

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Appeal of the Board of Adjustment decision to approve a 1) lot size variance from 43,560 square feet to 40,904 square feet, 2) front yard setback variance from 50 feet to 40 feet and 3) side street setback variance from 50 feet to 10 feet for a proposed single family home in the A-1 (Agriculture) district

DEPARTMENT: Planning and Development **DIVISION:** Planning

AUTHORIZED BY: Dori DeBord **CONTACT:** Kathy Fall **EXT:** 7389

MOTION/RECOMMENDATION:

1. Uphold the Board of Adjustment decision to approve 1) a lot size variance from 43,560 square feet to 40,904 square feet, 2) a front yard setback variance from 50 feet to 40 feet and 3) a side street setback variance from 50 feet to 10 feet for a proposed single family home in the A-1 (Agriculture) District; or

2. Reverse the Board of Adjustment decision to approve (1) a lot size variance from 43,560 square feet to 40,904 square feet, 2) a front yard setback variance from 50 feet to 40 feet and 3) a side street setback variance from 50 feet to 10 feet for a proposed single family home in A-1 (Agriculture) District; or

3. Continue the request to a time and date certain.

District 2 Michael McLean

Kathy Fall

BACKGROUND:

On September 24, 2007 the Board of Adjustment approved 1) a lot size variance from 43,560 square feet to 40,904 square feet, 2) a front yard setback variance from 50 feet to 40 feet and 3) a side street setback variance from 50 feet to 10 feet for a proposed single family home on a non-conforming lot. The decision was appealed by H. Daniel Hutter and David Kirk Walker, residents of Shady Palm Drive.

STAFF FINDINGS:

The applicant has satisfied the criteria for the grant of a variance. Staff has determined that:

- Special conditions or circumstances exist, which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or building in the same zoning district.

The location of the wetlands on the property prohibits the applicant from constructing a home without encroaching into the required setbacks.

- Special conditions and circumstances did not result from the actions of the applicant.

Neither the location of the wetlands nor the deficiency of the lot size resulted from any action taken by the applicant.

- The granting of the variances requested would not confer on the applicant special privileges that are denied by Chapter 30 to other lands, buildings, or structures in the same zoning district.

The lot was created before the adoption of the County subdivision regulations.

- The literal interpretation of the provisions of Chapter 30 would deprive the applicant of rights commonly enjoyed by other properties in the same zoning classification.

Without the requested variances the lot could not be developed with a single family home, which would deny the applicant rights that are enjoyed by other properties in the area.

- The variances requested are the minimum variances that will make possible reasonable use of the land, building or structure.

Reasonable use has been established by the development of vacant land in the surrounding area with single family homes. Without variances the applicant could not develop the property with a single family home.

- The grant of the variances would be in harmony with the general intent of Chapter 30.

The requested variances would be in harmony with the character of the surrounding area in allowing the use of a single family home.

STAFF RECOMMENDATION:

Staff recommends the Board uphold the Board of Adjustment decision to approve 1) a lot size variance from 43,560 square feet to 40,904 square feet, 2) a front yard setback variance from 50 feet to 40 feet and 3) a side street setback variance from 50 feet to 10 feet for a proposed single family home in A-1 (Agriculture) District.

ATTACHMENTS:

1. Notice of Appeal to BCC
2. Maps and Aerials
3. Maps and Aerials
4. appealmaps
5. petition
6. Special Exception Application
7. Proposed Site Plan
8. DEP letter

9. BOA Meeting Minutes

Additionally Reviewed By:

County Attorney Review (Kimberly Romano)

October 5, 2007

Seminole County Commissioners
Seminole County, Florida

Re: Appeal of Board of Adjustments decision to grant variance to 1100 Elm St.

Front yard setback variance from 50 feet to 40 feet, and side street setback from 50 feet to 10 feet have been approved by the Board of Adjustments for the referenced site. They were granted on this lot on the corner of Elm St. and Shady Palm Cove over the unanimous objection by the residents of Elm and its' side streets south of Florida Ave. The approval was granted by the board after a first meeting in which 3 of the 5 Board members called the side street setback inappropriate. We see the granting of the side street setback of 10 feet extreme, unnecessary and unprecedented in our area and totally inappropriate for A-1 zoning. It would put the home in close proximity and plain view of Shady Palm Cove and would stick-out like a sore thumb to Elm Street, past a point 0.3 miles south of Florida Ave. This is totally out of character for the Black Hammock area and spoils the value of the area which is found in natural buffering provided by mature trees, many of which will be unnecessarily cut down. We feel it will negative impact the values of all residences on Shady Palm Cove, Wild Orange Pt. and Elm St, south of this intersection.

