

Appeal to DENY Case No. 21-54000071

Dr. Ed Carlson

FLOW

- ~ **Character**
- ~ **Trees**
- ~ **Real Impacts of Previous Variances**
- ~ **Scale**
- ~ **Design**
- ~ **Legal Ordinances, LDRs, Comp Plan, Vision 2050**
- ~ **Attorney's Memorandum of Law (Exhibit 1)**
- ~ **Summary**

Preserve The JUNGLE: Unique historic Character and lush Tree shaded streets. Small homes nestled in the canopy of ancient Live Oaks.

70 years ago, I often paid a nickel to ride the Trolley from town out to JUNGLE Prada ... helped flip the seats over to return.

My love for The JUNGLE developed.

Growing up near Bartlett Park, I was enthralled with The JUNGLE . . .

I yearned to live there . . .

and I have lived in The JUNGLE for 50 years!!!

We Provide Many Powerful Realities to DENY this Application.

***1 min

THIS is Jungle Terrace

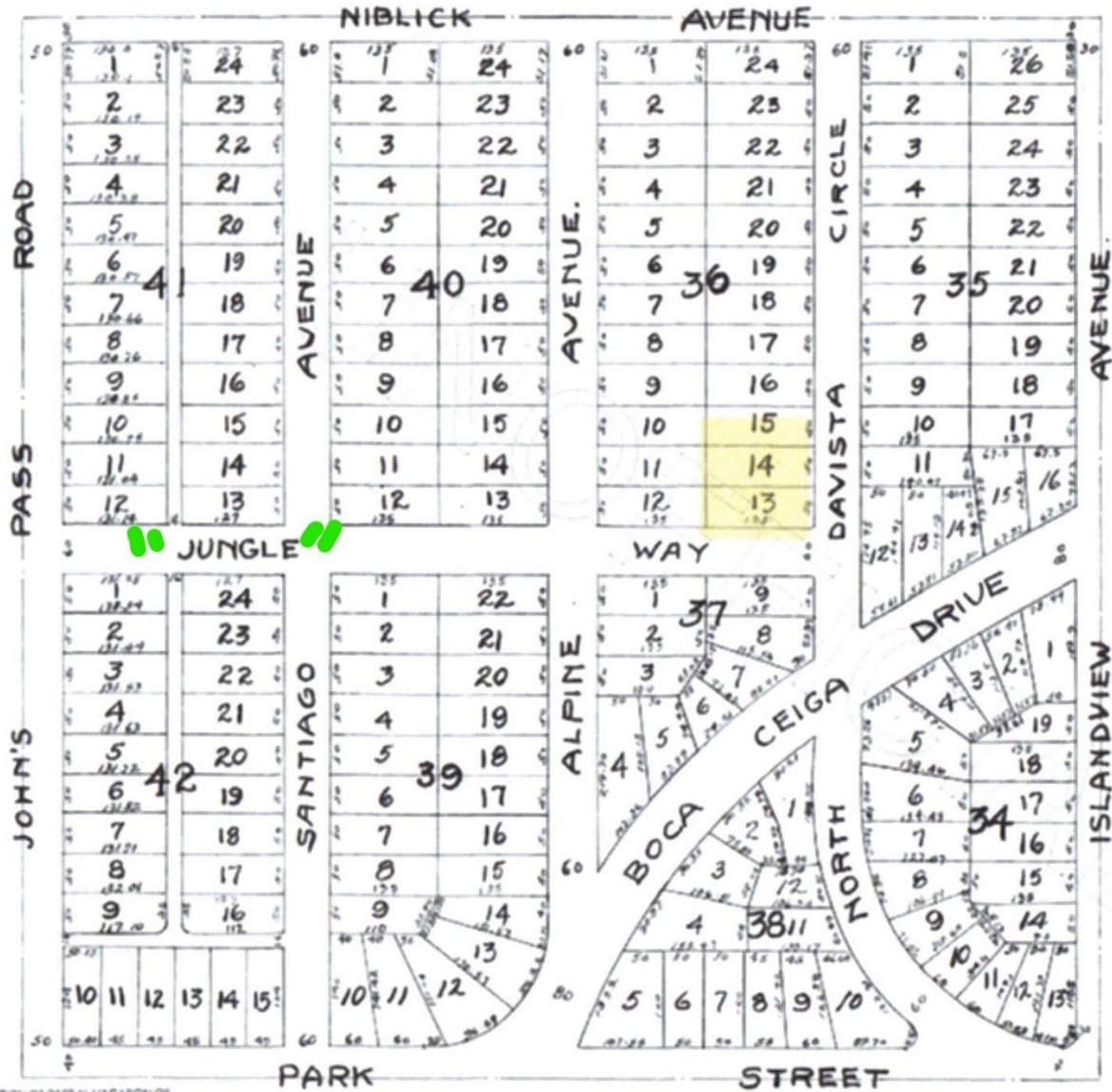


1915 Jungle Trolley

The JUNGLE was here long before St. Petersburg was founded. Early developers honored the Jungle's uniqueness and history. In 1916, 105 years ago, **Jungle** Golf Course opened, then the **Jungle Hotel**, and **Jungle Prada, Jungle Terrace** platted by Walter Fuller, **Jungle Way, Jungle Avenue, Jungle Prada Narvaez Park**, plus mounds of Tocobaga Indians, who chose The Jungle.

Historian Steve Elfman: The Jungle is an amazing neighborhood with a celebrated history. In 1900, this area was so wild and lush with tall oak trees that the first developers named it "the Jungle." In the Roaring Twenties, Walter Fuller began selling home sites using the slogan "**Jungle Terrace: Where Nature Did Her Best.**" Today, the Jungle is known for its tree-lined streets, shaded homes and a canopy of ancient oaks that are a prominent feature of the neighborhood.

1920s plat by Walter Fuller



RESOLUTION OF PARTIAL VACATION OF
JUNGLE TERRACE SEC D
 SUBDIVISION HAS BEEN RECORDED IN
 O. R. BOOK 2650 PAGE 1177
 ON 8/12 1991
 KAREN T. DEBLAKER
 Clerk of the Circuit Court
 By [Signature] Deputy Clerk

RESOLUTION OF PARTIAL VACATION OF
Jungle Terrace Sec D
 SUBDIVISION HAS BEEN REC. IN
 O. R. BOOK 4265 PAGE 495
 ON 3-8- 1975
 BARBARA WELLS

"JUNGLE" TERRACE SECTION 'D'

Being a Sub-Division of the N.W. 1/4 of the N.E. 1/4 of Sec. 12 Twp. 31 So. R. 15 E.

FULLER-HUNTER CORP OWNERS.
 by Walter P. Fuller Pres.

1925 St. Petersburg TIMES

“JUNGLE NEWS in PICTURES”

says

“TREES, BEAUTIFUL TREES ~ Old, old trees grow through Jungle Terrace.
Thousands of trees . . .”

ST. PETERSBURG TIMES

JUNGLE NEWS in PICTURES



GROUP 1, 2, 3—TREES, BEAUTIFUL TREES—Old, old trees grow through Jungle Terrace and Jungle Terrace Properties. Thousands of trees, alders, flowers, palms, grass—all grow easily. This is because the soil is rich. And through Jungle Terrace you will find dark, black earth—very fertile—twenty to twenty-five feet above the level of sunny Boca Ciega Bay.



TOO CURIOUS—The Mr. Oates you faced with a hook and line way out in the Gulf—and here he is on Jungle Pier.



IN THE JUNGLE—Of typically Moorish design is the Dining House and Shops building, the end facing Boca Ciega Bay being shown here. The structure extends from near the beach to Park street. In the rear will be the Botanical Gardens.



