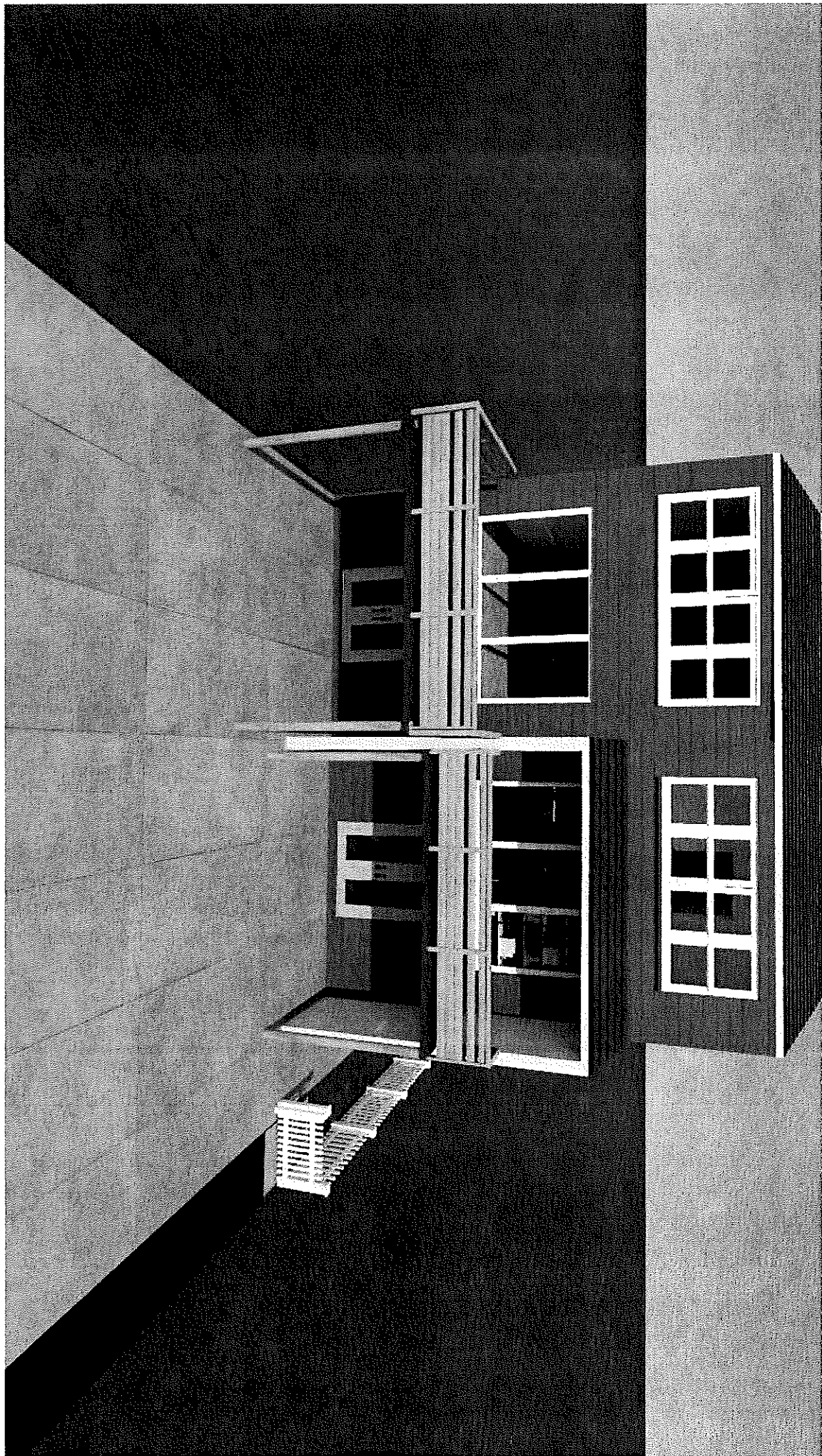
EAST & NORTH ELEVATION

No.	Revisions	By
▲	CLARIFIED FOR COUNCIL MEETING 12-31-23	J
▲		
▲		
▲		









**LEJEUNE IRENE MANN ET AL**  
 4153 WEATHERWOOD ESTATES DR  
 JACKSONVILLE, FL 32223  
**MOSHE YITZHAK BEN**

**Primary Site Address**  
 205 MYRA ST  
 Neptune Beach FL 32266-

**Official Record Book/Page**  
 20658-00071

**Title #**  
 9428

**205 MYRA ST**

Property Detail

RE #	172603-0000
Tax District	USD4
Property Use	0100 Single Family
# of Buildings	1
Legal Desc.	For full legal description see Land & Legal section below
Subdivision	03148 NEPTUNE BEACH TER SEC 2
Total Area	2538

The sale of this property may result in higher property taxes. For more information go to [Save Our Homes](#) and our [Property Tax Estimator](#). 'In Progress' property values, exemptions and other supporting information on this page are part of the working tax roll and are subject to change. Certified values listed in the Value Summary are those certified in October, but may include any official changes made after certification [Learn how the Property Appraiser's Office values property.](#)

Value Summary

Value Description	2023 Certified	2024 In Progress
<b>Value Method</b>	CAMA	CAMA
<b>Total Building Value</b>	\$154,683.00	\$300,083.00
<b>Extra Feature Value</b>	\$0.00	\$0.00
<b>Land Value (Market)</b>	\$258,750.00	\$258,750.00
<b>Land Value (Agric.)</b>	\$0.00	\$0.00
<b>Just (Market) Value</b>	\$413,433.00	\$558,833.00
<b>Assessed Value</b>	\$413,433.00	\$558,833.00
<b>Cap Diff/Portability Amt</b>	\$0.00 / \$0.00	\$0.00 / \$0.00
<b>Exemptions</b>	\$0.00	See below
<b>Taxable Value</b>	\$413,433.00	See below

**Taxable Values and Exemptions – In Progress**

If there are no exemptions applicable to a taxing authority, the Taxable Value is the same as the Assessed Value listed above in the Value Summary box.