This situation the applicant is in, the need for setback variance is a self imposed hardship. The applicant knew of the extent and the impact of the wetlands when the property was purchased. The variance request is the result of choosing a home plan and orientation that does not lend itself to the available uplands on the site, the extent of which were understood by the applicant before he purchased the lot. They have selected a long plan and placed it across the narrow aspect of the available uplands, creating the need for variance themselves.

This drastic variance is not required if this same house is inverted and turned 90 degrees so the long aspect coincides with the longer part of the uplands. The 100 feet of Shady Palm Cove to their driveway could be black topped, if crushed asphalt road access is a concern to the applicant. Many other plans are readily available that would keep both setbacks within 40 feet. In addition, if the setback variance were denied, the exact house plan and orientation currently shown on the site plan, could be placed on the site using the proper 50 ft front yard and side street setbacks by working with the DEP to obtain an ERP. This is an option the County could exercise. Wetland impact would be minimal (approx.4250 sq ft on the north edge of the area deemed wetlands). I have spoken with both Jennifer Koch and Jim Lee at the DEP and it sounds like this mitigation would be granted if the variances are denied. This cost of mitigation would likely be recouped in the value of the property by maintaining all the mature trees that are going to be cut down and the buffer they create.

In conclusion, our appeal is grounded in the fact that the applicant has many options in lieu of the set back variances that the community is unanimous in conviction that this is out of character for the community and will impact the values of the surrounding properties. Setbacks serve the community and help establish buffers and maintain property values. The value in these properties is in the privacy provided by the mature hammock. These are being thoughtlessly compromised.

The applicant provided no documentation that reasonable effort has been made to minimize the impact to setbacks. No optional plans were presented. Attached please find some options that we have come up with for this site. There are of course, many others. Options that should at least be considered by the applicant.

We thank you for considering our thoughts, concerns and firm disagreement with these unnecessary setback variances and their consequences for all living in the area.

Thank You and Best Regards,



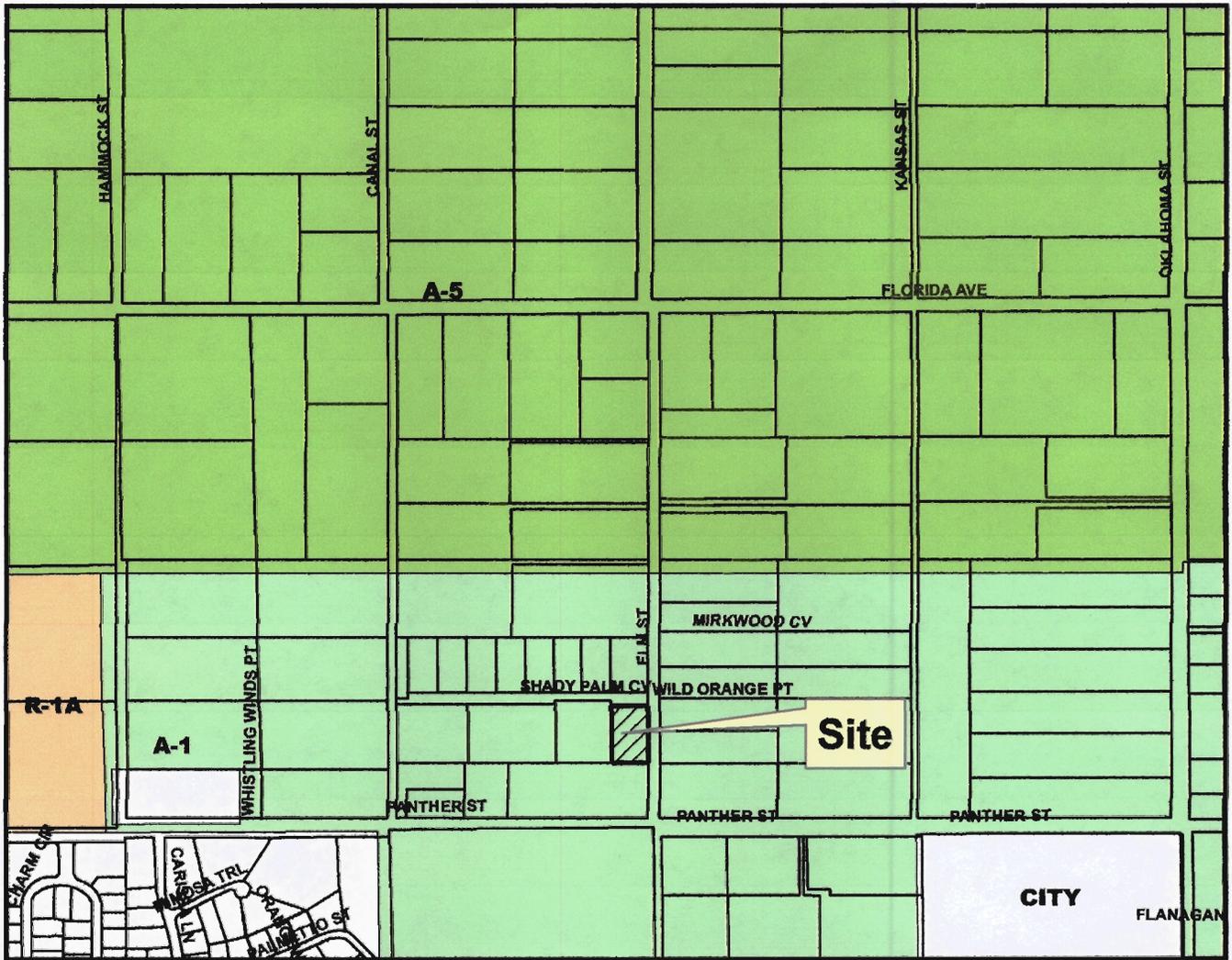
H. Daniel Hutter
Property Owner - 1155 Shady Palm Cove
407-353-4599