BUILDERS—Among the most popular of the army of skilled mechanics working in Jungle Properties now are E. G. Duhon and P. D. Elger, employed on Jungle Dining House and Shops Building.



JUNGLE TERRACE
"where Nature Did Best"

JUNGLE TERRACE
"where Nature Did Best"

WITH ROD AND REEL—Certainly, this tourist smiles—with a catch like that!



ON JUNGLE BEACH—Is plenty of parking space for the machines of fishermen and fishermen, as well as shell-hunters. Shell there are, sand and sun, on Jungle Beach.



FROM AUBURN, ILLINOIS—Comes Mr. J. S. Leith. He advises Jungle Properties. His son A. Leith is head of A. Leith Co., operating 18 furniture stores through Iowa, Illinois and Wisconsin. Mr. Leith, Sr., will pass through and see, plays many rounds of golf at Jungle Golf and Country Club.



JUNGLE NURSERIES—Now being built by Allen-Fuller Corporation in Jungle Properties. The first part, part of which is shown here, will house five hundred "baby" royal palms.

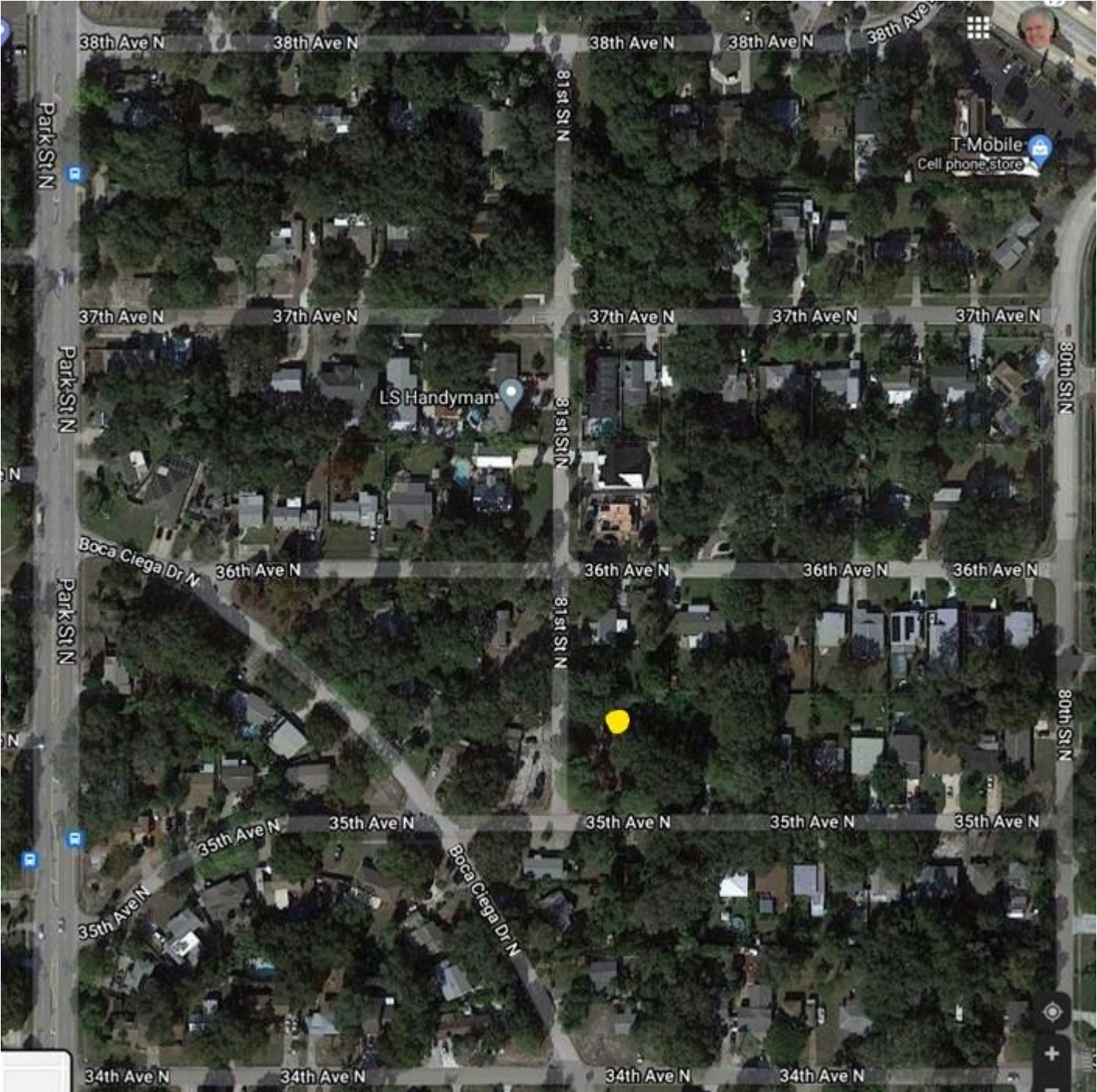


FISHIN' IS GOOD—Of Jungle pier the fishing boats ply. And every time George Warfield, prominent in Jackson, Mich., takes his trusty Pfleger with him he lands "every time."