County/Municipal Taxable Value  
 No applicable exemptions

SJRWD/FIND Taxable Value  
 No applicable exemptions

School Taxable Value  
 No applicable exemptions

**Sales History**

Book/Page	Sale Date	Sale Price	Deed Instrument Type Code	Qualified/Unqualified	Vacant/Improved
<a href="#">20658-00071</a>	4/19/2023	\$100.00	WD - Warranty Deed	Unqualified	Improved
<a href="#">20328-00523</a>	6/16/2022	\$100.00	MS - Miscellaneous	Unqualified	Improved
<a href="#">04816-00195</a>	2/8/1979	\$53,000.00	WD - Warranty Deed	Unqualified	Improved
<a href="#">04305-00157</a>	1/10/1977	\$46,500.00	WD - Warranty Deed	Unqualified	Improved
<a href="#">03776-00950</a>	1/28/1974	\$45,900.00	WD - Warranty Deed	Unqualified	Improved
<a href="#">03527-00228</a>	6/4/1973	\$100.00	QC - Quit Claim	Unqualified	Improved
<a href="#">03269-00711</a>	9/28/1971	\$20,000.00	MS - Miscellaneous	Unqualified	Improved

**Extra Features**

No data found for this section

**Land & Legal**

Land

LN	Code	Use Description	Zoning Assessment	Front	Depth	Category	Land Units	Land Type	Land Value
1	0101	RES MD 8-19 UNITS PER AC	NR-4	25.00	105.00	Common	25.00	Front Footage	\$258,750.00

Legal

LN	Legal Description
1	15-44 28-2S-29E
2	NEPTUNE BEACH TERRACE
3	W1/2 LOT 37

**Buildings**

Building 1

Building 1 Site Address  
 205 MYRA ST Unit  
 Neptune Beach FL 32266-

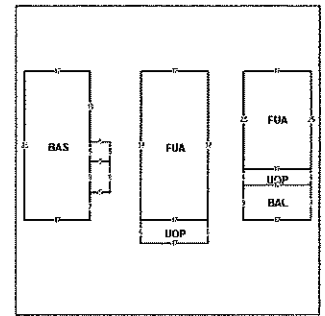
<b>Building Type</b>	0105 - TOWNHOUSE
<b>Year Built</b>	1972
<b>Building Value</b>	\$300,083.00

Type	Gross Area	Heated Area	Effective Area
Base Area	646	646	646
Finished upper story 1	646	646	614
Finished upper story 1	425	425	404
Balcony	153	0	23
Unfin Open Porch	68	0	14
Unfin Open Porch	102	0	20

Property Appraiser - Property Details

Unfinished Storage	25	0	10
Finished Open Porch	40	0	12
<b>Total</b>	<b>2105</b>	<b>1717</b>	<b>1743</b>

Element	Code	Detail
Exterior Wall	17	17 C.B. Stucco
Roof Struct	3	3 Gable or Hip
Roofing Cover	3	3 Asph/Comp Shng
Interior Wall	5	5 Drywall
Int Flooring	11	11 Cer Clay Tile
Int Flooring	14	14 Carpet
Heating Fuel	4	4 Electric
Heating Type	4	4 Forced-Ducted
Air Cond	3	3 Central



Element	Code	Detail
Stories	3.000	
Bedrooms	3.000	
Baths	2.500	
Rooms / Units	1.000	

**2023 Notice of Proposed Property Taxes Notice (TRIM Notice)**

Taxing District	Assessed Value	Exemptions	Taxable Value	Last Year	Proposed	Rolled-back
Gen Govt Beaches	\$413,433.00	\$0.00	\$413,433.00	\$2,805.01	\$3,318.30	\$3,032.16
Public Schools: By State Law	\$413,433.00	\$0.00	\$413,433.00	\$1,242.32	\$1,315.96	\$1,213.10
By Local Board	\$413,433.00	\$0.00	\$413,433.00	\$863.02	\$929.40	\$842.74
FL Inland Navigation Dist.	\$413,433.00	\$0.00	\$413,433.00	\$11.18	\$11.91	\$11.91
Neptune Beach	\$413,433.00	\$0.00	\$413,433.00	\$1,176.22	\$1,669.73	\$1,271.18
Water Mgmt Dist. SJRWMD	\$413,433.00	\$0.00	\$413,433.00	\$68.99	\$74.13	\$74.13
School Board Voted	\$413,433.00	\$0.00	\$413,433.00	\$0.00	\$413.43	\$0.00
Urban Service Dist4	\$413,433.00	\$0.00	\$413,433.00	\$0.00	\$0.00	\$0.00
			<b>Totals</b>	<b>\$6,166.74</b>	<b>\$7,732.86</b>	<b>\$6,445.22</b>

Description	Just Value	Assessed Value	Exemptions	Taxable Value
<b>Last Year</b>	\$383,907.00	\$349,482.00	\$0.00	\$349,482.00
<b>Current Year</b>	\$413,433.00	\$413,433.00	\$0.00	\$413,433.00

**2023 TRIM Property Record Card (PRC)**

This PRC reflects property details and values at the time of the original mailing of the Notices of Proposed Property Taxes (TRIM Notices) in August.

**Property Record Card (PRC)**

The PRC accessed below reflects property details and values at the time of Tax Roll Certification in October of the year listed.

- [2023](#)
- [2022](#)
- [2021](#)
- [2020](#)
- [2019](#)
- [2018](#)
- [2017](#)
- [2016](#)
- [2015](#)
- [2014](#)

• To obtain a historic Property Record Card (PRC) from the Property Appraiser's Office, submit your request here: 

**More Information**

[Contact Us](#) | [Parcel Tax Record](#) | [GIS Map](#) | [Map this property on Google Maps](#) | [City Fees Record](#)