David Kirk Walker
Resident - 1140 Shady Palm Cove
407.252.3946

Attachments: Layout options
Signatures of all residents in community off Elm, South of Florida Ave

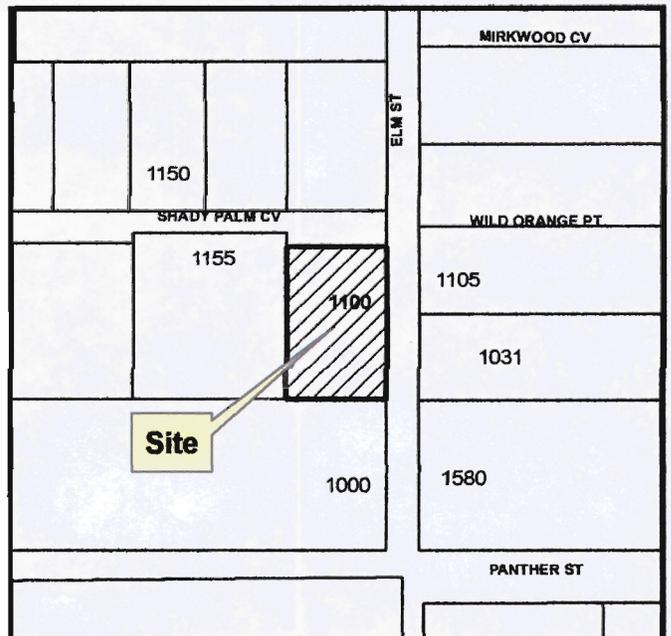
Sandarah and George Wilkes
 E 142 FT OF LOT 143 (LESS N 30 FT FOR RD)
 Elm Street
 Oviedo, Florida 32765



Seminole County Board of Adjustment
 August 27, 2007
 Case: BV2007-78 (Map 3160, Grid C4)
 Parcel No: 25-20-31-5BA-0000-143A

Zoning

-  BV2007-78
-  A-1
-  A-5
-  R-1A



AERIAL VIEW



ELM STREET

WILD ORANGE POINT

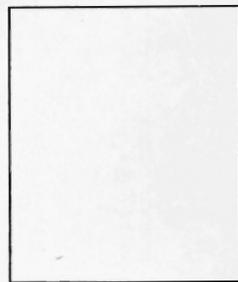
SHADY PALM COVE

BUILDABLE
AREA
APPROX.
2900 SF

50'

10'

50'



ELM STREET

WETLAND ENCROACHMENT
APPROX. 2000 SF

40'

10'

HOUSE BUILDING
PAD APPROX.
3766 SF

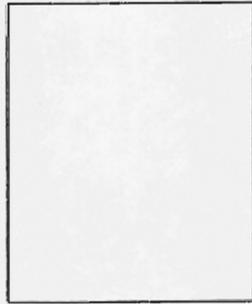
10'