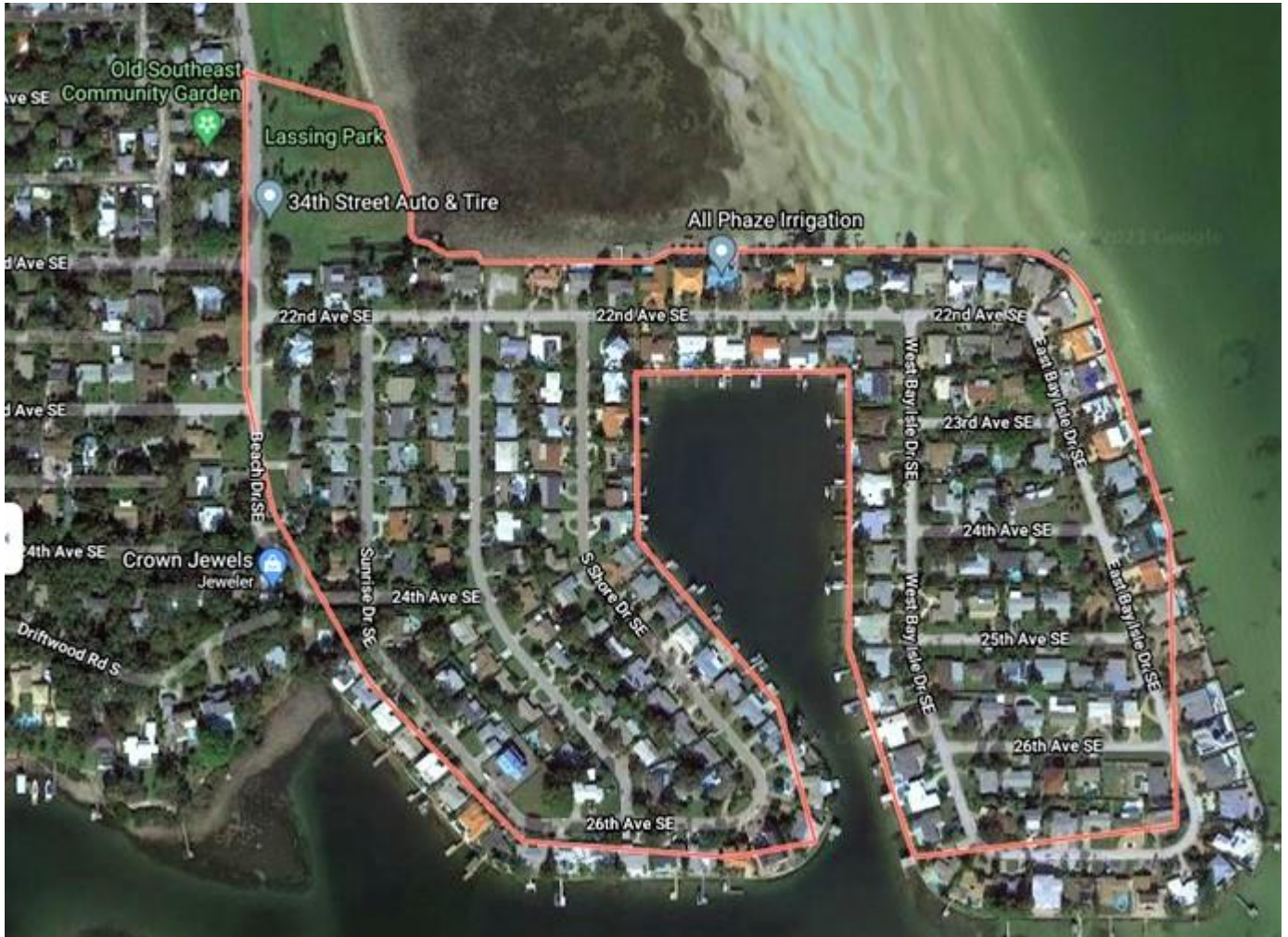


BACK FROM THE GULF—One of the attractions of Jungle Properties and Jungle Terrace Properties is fishing. And here is the Tarpon boat. Yes, they land good fish. Dozens of kings and others a-plenty.

**8 Blocks of Dense Tree Canopy
Including variance property at yellow dot.**



**Tropical Shore ~ 70 Years Ago in 1950s
Very Few Mature Trees
Tree Canopies have Great Value.**



**Yacht Club Estates ~ 70 Years Ago in 1950s
Very Few Mature Trees
Tree Canopies have Great Value.**



Canopy Streets of JUNGLE Terrace

Standing in one place.



Old Stand Urban Forest



Variance Property Canopy Streets
Standing in one place.





Old Stand Urban Forest

St. Pete “Tree City” ~ 35 Years



Print this page | Text resize

MORE TREES, PLEASE

Trees and greenspace are an important part of St. Pete’s built and natural environment. They promote social, economic, and environmental health by capturing and slowing rain, filtering air pollution, providing shade and healthier environments, providing food and habitat to local flora and fauna, and contributing to the character and aesthetic beauty of the city’s neighborhoods and business districts.

The City of St. Petersburg has been awarded the [Tree City USA award](#) for 35 consecutive years, from 1986 to 2020.

“Trees promote social, economic, and environmental health by capturing and slowing rain, filtering air pollution, providing shade and healthier environments, providing food and habitat to local flora and fauna, and contribute to the character and esthetics of the city’s neighborhoods . . .”

A Grand Oak stores 10,000 pounds of Carbon ...

Produces 260 pounds of Oxygen per year x 100yrs = 26,000 lbs.

Combats climate change. (Exhibit 2)

Health and wellbeing of neighbors: CO2: In . . . OXYGEN: Out.

“1 mature leafy tree produces enough Oxygen to allow 10 of us to breathe. Oxygen levels are expected to become 6% lower.”

https://www.google.com/search?q=how+much+oxygen+does+100+year+oak+tree+produce&rlz=1C1CHZL_enUS761US761&og=How+much+oxygen+does+100+year+oak&aqs=chrome.1.69i57j33i22i29i30i3.22464j0j7&sourceid=chrome&ie=UTF-8

<https://www.thoughtco.com/how-much-oxygen-does-one-tree-produce-606785>

Real RESULTS of 3 Previous Variances

What we learned . . .

Denuded all 6 properties –

Wounds and Scars on the Heart of Jungle Terrace!

5 ~ NO Specimen, Protected, Signature, Grand, Understory Trees.

1 ~ a single small understory tree on right-of-way.

Allowing this variance = breaks the dike ...

and is a SPEAR in the heart of Jungle Terrace.

Because we made 3 mistakes . . . and learned . . .
is not a “reason” to keep repeating them.



Slaughtered old stand ancient Grand Oak Tree “remains”
on Weekley property ~ See their Sign!
SYMBOLIC of what they do to property.

Weekley Homes Scours Lots . . . Now

8075 36th Ave N ~ Weekley



4 adjacent properties already DENUDED. 13, 14 by Weekley

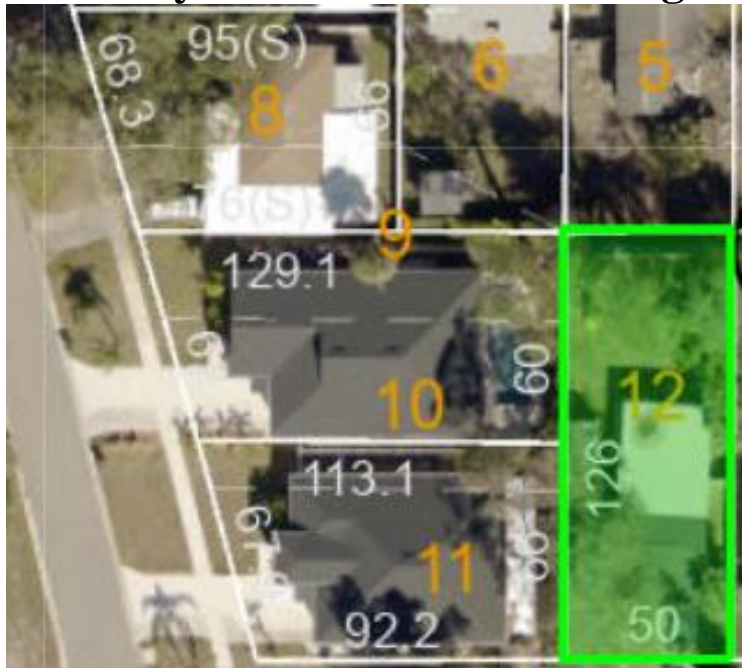


Variance #3 by Staff Bottom left 2 properties. 15 Now property.
TG 2,858sf + TG 2,794sf

Variance #3 listed by Staff ~ 2019



Variance #1 listed by Staff ~ 3201 Boca Ciega Dr N (2018)



**Both properties DENUDED!
TG 2,728 + TG 3,015**



Variance #2 listed by Staff

3339 Boca Ceiga Dr. two monsters next to classic home. (2018)

2,336 sf + 2,197sf vs **882sf**

(The Requested Variance designs are 100s of sf feet larger!)