### Dual Civil Planning Map

Home Layers Tools Basemaps About

Q 205 Myra St, Neptune Beach, FL

Trace < Details \* x

Real Estate #: 172603 0000

Owner: LEBLANC IRENE MANN ET AL

Address: 205 MYRA ST

Zip Code: 32286

Transaction Price: 5100

Transaction Year: 2023

Acres: 0.06

Book-Page: 20655500071

Map Panel 9428

Legal Description: 'S-LA 28-25-29E NEPTUNE BEACH TERRACE W/1/2 LOT 37

Flood Zone: 0.2 PCT ANNUAL CHANCE FLOOD HAZARD

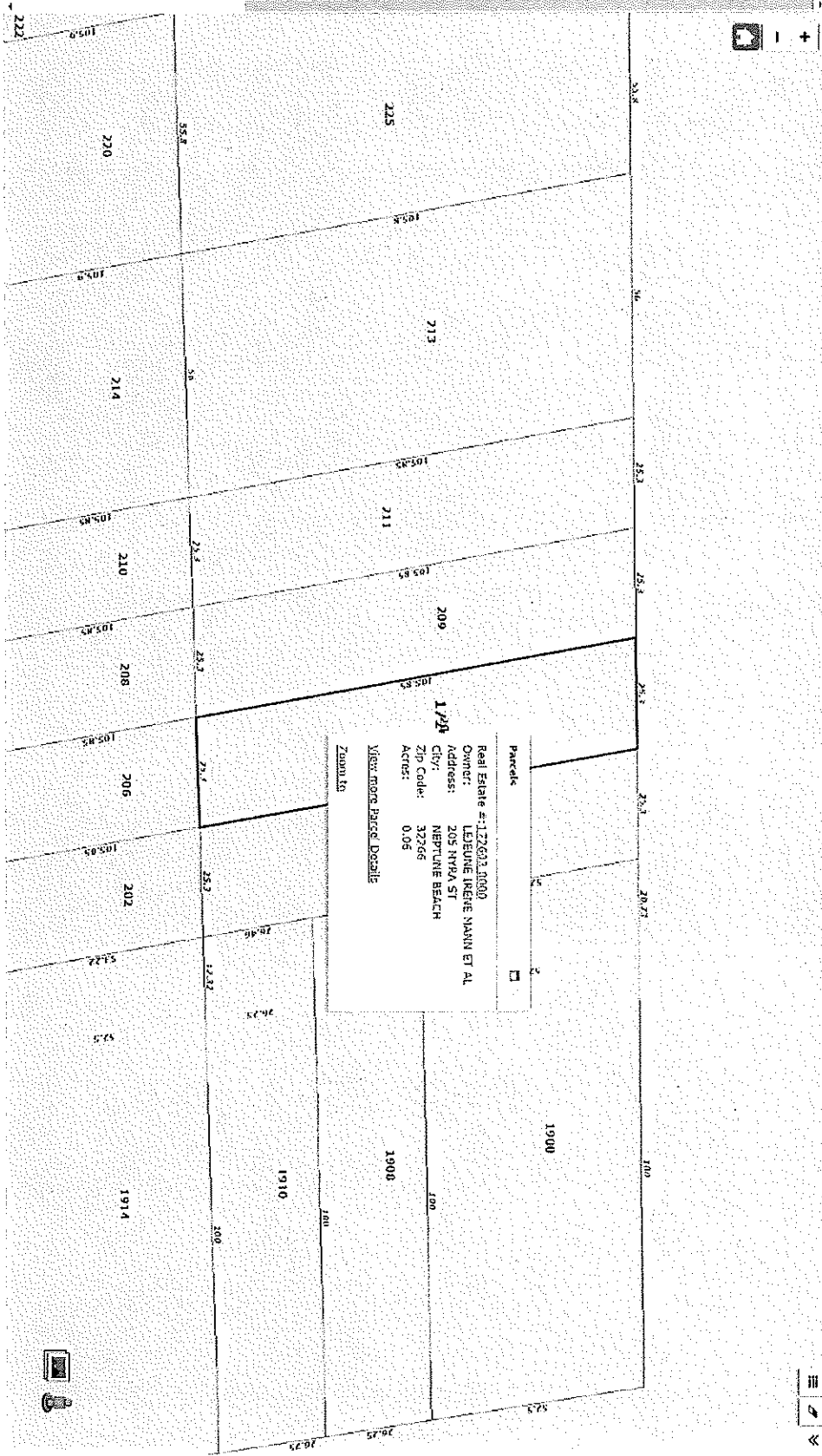
AshSite:

EDA Level: NOT DISTRESSED

Evacuation Zone: ZONE A

Planning District: 7

Noise Zone: NA



THIS DOCUMENT WAS PREPARED WITHOUT  
BENEFIT OF TITLE SEARCH OR SURVEY

PREPARED BY AND RETURN TO:  
Mary A. Robison, Esquire (KDB)  
Fisher, Tousey, Leas & Ball, P.A.  
501 Riverside Avenue, Suite 700  
Jacksonville, Florida 32202

Real Estate Assessment No.: 172603-0000

PERSONAL REPRESENTATIVES' DEED

THIS INDENTURE, made effective as of the 19 day of April, 2023, between IRENE MANN LEJEUNE and YITZHAK BEN MOSHE, as Personal Representatives of the Estate of Clara Mae Mann, whose respective addresses are 4153 Weatherwood Estates Drive, Jacksonville, Florida 32223, and 3803 Woodbrook Circle, Austin, Texas 78759, parties of the first part, and IRENE MANN LEJEUNE and YITZHAK BEN MOSHE, as equal tenants in common, whose respective addresses are 4153 Weatherwood Estates Drive, Jacksonville, Florida 32223, and 3803 Woodbrook Circle, Austin, Texas 78759, parties of the second part.

WITNESSETH:

WHEREAS, Clara Mae Mann (the "Decedent") died testate, a resident of Duval County, Florida, on March 11, 2022, seized and possessed of the property described below (the "Property"); and

WHEREAS, by Order entered on May 25, 2022, in the Circuit Court, Fourth Judicial Circuit, in and for Duval County, Florida, Probate Division, in Case No. 16-2022-CP-001532, Division PR-A, the Decedent's Last Will, dated January 19, 2005 (the "Will"), was admitted to probate and Letters of Administration were issued to IRENE MANN LEJEUNE and YITZHAK BEN MOSHE; and

WHEREAS, the Property did not constitute the homestead of the Decedent within the meaning of Section 4 of Article X of the Constitution of the State of Florida, was subject to the right of the parties of the first part to sell or encumber the Property for the purpose of defraying claims, costs and expenses of administration of the Decedent's estate; and

WHEREAS, the parties of the first part wish to distribute the Property to the parties of the second part and evidence the release of the Property from said right to sell or encumber.

NOW, THEREFORE, in consideration of the foregoing and in connection with the distribution of the estate of the Decedent, the parties of the first part release to the parties of the second part the right to sell or encumber the Property and grant, convey and confirm unto the parties of the second part, their heirs, successors and assigns forever, all of the interest of the Decedent in and to the following described lands, situate, lying and being in Duval County, Florida, to wit:

**NOTE TO CLERK: THIS DEED IS EXEMPT FROM DOCUMENTARY STAMP TAX UNDER FAC RULE 12B-4.014(4) AS A PERSONAL REPRESENTATIVE'S DEED TO A BENEFICIARY.**

The Westerly One-Half (1/2) of Lot Thirty-seven (37), NEPTUNE BEACH TERRACE, SECTION TWO (2), according to plat thereof as recorded in Plat Book 15, page 44, of the current public records of Duval County, Florida.

Real Estate Assessment No.: 172603-0000

Subject to covenants, restrictions, easements, mortgages and all other encumbrances of record and taxes assessed subsequent to December 31, 2021; provided, however, this reference will not serve to reimpose any such covenants, restrictions or easements.