Denuding lots... Removing all trees ... in preparation



DENUDED Results in 2021 – 3339 Boca Ceiga Dr. ~ 9, 10, 8

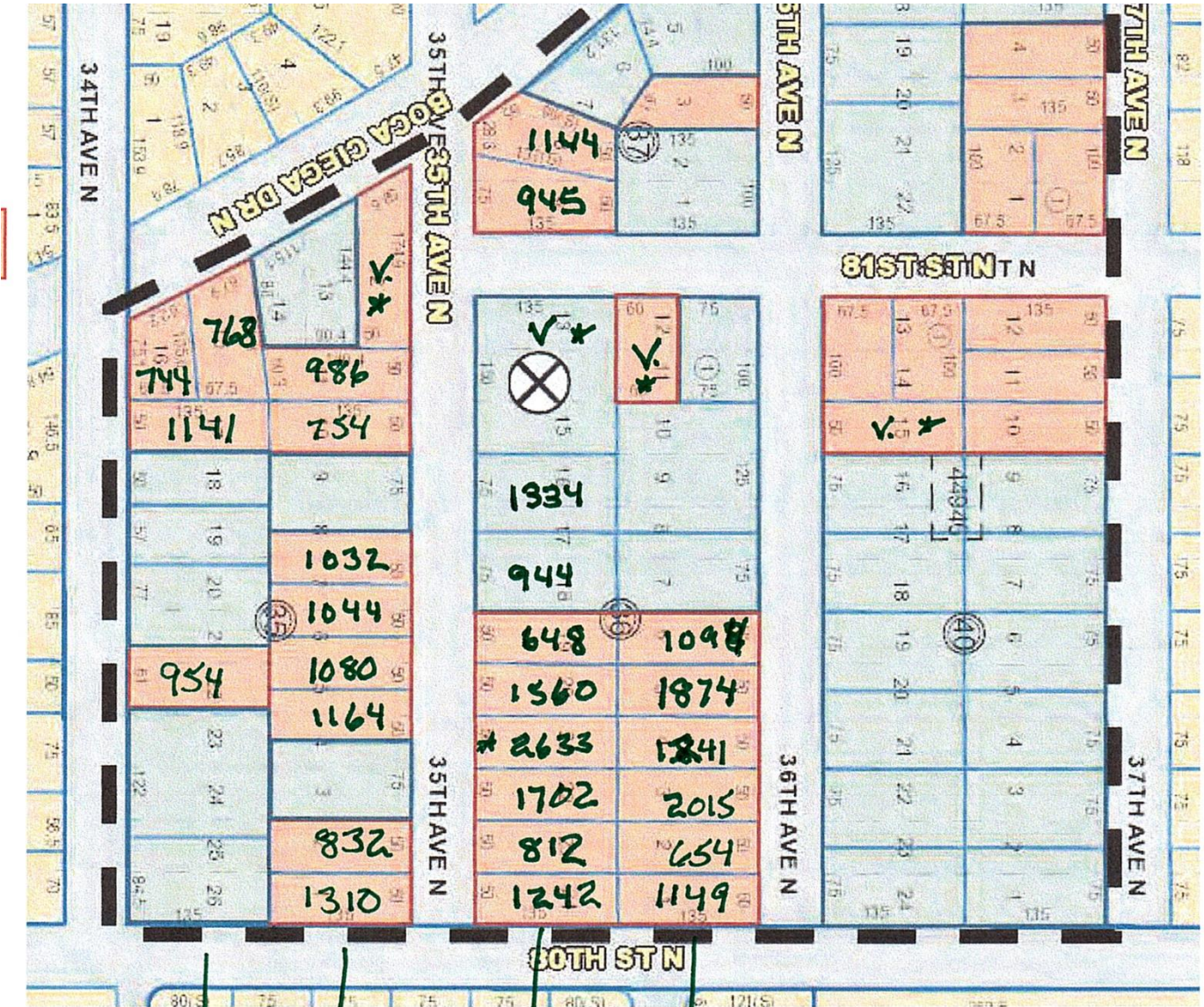


Done RIGHT!

8000 34th St N, 70' lot, 3,200 sq ft. + adjacent greater than 50' lot.



CHARACTER and Existing Scale



AVERAGE 920 1,025 1,193 1,338 * OUTLIERS OMIT
 4 VACANT LOTS
 1 LARGE HOUSE

Total Living sf. Average: 920sf; 1025sf; 1193sf; 1,338sf

Smallest 648sf (closest on block to Variance prop)

20 No garages.

All 27 homes on 50' lots are less that \$250,000, but 4.

Variance houses are 2X, 3X, 4X size of neighborhood homes nestled in canopy of trees.

Small home across street to west: 945 sf



Homes Across 35th Av: 754 sf + 986 sf ~ very low roof



**4 Homes 2 in, from 80th St on 35 & 36 Av, 50' lots, Block + Face
812 sf**



832 sf



654 sf



On 75' lot: 1,304 sf



Closest 50' lot home on same side of street, 648 sf.



NS-1

**“Horizontally oriented architecture,
relatively large lots, and frontages.”**

“Typically, lots are a minimum of 60 feet wide with
majority of lots having a **minimum width of 75 feet.**
... allowing **gracious front yards and landscaping opportunities.**

16.20.020.1. - History and composition of suburban neighborhoods.

Protect the single-family character

- ... **in keeping with the scale of the neighborhood.**
- ... **reflect and reinforce their unique character.**

16.20.020.2. - Purpose and intent.

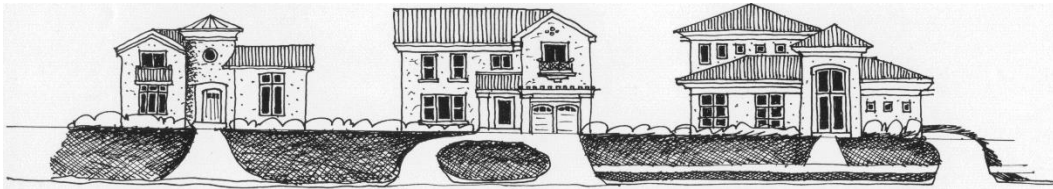
Standards allow for additions and improvements, while **respecting the existing development pattern and the character of the neighborhoods.**

16.20.020.5. - Introduction to NS districts.



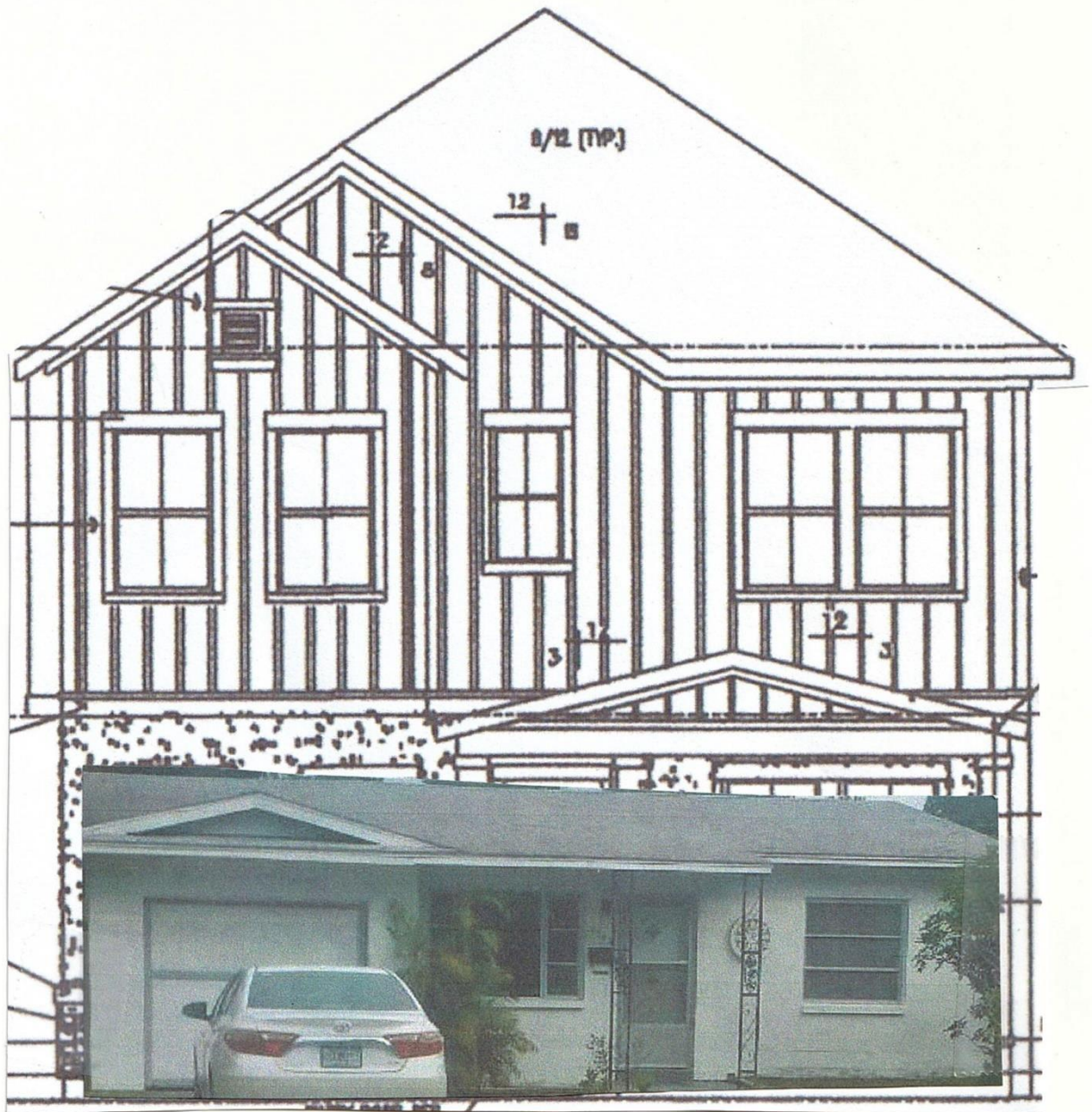
**Typical Single-Family Homes Within the NS-1 District
{HORIZONTAL}**

16.20.020.5.1. Neighborhood Suburban-1
75' Lots



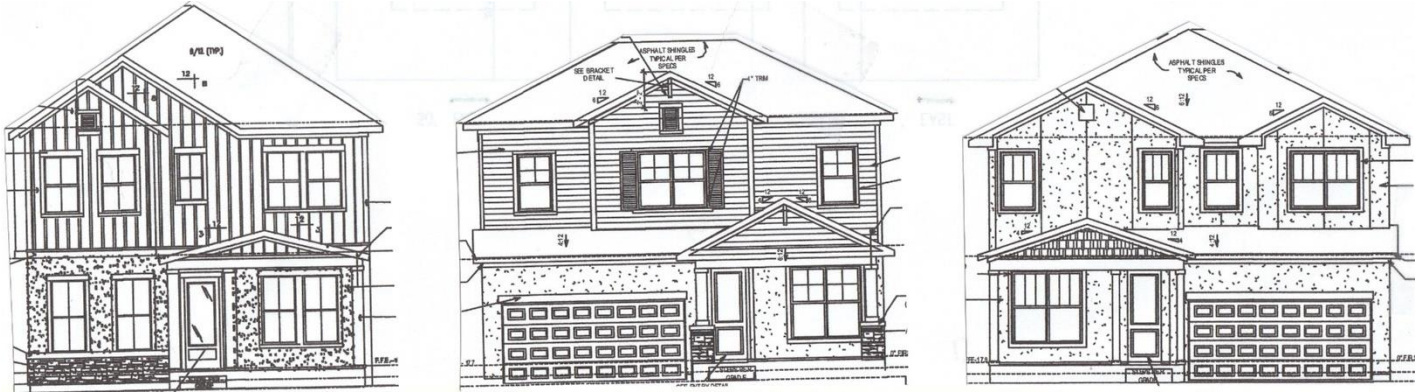
Typical Single-Family Homes Within the NS-2 District
16.20.020.5.2. Neighborhood Suburban-2 (NS-2).
100' Lots

SCALE ~ 3 x Height
33'- 6" vs 11'



3 in a Row, Side by Side, 33'6" High x 35' Wide

Massive 2 story, high roof, nothing this big in Jungle Terrace.



“Substantially similar design cannot be replicated. There shall be a minimum separation of three parcels in every direction before a substantially similar design can be repeated.

16.20.020.12. - Building and site design.

16.20.020.7. - Building envelope: Maximum height and minimum setbacks.

*****Building height is over 24 feet, requires:**

Front yard 35' + Rear Yard 30' from 135' = 70' buildable

Lot 13 design is 82' in length! Front setback now is 20'.

Side yard 15' x 2 = 30' from 50' is 20' buildable. Now is 7.5'.

Street Side 20'+15' = 35' from 50' = 15' buildable. Now 17.5'.

Rear Yard 30 ft

Not long enough or wide enough to build on!

Sidewalks not in site plan. Required.

Building Setbacks		
		If building height is over 24 ft.
Front Yard	Stoop	35 ft.
	Open Porch ⁽¹⁾	35 ft.
	Building	35 ft.
Interior Side Yard		15 ft.
Street Side Yard		20 ft.
Rear Yard	Principal	30 ft.

“... due regard shall be shown for all natural features such as **large trees** ... and similar community assets.

16.40.140.4.8. - Preservation of natural features.

Trees ~ Staff Report ~ Good photos of 19 Trees on Property

“Both Grand Live Oaks and all other code protected trees not referenced above that are on-site are anticipated to remain on-site.”

Report lists 19 protected trees, with 2 removals = 17 trees to remain.

Doubtful even a few will be saved, cramming 3 giant houses on 50’ lots.

If it were legal, I’d make \$10,000 bet with Staff / DRC that majority of trees are lost. . .

“HB 1159, has been disastrous for local municipal tree protection efforts.” (2019)

Article: “Put more focus on saving the older trees.”

This is DRC’s chance to preserve trees.

Design ~ 6-7 Bedroom houses: 4 Bdrms + Owners Retreat (master) (5), Retreat 11x17 w/closet (6), Study w/closet (7).

Lot 13: Total Living 2,671sf + Lanai 136 + Garage 411 + Front Porch 158 = T. Gross **3,378 sf**

16.20.020.6. - Maximum development potential.

Maintain community character ...benefit character of the neighborhood and reduce the appearance of mass and bulk from public view.

		NS-1	NS-2
Minimum lot width	Residential	75 ft.	100 ft.
	Nonresidential	150 ft.	200 ft.
Minimum lot area	Residential	5,800 sq. ft.	8,700 sq. ft.
	Nonresidential	1.0 acre	1.0 acre

5,800sf / 75' = 75 foot lot 77.3' deep.

(10' x 580' = 5,800 sf)

16.60.010.3. - Minimum lot area.

A. the term "lot" means one or more lots, plots, or parcels of land under common ownership.

(Thus Weekley has ONE lot, not 2 x 75' lots.)

3501 81st St N Lot ~

There was one 1,500 sf home on 2 x 75' lots.

Replacing it with 3 houses of 9,000+sf TG area.

6 times as Big. On same property.

Not congruent!

Staff Report ~ Nonconforming Lots

“56% of the properties are substandard in terms of lot width.”

a. **80%** or more of the **lots** on the subject block and any **lots** on the surrounding block faces which block faces are **also substandard for width and/or area**,
[56% is far less than 80%]

16.60.030.2. - **Nonconforming lots.** ~ **Fails**

b. The **nonconformity** is equal to or less than **5%** of the **required width and/or area**.

[Way over 5% ... 33% less than required.]

16.60.030.2. - **Nonconforming lots.** ~ **Fails**

Staff Report mixes all non-conforming lots in with 50' lots and uses as “reason” for variance ... in violation of D. 9.