TOGETHER with all and singular the tenements, hereditaments and appurtenances belonging to or in any way appertaining to all of the above real property.

The parties of the first part hereby covenant to and with the parties of the second part that the parties of the first part are the duly appointed, qualified and acting Personal Representatives of the Estate of Clara Mae Mann, and in all things preliminary to and in and about the conveyance of the property described herein, the orders of the above named court, and the laws of the state of Florida have been followed and complied with in all respects, and that the undersigned parties of the first part have the full power and authority to execute this deed for the uses and purposes herein expressed.

And the parties of the first part do hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever, claiming by, through or under the parties of the first part, but not otherwise.

IN WITNESS WHEREOF, the parties of the first part have hereunto set their hands and seals effective as of the day and year first above written.

WITNESSED BY:

Sign: [Signature]  
Print Name: Brya Gill

Irene M. Lejeune  
IRENE MANN LEJEUNE, as Personal Representative of the Estate of Clara Mae Mann, Deceased

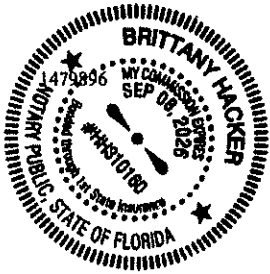
Sign: [Signature]  
Print Name: Brittany Walker

STATE OF FLORIDA  
COUNTY OF Duval

The foregoing instrument was acknowledged before me by means of [NOTARY MUST CHECK ONE BOX]  physical presence or  online notarization, this 19 day of April, 2023, by IRENE MANN LEJEUNE, as Personal Representative of the Estate of Clara Mae Mann, Deceased, [NOTARY MUST CHECK ONE BOX AND COMPLETE RELEVANT INFORMATION]  who is personally known to me or  who has produced a current FL (state) driver's license as identification.

[NOTARY SEAL]

Signature: Brittany Hacker  
Printed Name: Brittany Hacker  
NOTARY PUBLIC, State of Florida  
Commission Number: 918126





WITNESSED BY:

Sign: [Signature]  
Print Name: Rachel Steyn

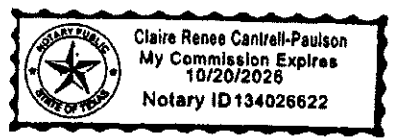
[Signature]  
YITZHAK BEN MOSHE, as Personal Representative of the Estate of Clara Mae Mann, Deceased

Sign: [Signature]  
Print Name: Jenny Richardson

STATE OF Texas  
COUNTY OF Travis

The foregoing instrument was acknowledged before me by means of [NOTARY MUST CHECK ONE BOX]  physical presence or  online notarization, this 4 day of Apr., 2023, by YITZHAK BEN MOSHE, as Personal Representative of the Estate of Clara Mae Mann, Deceased, [NOTARY MUST CHECK ONE BOX AND COMPLETE RELEVANT INFORMATION]  who is personally known to me or  who has produced a current \_\_\_\_\_ (state) driver's license as identification.

[NOTARY SEAL]



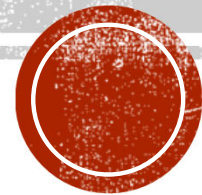
Signature: [Signature]  
Printed Name: Claire Cantrell-Paulson  
NOTARY PUBLIC, State of Texas  
Commission Number: 134026622

**CITY OF NEPTUNE BEACH**

**COMMUNITY DEVELOPMENT BOARD**

**TRAINING – FEBRUARY 2024**

*What are we doing here?*



# ROADMAP

- Quasi-Judicial Hearing Recap
- What are our roles?
  - *What is the Board's role in the zoning process?*
  - *What about the various City staff and officers?*
- Variances and Special Exceptions
  - *What are they?*
  - *How are they different?*
  - *What standards apply to each?*
- Variance Deep Dive
  - *What is an undue hardship?*
  - *What does it mean for an issue to be owner-created?*
- Questions



# QUASI-JUDICIAL V. LEGISLATIVE

- Fundamental question
- Determines procedures the Board must adhere to and standards of review for challenges

“A board's legislative action is subject to attack in circuit court...However, in deference to the policy-making function of a board when acting in a legislative capacity, its actions will be sustained as long as they are fairly debatable...On the other hand, the rulings of a board acting in its quasi-judicial capacity are subject to review by certiorari and will be upheld only if they are supported by substantial competent evidence.”

*Bd. Of County Comm'rs v. Snyder, 627 So. 2d 469 (Fla. 1993).*



# HOW DO YOU DIFFERENTIATE?

“Generally speaking, legislative action results in the formulation of a general rule of policy, whereas judicial action results in the application of a general rule of policy.” *Bd. Of County Comm’rs v. Snyder*, 627 So. 2d 469 (Fla. 1993).

- Examples of legislative action
  - Adoption of zoning ordinance
  - Adoption of procedures for application of Code
  
- Examples of quasi-judicial action
  - Rezoning actions involving one or a small number of properties
  - Consideration of a minor replat or development permit
  - Essentially anything impacting an actual property rather than a policy-making decision for the City or a district as a whole





## **HOW WOULD YOU DESCRIBE THE CDB'S ROLE?**

*For these purposes,  
we are speaking in  
the realm of quasi-  
judicial hearings.*

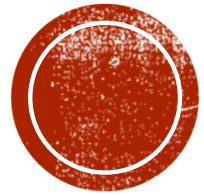


“Zoning is the single most powerful legal enforcement of an overall urban concept, but alone it does not create beauty, aesthetic order or amenity. The purpose of this board is, therefore, to apply this Code and the comprehensive plan to preserve various elements of urban beauty and to require that new projects enhance existing values. Preservation of special local characteristics of site, aesthetic tradition, natural beauty, and redevelopment potential should be a high priority. The natural beauty of the beaches, the ocean, and the Intracoastal Waterway, for example, should only be enhanced. This board should act to promote the best interest of the community, in the effort to achieve these goals.”

## **SECTION 27-37 OF THE CODE**

**Titled, “Purpose”**





# WHAT ABOUT OTHER STAFF MEMBERS AND OFFICERS?





“The city manager shall be the **chief executive officer** of the city government, shall enforce the laws of the city and require the faithful performances of all administrative duties.”

## **CITY MANAGER**

Section 2-187 of  
the Code

Reports to the  
City Council



“The city clerk shall serve as **clerk of the council** and perform such other duties of a like nature as shall be required by that body. In addition, **the city clerk shall be custodian of the public records**; responsible for the recording, filing, indexing and safekeeping of all proceedings of the council; record in full, uniformly and permanently, all ordinances and shall authenticate the same; publish daily all adopted ordinances and resolutions of the council, and all legal notices required by law or ordinance; keep and maintain all elections records and have custody of all property used in connection with elections; prepare, attest and report on the vital statistics of the city; notify the appointing authority of the impending expiration of the term of office of a member of any board or commission, said notice to be given at least thirty (30) days before such expiration; be the custodian of the official seal of the city. The city clerk shall have the power to administer oaths. **The city clerk shall have as his/her particular position and objectives to cooperate and assist the administrator and improve the efficiency of the administration of the city government.**”

## CITY CLERK

Section 2-169 of  
the Code

Reports to the  
City Council



“The city council shall appoint a city attorney who shall act as the **legal adviser to, and attorney and counselor for, the city and all of its officers** in matters relating to their official duties.”

\*\*\*

“The city attorney shall **prepare all contracts, bonds and other instruments in writing** in which the city is concerned, and shall endorse on each his approval of the form and correctness thereof, but failure to do so shall not affect its validity. When required to do so by resolution of the city council, the city attorney shall prosecute and defend for and in behalf of the city all civil complaints, suits and controversies in which the city is a party. The city attorney shall **furnish** the city council, the city manager, the head of any department or any officer **his opinion on any question of law relating to their respective powers and duties.**”

## **CITY ATTORNEY**

**Sections 2-186  
and 2-187 of the  
Code**

**Reports to the  
City Council**



# COMMUNITY DEVELOPMENT DIRECTOR

From job  
description

Reports to City  
Manager

- City Planner:
  - Acts as Zoning Administrator and reviews all applications for compliance with zoning rules in Municipal Code (subdivisions, site plans, annexations, conditional uses, etc.);
  - Provides staff support for Comprehensive Plan updates and Public Outreach;
  - Prepare staff reports for presentation to the Community Development (Design) Board and City Council;
  - Recommends policy and ordinance updates consistent with the City's Vision Plan, and Comprehensive Plan;
  - Provides staff support for other long-range planning activities including Capital Improvement Plans, Strategic Plans and Economic Development Strategy;
  - Monitors zoning permits for compliance;
  - Provides Staff support to review City projects that uphold resiliency, walkability and good urban design standards;
  - Responsible for review of building permits to ensure compliance with City Code;
  - Assists applicants in the Development Order application process while ensuring that the City's Code is met;
  - Prepares staff reports for Development Orders for presentation to the Community Development Board and the City Council;
  - Reviews all applications related to structure for building plans and checks for compliance with the City's Code, if inconsistent with City Code, assists applicants in explaining the variance application process;
  - Compiles and coordinates all concurrency reports that may be required by an applicant as consistent with City Code and Florida Statute.
  
- Director:
  - Responsible for the processes related to Land Development Regulations, Comprehensive Plan Administration, and Evaluation and Appraisal Reports;
  - Represents the City on behalf of the City Manager on Local, State, and Regional Agencies involved in growth management and planning;
  - Performs special projects involving such areas as economic development, long-range and strategic planning;
  - Plans, organizes and directs the work of the department;
  - Manages third party agreement between the City and Building Official;
  - Manages third party agreement between the City and various consultants related to planning and development;
  - Attends all meetings of the Community Development Board;
  - Attends meetings as necessary of the City Council;
  - Motivates and builds trust with employees at all levels of the City organization and mentors employees to provide job skill development and opportunities for professional growth;
  - Sets clear direction for the Department and empowers department team members at all levels to make decisions and recommendations about organizational improvement and innovations;
  - Empowered to manage the daily operations of the department and encouraged to implement necessary process changes to make the department more innovative and efficient.



“The building official is hereby authorized and directed **to enforce the provisions of [the Florida Building Code]**. The building official shall have the authority to render interpretations of [the Florida Building Code] and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of [the Florida Building Code] and shall not have the effect of waiving requirements specifically provided for in [the Florida Building Code].”

## **BUILDING OFFICIAL**

Section 8-27 of the  
Code (an  
incorporated  
provision of the  
Florida Building  
Code)

Reports to the  
Community  
Development  
Director



“Code enforcement officer means the city manager or his designee whose duty it is to enforce codes and ordinances enacted by Neptune Beach.”

## **CODE ENFORCEMENT OFFICER**

Section 2-438 of  
the Code

Reports to the  
City Manager



# TAKEAWAY?

- Everyone has a different and specific role to play.
- The City Manager administers the day to day functions of the City and enforces its laws.
- The City Clerk manages the records of the City and oversees all ministerial functions of the City.
- The City Attorney provides legal advice to the City's representatives and drafts contracts.
- The Community Development Director oversees the functions of zoning and building enforcement.
- The Building Official focuses on application of the Florida Building Code and has no role in determining compliance with the City's zoning provisions.
- The Code Enforcement Officer enforces violations of the Code.
- The CDB is tasked with enforcing the Code as written based on the applications before it.

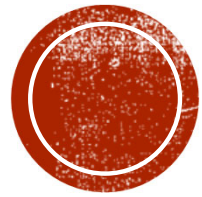


# HOW DOES THE CDB ENFORCE THE CODE “AS WRITTEN”?

- By applying the provisions as currently provided, regardless of the members' views on their propriety.
- By analyzing the facts presented as they relate to the specific findings required by the Code.
- By not substituting one's own judgment for the provisions of the Code.
- By not seeking to find a “compromise” outside of the terms of the Code.
- By not attempting to predict the future – future violations are the task of the Code Enforcement Officer.
- By avoiding discussion of irrelevant topics or Code provisions.
- By discussing, analyzing, and applying relevant evidence to each application so that such matters are established in the record.
- By making the hard decision – sometimes the Code simply doesn't allow what is requested.







# VARIANCES AND SPECIAL EXCEPTIONS

What are they?

How are they different?

What standards apply?

# WHAT ARE THEY?

A "variance" is defined as "the relief granted from the literal enforcement of a zoning ordinance permitting the use of property in a manner otherwise forbidden upon a finding that enforcement of the ordinance as written would inflict practical difficulty or unnecessary hardships on a property owner." *Bd. of Adjustment of Ft. Lauderdale v. Kremer*, 139 So. 2d 448, 451 (Fla. 2d DCA 1962). An "exception" is defined as "a departure from the general provisions of a zoning ordinance granted by legislative process under express provision of the enactment itself."