Comprehensive Plan intent, purpose and objectives

“...to preserve, promote, protect, and improve the public health, safety, comfort, good order, appearance ...and general welfare; prevent the overcrowding of **land** and avoid undue concentration of populations; ... and conserve, appropriately develop, utilize, and protect natural and historic resources;”

B. The provisions of the plan ..., are **the minimum requirements** to maintain, through orderly growth and development, **the character and stability of present and future **land use** and development.**

SECTION 16.02. - COMPREHENSIVE PLAN^[2]

No ... **land** shall be **used**, nor shall any **use** be established unless it complies with the requirements of this chapter.

D. Development standards... established in order ...to **maintain and enhance locally recognized values of community appearance...**”

G. Lot size. ... established in order to promote the type and **scale** of development envisioned in the plan and the Vision 2020 Plan. (Now 2050)

*****K. Building and site design standards.**

... expect new construction to respect and reinforce the neighborhood context created by existing development ... all new construction should blend with the established development pattern and not challenge it. **Contextual site layout will be the number one priority of the building and site design review process.**

Architectural style **blends the new construction with the existing neighborhood context.**

Design standards permit creative solutions that **strengthen the overall contextual setting.**

16.10.010.4. - Zoning district regulations.

Vision 2050 ~ Growth and Community Character pg 79

“Accommodating growth while preserving the many desirable aspects of the community’s character is key. Within the City’s development framework of neighborhoods, corridors, and centers, there **are areas for protection** and areas of growth opportunity.

Areas for protection include the waterfront, open space, and **neighborhoods**, including our local historic districts.

Future redevelopment is best located in the city’s centers, corridors, and underused industrial lands.

“1. Protect the character and viability of neighborhoods.”

Jungle Terrace has 29 acre "underused" Raytheon site, PLUS 31 acres old Walmart site, on Tyrone Blvd, 38th Av N to Park St. 60 acres of underused [no longer used] land.

16.70.040.1. -Planning and zoning decisions, generally.

F. Public participation process and report.

1. *Purpose.* a. Encourage **applicants** to pursue early and effective communications with the affected public. **Fail**

b. Provide residents and owners of property in potentially impacted areas with an opportunity to learn about applications. **Fail**

2. *Applicability.* **Policy of the City to encourage applicants to meet with residents of the surrounding neighborhoods prior to filing an application for a decision requiring a streamline review.** **Fail**

4. *Documentation.* a. **Applicant shall provide a written report on the results of their public participation effort prior to filing the application.** **Fail**

The report will be attached to the POD's public hearing report. **Fail**

5. *Notice of intent to file.* A minimum of **ten days prior to filing** an application for a decision requiring **streamline** or public hearing approval, the **applicant shall send a copy of the application by email** or certified mail to the Council of Neighborhood Associations (CONA) and to **all neighborhood associations** within 300 feet of the subject property. The applicant **shall file** evidence of such notice with the application to the POD. **Fail**

Considerations for issue of variances ~ Fails All

6. **Compatibility** of the proposed use with existing ... development;

7. Relationship to the *Comprehensive Plan*, FIS for the area, and this section;

12. Economic hardship and self-created hardship are not relevant factors and shall not be considered as reasons to grant a variance.

16.40.050.7.7. - Considerations for issuance of variances.

After consideration of the factors listed above and the purposes of this section, variances shall be granted by the Commission **only** upon:

1. ...**showing of good and sufficient** cause the unique characteristics of the size, configuration, or topography of **site limit compliance** with any provision of this section

2. a. Failure to grant variance would result in **exceptional hardship**, due to the **physical characteristics of the land that render the lot undevelopable**; increased costs or inconvenience do not constitute hardship;

b. The granting of a variance will not result in **victimization of the public** or **conflict with existing laws and ordinances**.

16.40.050.7.8. - Conditions for issuance of variances.

16.70.040.1.6. - Variances, generally ~ **Fails**

2. *Demonstrate the existing conditions and circumstances...* deprive the applicant of **reasonable use of the land** . . . and the peculiar conditions and circumstances are **not the result of the actions of the applicant**.

Demonstrated: FAILS all 9 Standards, especially

D. Standards for review.

1. Special conditions

b. Substandard Lot(s). If the **site** involves the utilization of an **existing legal nonconforming lot(s)** which is smaller in width, length or area from the **minimum lot requirements of the district**.

e. *Significant vegetation*

*f. *Neighborhood character* ... project promotes the **established historic or traditional development pattern** of a block face, including **setbacks, building height** ...

*2. The special conditions existing are

not the result of the actions of the applicant;

3. Owing to the special conditions, a literal enforcement of this chapter would result in **unnecessary hardship;**

*4. Strict application ... would provide the applicant with no means for **reasonable use of the land,**

5. Variance ... is **minimum variance (for) reasonable use** of the land...

*6. The granting the variance will be in **harmony with the general purpose and intent** of this chapter;

7. The granting of the variance will **not be injurious to neighboring properties or otherwise detrimental to the public welfare;**

8. The **reasons set forth in the application justify** the granting of a variance;

*9. **No nonconforming use** of neighboring lands, buildings, or other structures, legal or illegal, in the same district **shall be considered as grounds for issuance of a variance permitting similar uses.**

* **Primary fails outlined in “Memorandum of Law” ~ Exhibit 1**

1. The hardship cannot have been self-created.

2. Consistency with neighborhood and scheme of regulations.

3. No reasonable legal use can be made of the property without the variance.

Many additional fails have been covered.

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Closing Statements

For 50 years I have watched The Jungle be cherished, loved, and maintained in health . . . both the Centennial tree canopy . . . and the unique Character, history, homes, and harmonious appropriateness of new dwellings.

DRC has many letters from individuals, multiple neighborhoods and umbrella organizations including Snell Isle and Allendale where Weekley has been destructive.

“Eventually City Council weighed in to stop such future attempts.”

1 house on 75’ lot, according to Ordinance ... is NOT a Hardship.

This Variance Violates Ordinances, Land Use Plan, Zoning requirements, Neighborhoods and the Comprehensive Plan’s intent, purpose, and objectives.

This Variance is only sought for PROFIT.

The Character-altering re-development and Incompatible Architecture violate the Spirit of Vision 2050.

Way, WAY Out of SCALE ~

**Skinny lots with mega mansions ~
GROSSLY out of Proportion.**

UGLY wounds on the Heart of The Jungle.

This Irreversibly alters the unique character, scale, and historic pattern of development of the JUNGLE neighborhood.

St. Pete Builders are in harmony with The Jungle for 100+ years.

They understand the value of our Urban Forest!

With climate change, maintaining our urban canopy is essential!

**Otherwise, we go from Jungle Terrace, Jungle Prada, Jungle Ave,
to “Denuded Desert.”**

NINA LIGHT in Allendale expresses this well . . .

"We've dealt with "get rich quick" developers over the past decade. Their homes do not belong in suburban, well-established areas. They are too tall . . . and have minimal space between them."

Approval of the variance would put elected officials, appointed officials, and City staff on the side of an out-of-town developer, in opposition to citizens who elect them, are appointed for them, and hired to represent their interests.

"Preserve the JUNGLE Neighborhood Character" ~

This is very Detrimental to the JUNGLE Character!

This Citizens' Appeal is the Finger in the Dike!

The Jungle deserves protection from development that obliterates its character.

With Peter Belmont, we have been to court with the city on Writ of Certiorari on a similar variance, won, and received \$10,000 for attorney fees.

We have consulted with 5 attorneys to be sure we are right.

The Jungle's character and charm is an asset that no homeowner wants to see disrespected and diminished by any developer building large homes on small lots.

Are You willing to make the City

Go to Court against oldest most historic Neighborhood

To advocate for a Texas firm gaining 1 extra house???