*Redner v. City of Tampa*, 827 So. 2d 1056, 1059 (Fla. 2d DCA 2002)

A special exception is a permitted use to which the applicant is entitled unless the zoning authority determines according to the standards in the zoning ordinance that such use would adversely affect the public interest.

*Rural New Town, Inc. v. Palm Beach County*, 315 So. 2d 478, 480 (Fla. 4<sup>th</sup> DCA 1975)



(h) *Commercial-1 (C-1):*

- (1) *Intent.* The C-1 zoning districts are intended to provide for office and professional services. This district corresponds to the commercial low designation on the adopted future land use map.
- (2) *Permitted uses.* The uses permitted within the C-1 zoning district shall be:
  - a. Business and professional offices including, architects, accountants, doctors, dentists, miscellaneous health offices and clinics, veterinary clinic, and legal services;
  - b. Financial institution, insurance and real estate offices;
  - c. Travel agencies;
  - d. Photographic studios;
  - e. Public park/recreation area;
  - f. Accessory structures and uses as defined by article V.
- (3) *Uses by special exception.* The uses permitted by special exception within the C-1 zoning district shall be:
  - a. Day spa;
  - b. Parking lot (not associated with any business);
  - c. Government uses, buildings and utilities;
  - d. Elementary, junior and high schools;
  - e. Dance, art, dramatic, gymnastics and music studio;
  - f. Worship facility and child care associated with facility;
  - g. Social, fraternal club, lodge and union hall;
  - h. Library, museum and art gallery.

## **CODE EXAMPLE OF A SPECIAL EXCEPTION**

**Section 27-226(h) of  
the Code**



The community development board may not recommend for approval a special exception unless it makes a positive finding, based on substantial competent evidence, on each of the following, to the extent applicable:

- (1) The proposed use is consistent with the comprehensive plan;
- (2) The proposed use would be compatible with the general character of the area, considering the population density; the design, density, scale, location, and orientation of existing and permissible structures in the area; property values; and the location of existing similar uses;
- (3) The proposed use would not have an environmental impact inconsistent with the health, safety and welfare of the community;
- (4) The proposed use would not generate or otherwise cause conditions that would have a detrimental effect on vehicular traffic, pedestrian movement, or parking inconsistent with the health, safety and welfare of the community;
- (5) The proposed use would not have a detrimental effect on the future development of the area as allowed in the comprehensive plan;
- (6) The proposed use would not result in the creation of objectionable or excessive noise, light, vibration, fumes, odors, dust or physical activities inconsistent with existing or permissible uses in the area;
- (7) The proposed use would not overburden existing public services and facilities; and
- (8) The proposed use meets all other requirements as provided for elsewhere in this Code.

## **CODE REQUIREMENTS TO GRANT SPECIAL EXCEPTION**

**Section 27-160 of  
the Code**



# HOW ARE THEY DIFFERENT?

If certain facts or circumstances specified in the ordinance are found to exist, then either on a direct application, or on an appeal from an administrative order enforcing the zoning ordinance, a Board of Adjustment may grant an exception. **A variance is entirely different from an exception** although the terms are sometimes, in error used synonymously. **In the absence of a specific provision of law requiring it, one need not show unusual hardships to secure an exception.** An ordinance granting the power to make exceptions must contain proper standards or rule of guidance, and under such circumstances, the Board is not rezoning or usurping legislative power.

*Redner v. City of Tampa*, 827 So. 2d 1056, 1059 (Fla. 2d DCA 2002)



# WHAT ARE THE BURDENS OF PROOF? - GENERALLY

Generally, in proceedings on an application for rezoning or a variance from a zoning classification, **the applicant has the burden of clearly establishing such right.** *Irvine v. Duval County Planning Commission*, 466 So.2d 357, 362, 364 (Fla. 1st DCA 1985) (Zehmer, J., dissenting). See also *Rural New Town, Inc. v. Palm Beach County*, 315 So.2d 478 (Fla. 4th DCA 1975). However, **in proceedings on an application to obtain a permissible use by special exception pursuant to express provision in the zoning ordinance, "where the applicant has otherwise complied with those conditions set forth in the zoning code, the burden is upon the zoning authority to demonstrate by substantial competent evidence that the special exception is adverse to the public interest** (emphasis in the opinion)."

*Planning Com. of Jacksonville v. Brooks*, 579 So. 2d 270, 273 (Fla. 1<sup>st</sup> DCA 1991)



# WHAT ARE THE BURDENS OF PROOF? - VARIANCES

As a general rule, **the applicant has the burden** to come before the Board of Adjustment and establish the requirements for a variance. [citations omitted]. **The burden upon a petitioner for a variance is more extensive than the burden upon a party seeking a permissible use by special exception.**

*Gomez v. St. Petersburg*, 550 So. 2d 7, 8 (Fla. 2d DCA 1989)

On review of an administrative grant of a zoning variance, **the standard is not whether variances have been granted to similarly-situated applicants in the community, or whether the grant of the variance would have a deleterious impact on the surrounding area.**

*Herrera v. Miami*, 600 So. 2d 561, 563 (Fla. 3d DCA 1992)



# WHAT ARE THE BURDENS OF PROOF? — SPECIAL EXCEPTIONS

Since the exception bears legislative sanction, however, **the burden of the applicant is much lighter than it would be if he sought a use variance.**

*Irvine v. Duval County Planning Com.*, 466 So. 2d 357, 365 (Fla. 1<sup>st</sup> DCA 1985)

Once the petitioner has met this burden, **the burden shifts** to the opposing party to demonstrate by competent, substantial evidence that the special exception does not meet those standards and is adverse to the public interest. *Id.*; see also *Fla. Power & Light Co. v. City of Dania*, 761 So. 2d 1089, 1091-92 (Fla. 2000). **The burden is on the City to ensure that an adequate record of the evidence presented at the hearing is prepared and presented to the circuit court for review.** *Irvine*, 466 So. 2d at 366. The failure of the agency reviewing the petition to make findings of fact in its order **constitutes a departure from the essential requirements of the law.**

*Redner v. City of Tampa*, 827 So. 2d 1056, 1059 (Fla. 2d DCA 2002)

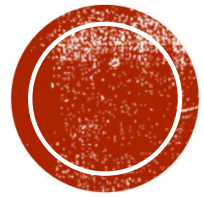




# TAKEAWAY?

- With a variance, the burden is entirely on the applicant to prove an entitlement, but the Board should be sure to discuss the evidence for and against whether the applicant has made such a showing. The burden is very high and, for that reason, most variance requests likely do not meet the standard.
- Special exceptions feature lower, shifting burdens; once an applicant meets their initial burden, it is the burden of the City to establish evidence contrary if the application is not to be approved.





# VARIANCES

A Deeper Dive

# WHAT IS THE POINT OF A VARIANCE?

A variance should not be granted where the use to be authorized thereby will alter the essential character of the locality, or interfere with the zoning plan for the area and with rights of owners of other property; and a variance which permits a use not authorized by an existing zoning classification fixed under a planned zoning of the area or neighborhood, **generally is not justified unless the land cannot yield a reasonable return when used only for purposes authorized in its present zoning.**

*Elwyn v. Miami*, 113 So. 2d 849, 852 (Fla. 3d DCA 1959).

- In *Elwyn*, the court found the variance was not proper because “From the complaint it appears that the variance was sought for the economic advantage of the applicant, and not because the property was not reasonably and profitably usable for one or another of the purposes for which it was zoned.”
  - This is not the purpose for which variances exist.



The community development board shall not recommend approval of, any variance unless it makes a positive finding, based on substantial competent evidence presented at the public hearing, on each of the following criteria:

- (1) The property has unique and peculiar circumstances, which create an exceptional and unique hardship. For the purpose of this determination, the unique hardship shall be unique to the parcel and not shared by other property owners in the same zoning district.
- (2) The proposed variance is the minimum necessary to allow the reasonable use of the parcel of land.
- (3) The proposed variance would not adversely affect adjacent and nearby properties or the public in general.
- (4) The proposed variance will not substantially diminish property values in, nor alter the essential character of, the area surrounding the site.
- (5) The effect of the proposed variance is in harmony with the general intent of the ULDC and the specific intent of the relevant subject area(s) of the ULDC.
- (6) The need for the variance has not been created by the actions of the property owner or developer nor is the result of mere disregard for the provisions from which relief is sought.
- (7) Granting the variance will not confer upon the applicant any special privilege that is denied by the ULDC to other lands, buildings, or structures in the same zoning district.

## **REMINDER OF THE ELEMENTS FROM OUR CODE**

**Section 27-147 of  
the Code**



The community development board shall not recommend approval of, any variance unless it makes a positive finding, based on substantial competent evidence presented at the public hearing, on each of the following criteria:

- (1) The property has unique and peculiar circumstances, which create an exceptional and unique hardship. For the purpose of this determination, the unique hardship shall be unique to the parcel and not shared by other property owners in the same zoning district.
- (3) The proposed variance would not adversely affect adjacent and nearby properties or the public in general.
- (4) The proposed variance will not substantially diminish property values in, nor alter the essential character of, the area surrounding the site.
- (5) The effect of the proposed variance is in harmony with the general intent of the ULDC and the specific intent of the relevant subject area(s) of the ULDC.
- (6) The need for the variance has not been created by the actions of the property owner or developer nor is the result of mere disregard for the provisions from which relief is sought.

district.



# UNIQUE AND PECULIAR CIRCUMSTANCES / EXCEPTIONAL AND UNIQUE HARDSHIP

The requisite hardship may not be found unless there is a showing that under present zoning, **no reasonable use can be made of the property.**

*Thompson v. Planning Com. of Jacksonville*, 464 So. 2d 1231, 123 (Fla. 1<sup>st</sup> DCA 1985)

They must be peculiar to that particular property, and not general in character, since difficulties or hardships shared with others in the area go to the reasonableness of the zoning generally, and will not support a variance. If the hardship is one which is common to the area the remedy is to seek a change of the zoning for the neighborhood rather than to seek a change through a variance for an individual owner. **Thus some exceptional and undue hardship to the individual land owner, unique to that parcel of property and not shared by property owners in the area, is an essential prerequisite to the granting of such a variance.**

*Elwyn v. Miami*, 113 So. 2d 849, 852 (Fla. 3d DCA 1959)



## UNIQUE AND PECULIAR CIRCUMSTANCES / EXCEPTIONAL AND UNIQUE HARDSHIP (CONT.)

"Unnecessary hardship' has generally been defined as a non-self created characteristic of the property in question **which renders it virtually impossible to use the land for the purpose or in the manner for which it is zoned.**" *Id.* at 1155 n.2 (Fletcher, J., concurring); see also *Maturo v. City of Coral Gables*, 619 So. 2d 455, 456 (Fla. 3d DCA 1993)(stating that "a legal hardship will be found to exist only in those cases where the property is **virtually unusable or incapable of yielding a reasonable return when used pursuant to the applicable zoning regulations**"); *Herrera v. City of Miami*, 600 So. 2d 561, 562 (Fla. 3d DCA 1992)(holding that a variance may be issued only when **no reasonable use** can be made of the property without the variance).

*Fine v. City of Coral Gables*, 958 So. 2d 433 (Fla. 3d DCA 2007)



## UNIQUE AND PECULIAR CIRCUMSTANCES / EXCEPTIONAL AND UNIQUE HARDSHIP (CONT.)

There is not a unique hardship simply because the desired use or a more aesthetically pleasing use is not available:

Nance gave his opinion that the variances granted were the minimum necessary to build an economically feasible motel, but he did not define what he considered economically feasible or offer any evidence in support of his position. In fact, Nance's architect testified that Nance could build a motel on those two lots within the zoning code, but that the building would not be aesthetically pleasing. As stated in *Thompson v. Planning Commission of City of Jacksonville*, 464 So.2d 1231 (Fla. 1st DCA 1985), **a hardship may not be found unless no reasonable use (in this case, for a motel) can be made of the property.**

*Indialantic v. Nance*, 485 So. 2d 1318 (Fla. 5<sup>th</sup> DCA 1986)





# BOTTOM LINE ON UNIQUE HARDSHIP

- A hardship is sufficient for a variance when it:

“renders it **virtually impossible** to use the land for the purpose or in the manner for which it is zoned.”

*Hemisphere Equity Realty Co. v. Key Biscayne Prop. Taxpayers Ass'n*, 369 So. 2d 996 (Fla. 3d DCA 1979)



# NOT CREATED BY OWNER OR IN DISREGARD OF CODE

One who purchases property while it is in a certain known zoning classification, ordinarily will not be heard to claim as a hardship a factor or factors which existed at the time he acquired the property...A self-imposed or self-acquired hardship **(such as by purchasing property under existing zoning and then applying for a variance)** is not the kind of hardship for which variance should be granted.

When the owner himself by his own conduct creates the exact hardship which he alleges to exist, he certainly should not be permitted to take advantage of it

*Elwyn v. Miami*, 113 So. 2d 849, 852 (Fla. 3d DCA 1959)

An owner is legally obligated to examine the public records of the zoning authority and is on constructive notice of the ordinances, resolutions, and filed plans and restrictions governing a parcel of property.