**This is
Legally Wrong,
Morally Wrong,
Ethically Wrong.
Responsibly Wrong.**

**Do the Right Thing.
DENY.**

We are all trusting this Commission, to do the right thing.

**Please be responsible and respectful of zoning requirements, and
the JUNGLE's Character, Charm, and Architectural Uniqueness.**

DENY this Variance request!

REPORT TO THE DEVELOPMENT REVIEW COMMISSION FROM DEVELOPMENT REVIEW SERVICES DIVISION, PLANNING & DEVELOPMENT SERVICES DEPARTMENT, for Public Hearing and Executive Action on Wednesday, November 3, 2021 at 1:00 P.M.

CASE NO.: 20-54000071 PLAT SHEET: S-20

APPEAL: Appeal of a Streamline Approval of a variance to the minimum required lot width from 75-feet to 50-feet in order to create three (3) buildable lots on property zoned NS-1.

APPELLANT: Edwin Carlson, Jungle Terrace Civic Association President
7691 30th Avenue North

ZONING: Neighborhood Suburban Single-Family (NS-1)

Structure	Required	Requested	Variance	Magnitude
Lot Width (Lots 13-15)	75-feet	50-feet	25-feet	33%

MEMORANDUM OF LAW IN SUPPORT OF DENIAL

RALF BROOKES, ESQ. ATTORNEY FOR APPELLANT

This variance application fails to meet three essential criteria for granting a variance under the St Pete City Code sections 16.70.040.1.6.D (Variances: Standards of Review):

...

(2) The special conditions existing are not the result of the actions of the applicant;

(3) Owing to the special conditions, a literal enforcement of this chapter would result in unnecessary hardship;

(4) Strict application of the provisions of this chapter would provide the applicant with no means for reasonable use of the land, buildings, or other structures;

(5) The variance requested is the minimum variance that will make possible the reasonable use of the land, building, or other structure;...”

These are criteria that are commonly applied to variance applications in City Codes that have interpreted by the Courts in numerous cases over the years under numerous court decisions on the law governing variances in Florida.

1. The hardship cannot have been self-created.

The hardship criteria found in variance provisions has a long line of cases and has been strictly construed by the courts. *Josephson v. Autrey*, 96 So.2d 784 (Fla. 1957).

A mere economic disadvantage due to the owner's preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance. *Burger King v. Metropolitan Dade County*, 349 So.2d 210 (3 DCA 1977); *Metropolitan Dade County v. Reineng*, 399 So.2d 379 (3 DCA 1981); *Nance, supra*; *Crossroads Lounge v. City of Miami*, 195 So.2d 232 (DCA 1967). Neither purchase of property with zoning restrictions on it, nor reliance that zoning will not change, will constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (3 DCA 1959).

If a purchaser buys land with a condition creating a hardship upon it, then the hardship should be ruled self-created. *Coral Gables v. Geary*, 383 So.2d 1127 (3 DCA 1980). The requirement

that a variance hardship cannot be self-created is required by Code and Florida case law. In *Re Kellogg*, 197 F. 3rd 1116, 1121 (11th Cir. 1999). *Josephson v. Autrey*, 96 So.2d 784 (Fla. 1957) (superseded by statute *on other grounds* in *Grace v. Town of Palm Beach* 656 So.2d 945 (Fla. DCA 1995); *Town of Ponce Inlet v Rancourt*, 627 So.2d 586, 588 (Fla. DCA 1993).

Case law, as well as the Land Development Regulations control the degree of showing needed to support the approval of a variance from the express requirements of local regulations. The days of the “weeping variance” have been replaced by strict interpretation of what is required to show entitlement to a variance from local Code provisions under the case law. *Town of Indian River v. Nance*, 400 So.2d 37 (5 DCA 1981), *affd.* 419 So.2d 1041; appealed again at 485 So.2d 1318 (5 DCA 1986), *rev. den.* 494 So.2d 1152.

The purchase of property with zoning restrictions on the property will normally not constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (3 DCA 1959). *Namon v. DER* 558 So. 2d 504 (Fla 3rd DCA 1990) and the cases cited therein address cases where property is purchased AFTER adoption of prohibitory regulations:

“Appellants are deemed to purchase the property with constructive knowledge of the applicable land use regulations. Appellants bought unimproved property. A subjective expectation that the land could be developed is no more than an expectancy and does not translate into a vested right to develop the subject property. *See Graham v. Estuary Properties, Inc.*, 399 So.2d 1374, 1382, 1383 (Fla.), *cert. denied sub nom. Taylor v. Graham*, 454 U.S. 1083, 102 S. Ct. 640, 70 L. Ed. 2d 618 (1981)

Case law also indicates that a mere economic “disadvantage” or the **owner's mere preference as to what he would like to do with the property is not sufficient** to constitute a hardship entitling the owner to a variance. *Burger King v. Metropolitan Dade County*, 349 So.2d 210 (3 DCA 1977); *Metropolitan Dade County v. Reineng*, 399 So.2d 379 (3 DCA 1981); *Crossroads Lounge v. City of Miami*, 195 So.2d 232 (DCA 1967).

Neither purchase of property with zoning restrictions on it, nor reliance that zoning will not change, will constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (3 DCA 1959).

If the owner participated in an affirmative act which created the hardship (such as by purchasing a substandard size lot), then the hardship should be ruled self-created. *Coral Gables v. Geary*, 383 So.2d 1127 (3 DCA 1980).

2. Consistency with neighborhood and scheme of regulations.

Granting the variance must not adversely affect the zoning scheme as a whole. Granting of a variance is illegal, and beyond the authority of any local administrative body, where the proposed variance is not shown to be in harmony with, and not “in derogation of the spirit, intent, purpose, or general plan of [the zoning] regulations.” *Troup v. Bird*, 53 So.2d 717 (Fla. 1951). “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.” *Elwyn v. City of Miami*, 113 So.2d 849 (Fla. 3rd DCA 1959).

3. No reasonable legal use can be made of the property without the variance. -

Some cases go so far as to say no variance can be granted if the property can still be used without the variance. This approach incorporates, to some extent, the law of taking of property without

just compensation, i.e., a variance can be granted and will not be overturned if no other reasonable use can be made of the property without a variance.

"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 Commission*, 464 So.2d 1231 (1 DCA 1985). *Herrera v. Miami*, 600 So.2d 561 (3DCA 1992).

The hardship must be such that it "renders it virtually impossible to use that land for the purpose or in the manner for which it is zoned." *Hemisphere Equity v. Key Biscayne*, 369 So.2d 996 (3 DCA 1979).

It is the land, and not the nature of the project, which must be unique and create a hardship. *Nance, supra*; *Ft. Lauderdale v. Nash*, 425 So.2d 578 (4 DCA 1982) (many other common violations in the neighborhood do not constitute a hardship); *City of Miami v. Franklin Leslie*, 179 So.2d 622 (3 DCA 1965).

Additional case law supporting DENIAL of this variance application in numerous cases including:

City of Jacksonville v. Taylor, 721 So.2d 1212 (Fla. 1st DCA 1998)
Bernard v. Town Council of Palm Beach, 569 So.2d 853 (Fla. 4th DCA, 1990); *Metropolitan Dade County v. Betancourt*, 559 So. 2d 1237;
Town of Indiatlantic v. Nance, 485 So.2d 1318 (Fla. 5th DCA 1986) ("*Nance I*"),
Town of Indiatlantic v. Nance, 400 So.2d 37 (Fla. 5th DCA 1981), approved, 419 So.2d 1041 (Fla.1982). ("*Nance II*"),
City of St. Augustine v. Graubard, 780 So.2d 272 (Fla. App. 2001)
Maturo v. City of Coral Gables, 619 So.2d 455 (Fla. 3rd DCA 1993);
Herrera v. City of Miami, 600 So.2d 561 (Fla 3rd DCA 1992) rev. denied 613 So.2d 2 (Fla. 3rd DCA 1992).
In *Re Kellogg*, 197 F. 3d 1116, 1121 (11th Cir. 1999).
Blount v. City of Coral Gables, 312 So. 2d 208 (Fla. 3rd DCA 1975) ("Nor are the Blounts entitled to a variance from the above zoning ordinance...as the hardship was self-created because they knew of the zoning ordinance.") (*citing other Florida cases on this issue*);
Clarke v. Morgan, 327 So.2d 769 (Fla. 1975);
Friedland v. Hollywood, 130 So.2d 306 (DCA 1961);
Elwyn v. Miami, 113 So.2d 849 (3 DCA 1959);
Coral Gables v. Geary, 383 So.2d 1127 (3 DCA 1980).

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Florida is ditching palm trees to fight the climate crisis ~ how tree sinks benefit us

By **Allison Chinchar**, CNN Meteorologist October 23, 2021 (emphasis added)
<https://www.cnn.com/2021/10/23/weather/weather-trees-adapt-climate-change/index.html>

(CNN) When you think of Florida, beaches and palms come to mind. But what if those palms were slowly replaced with other trees? That could happen over time because communities in South Florida are trying to save the world from the climate crisis, one tree at a time.

"Palms do not sequester carbon at the same rate as our native canopy trees, and do not provide shade, cool down streets and sidewalks to help counter the urban heat island effect that canopy trees do," said Penni Redford, the Resilience and Climate Change Manager for West Palm Beach.

With atmospheric carbon dioxide levels today higher than at any point in at least the past **800,000 years**, according to the National Oceanic and Atmospheric Administration (NOAA), the Earth needs to remove it or humans have to stop adding it. In fact, the last time carbon dioxide concentration was this high was more than 3 million years ago.

Scientists are working on solutions to capture and safely contain atmospheric carbon. One approach is called **"terrestrial sequestration"** -- which is essentially planting trees.

A tree absorbs carbon during photosynthesis and **stores it for the life of the tree.**

But Florida's beloved palms are the least effective at carbon sequestration. The average palm in southern Florida only absorbs 5 pounds of CO₂ per year.



COMPARATIVE ECOSYSTEM BENEFITS OF COMMON TREES IN FLORIDA



	Live Oak	Mahogany	Florida Thatch Palm
Annual CO ₂ sequestered (pounds)	487	623	2
Lifetime CO ₂ sequestered (pounds)	10,994	11,963	75
Ozone pollution removed annually (ounces)	48	44	5

Compared to other trees -- **oaks**, mahogany, **pin**es, and **cedars** -- sequester more than 10,000 pounds of CO₂ over their lifetime. Best to exclude palms in favor of more broadleaf trees or conifers.

Kristine Crous, a senior lecturer at Western Sydney University, explains that palms don't produce wood, so they're poorer at storing carbon.

Thus **palms are not actually trees** at all. Botanists, ecologists, and forestry specialists have [various definitions](#) of what a tree actually is. (Palms are in the big grasses family.)

The concern is that a standard passenger vehicle emits about 10,000 pounds of CO₂ per year, which means we need a lot of trees to combat the amount of vehicles on the roads.

Even though palms are not great at carbon sequestration, chopping them down isn't the answer. Instead, programs in both West Palm Beach and Miami Beach, Florida, are taking the initiative to plant trees more adept at handling changing climate conditions.

Having many palms will not allow for these cities to handle carbon sequestration as well as they would have with other tree varieties. By 2050, Miami Beach's palms should make up no more than 25% of the public tree population, according to Miami Beach's [Rising Above plan](#).

"**Southern Live oak**, *Quercus Virginiana* -- large canopy trees, can withstand occasional floods and hurricanes and are resistant to salt spray, provide habitat for birds and a variety of moss and bromeliads in south Florida," Redford said

Even without considering logging and deforestation, Mother Nature brings down a lot of trees. Tree loss from hurricanes and flooding will become even bigger concerns in the future.

However, in the case of palms, the best solution is to replace them with trees that are better at mitigating the climate crisis.

Age of the tree matters: Younger trees absorb less carbon dioxide than older trees.

"Yes, tree species matter, some grow faster than others and so their response to elevated CO₂ may differ, too," Crous said. "But it is important to distinguish between responses from younger trees compared to older trees."

Age isn't just a number

Young trees and mature trees do not adapt to changes equally. "Plant more trees" to combat climate change is not a universal remedy. Climate change is making hurricanes stronger, knocking down mature trees, and entire forests, which are needed most to ease climate change.

"Planting trees is great, but **valuing old growth forest is equally important**," said Crous. A [joint research study](#) from the University of Birmingham, Western Sydney University, Australian EucFACE, and BIFoR FACE is being done across the globe to study how trees adapt to the increase of carbon dioxide in the atmosphere.

The research shows that **mature oak trees can increase their rate of photosynthesis by up to a third in response to higher CO₂ levels**. In just the first three years of the 10-year project, the **175-year-old oaks clearly responded to higher CO₂ by increasing their rate of photosynthesis**.

"We aimed specifically to quantify the photosynthetic response (carbon uptake) of these trees to future levels of atmospheric CO₂," Anna Gardner said.

"Planting trees will certainly help reducing CO₂ levels," Crous said.
"But as trees take a long time to mature it will be a delayed effect."

Old trees are the most valuable

"The type of tree certainly matters. More so, our climate models are using data from seedlings and young trees to show how **old forests will absorb future increases in CO2** in the air," said David Ellsworth, Professor of Tree Physiology at the University of Western Sydney. That is why it is **so important that we save the landscapes and forests with very dense older and mature trees.**

"Our CO2 in the atmosphere and its impacts on climate would be far worse if we didn't have these old forests, and that these old forests can adjust and increase CO2 uptake into the future," Ellsworth said.

The study notes that the amount of forest carbon-uptake in the future, and subsequent carbon sequestration, "will be crucial determinants of future atmospheric CO2 concentrations. So, quantifying the photosynthetic response under elevated CO2, especially for mature trees, is critical to understanding the carbon uptake of forests under changing atmospheric composition."

Planting new trees in Florida

West Palm Beach gives out 1,000 native trees a year for residents and businesses to plant.

"We have an active tree planting program," Redford explains about the program they are using in West Palm Beach. The goal is to help Floridians not only beautify their surroundings, but also to better prepare them for a future of global warming. To do that, Redford said, you have to be selective. "We do not use our canopy tree fund to plant palms," Redford said.

Miami is joining the initiative to shift planting priority to a variety of trees -- just not palms. Miami Beach's [Rising Above program](#) to combat the climate crisis includes an urban forestry master plan which details the environmental benefits of planting shade trees, including species such as oak, ash, elm and sycamore, in place of palms.

"It may seem simple to select trees, but it requires thought and planning to have the right tree in the right place -- one that can provide maximum benefits with minimal maintenance and does not contribute to other concerns like fertilizer run off and higher costs for water and maintenance," Redford said.

There's also a plan for when **construction leads to the removal of trees.** Redford said that if a developer needs to remove trees and cannot replace them, they can pay into a fund for trees to be planted elsewhere.

"We try first to save the trees or replant on that location," Redford said.
"But if it's not possible, we look to plant trees where they are most needed."

Planting trees to remove carbon dioxide from the atmosphere is a critical component of climate change mitigation, experts say. But it's important to be smart about which trees we plant, and to **put more focus on saving the older trees we already have.**