*Delray Beach v. DeLeonibus*, 2024 Fla. App. LEXIS 682 (Fla. 4th DCA, Jan. 31, 2024)



# NOT CREATED BY OWNER OR IN DISREGARD OF CODE (CONT.)

They purchased the property subject to all applicable zoning restrictions. The owner of land is chargeable with knowledge of general laws prescribing the manner in which it may be enjoyed or the title thereto affected. *McDaniel v. McElvy*, 91 Fla. 770, 108 So. 820, 831 (Fla.1926). Therefore, **having purchased this land subject to the set-back ordinance, appellees Feinbergs are estopped to assert any hardship created by virtue of the set-back ordinance.**

*Allstate Mortg. Corp. v. Miami Beach*, 308 So. 2d 629 (Fla. 3d DCA 1975)

Before purchasing the property, the owners were fully aware of its shape and size, but still designed a building which was too large for the lot, leaving insufficient room for code required parking. **The hardship arose solely from their own conduct and expectations.**

*Thompson v. Planning Com. of Jacksonville*, 464 So. 2d 1231, 123 (Fla. 1<sup>st</sup> DCA 1985)



# **BOTTOM LINE ON SELF CREATED**

- You bought it, you own it.
- It is self-created if you purchased subject to the zoning, the zoning has not changed, and you want to do something contrary to that zoning.



# GREAT EXAMPLE OF WHAT IS NOT OK!

Apparently what has been done in this case is to use the variance procedure as a means of effecting a change in the zoning of two city lots which do not appear to have any unusual or peculiar differentials from the properties surrounding them.

*Friedland v. Hollywood*, 130 So. 2d 306, 308 (Fla. 2d DCA 1961)

In *Friedland*, the city granted the right to construct a service station on a property where such use was not permitted under the zoning code.



# BOTTOM LINE ON VARIANCES

The general rule is that variances are to be granted sparingly, only in rare instances and under peculiar and exceptional circumstances.

*Kaeslin v. Adams*, 97 So. 2d 461 (Fla. 1957)



# WHY IS THIS ALL IMPORTANT?

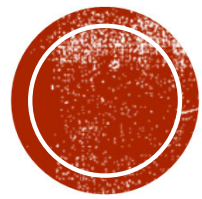
Moreover, as property owners situated immediately across the street from the owners, appellants "have a right to rely on existing zoning conditions and they have a right to a continuation of these conditions in the absence of a showing" that the variance is proper. **If the owners have not made the proper showing for a variance, appellants' rights will be irreparably harmed.**

*Thompson v. Planning Com. of Jacksonville*, 464 So. 2d 1231, 123 (Fla. 1<sup>st</sup> DCA 1985)

"As neighboring property owners, the appellants had a right to rely on existing zoning conditions and **they had a right to a continuation of those conditions** in the absence of a showing that a variance was necessary."

*Herrera v. Miami*, 600 So. 2d 561, 563 (Fla. 3d DCA 1992)





# EX-PARTE COMMUNICATIONS

Bonus Topic!



# WHAT IS AN EX-PARTE COMMUNICATION?

“Ex-Parte” means “by or for one party” – essentially only one party to the matter is privy to what is said.

Ex-Parte Communication is any discussion with local public officials regarding the merits of any matter on which action may be taken by the local public official outside of a publicly noticed meeting.

“Discussions” include all email, phone calls, text messages, as well as face to face meetings.

For purposes of these discussions, independent investigations undertaken by local public officials are also subject to regulation as ex-parte communication.



# WHAT IS THE EFFECT OF EX-PARTE COMMUNICATION?

Ex-Parte Communication is permissible unless expressly prohibited by law, but such communications, discussions, and investigations create a rebuttable presumption of prejudice, or bias, by the local official.

Such presumption can be removed through disclosure.

Such disclosure must occur on the record by announcement of the subject and identity of the persons, groups, or entities that have communicated with the public official before final action is taken on the matters.

Why? So other interested parties can address and rebut those communications.



# HOW DOES THE CITY HANDLE DISCLOSURE OF EX-PARTE COMMUNICATION?

The City adopted an ordinance specifically governing the protocol for disclosure of ex-parte communication.

That ordinance is 27-23 of the Code.



**Sec. 27-23. - Adopting disclosure procedures related to ex-parte communications with public officials.**



The city council of the city hereby adopts the following public disclosure process relating to elected and/or appointed public officials who hold positions on any board, council or commission charged with making recommendations and/or taking final action on any quasi-judicial proceeding.

Access permitted: Any person not otherwise prohibited by statute, Charter provision or ordinance may discuss with any local public official (elected and/or appointed) the merits of any matter on which quasi-judicial action may be taken by any board, council or commission on which the local public official is a member, so long as the following process is observed:

- (1) The substance of any ex parte communication with a local public official (appointed and/or elected) which relates to quasi-judicial action pending before the official shall not be presumed prejudicial to the action if the subject of the communication and the identity of the person, group or entity with whom the communication took place is disclosed and made a part of the record before final action on the matter.
- (2) A local public official may read a written communication from any person. However, a written communication that relates to quasi-judicial action pending before a local public official shall not be presumed prejudicial to the action and such written communication shall be made a part of the record before final action on the matter.
- (3) Local public officials may conduct investigations and site visits and may receive expert opinions regarding quasi-judicial action pending before them. Such activities shall not be presumed prejudicial to the action if the existence of the investigation, site visit or expert opinion is made a part of the record before final action on the matter.
- (4) Disclosure made pursuant to subsections (1), (2) and (3) must be made during the public meeting, but prior to the vote being taken on such matters, so that persons who have opinions contrary to those expressed in the ex-parte communication are given a reasonable opportunity to refute or respond to the communication. This section shall not subject local public officials to F.S. Ch. 112, Pt. III, for not complying with this subsection.

(Ord. No. 2004-10, § 1, 10-4-04)

# **CODE PROVISION REGARDING EX- PARTE COMMUNICATIONS**

## **Section 27-23 of the Code**



# TAKEAWAYS?

Disclose prior to the vote:

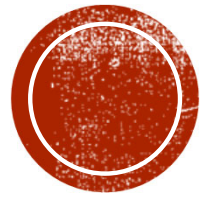
The subject matter of the communication

The identity of the party with whom the communication took place

Submit any written communication received to be made part of the record

Announce any investigations undertaken





**QUESTIONS?**