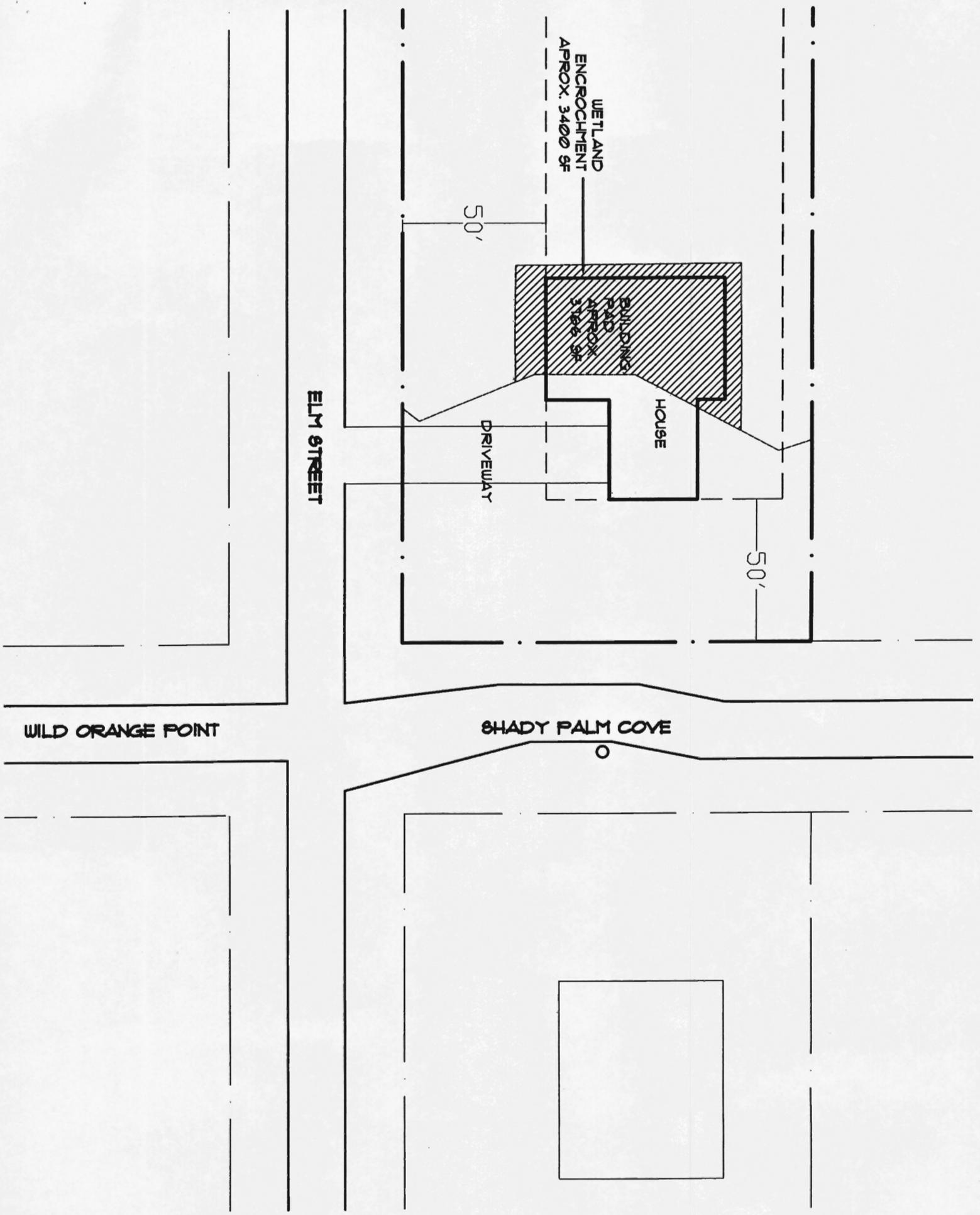
40'

DRIVEWAY

WILD ORANGE POINT

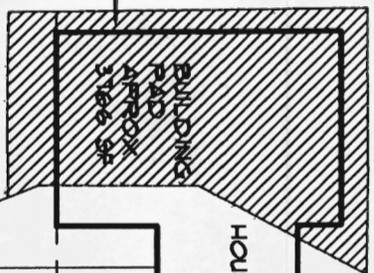
SHADY PALM COVE





WETLAND
ENCROACHMENT
APPROX. 3400 SF

50'



HOUSE

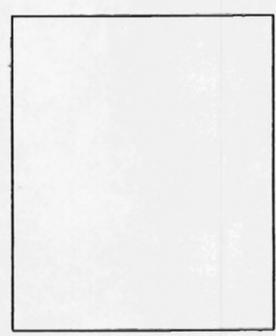
DRIVEWAY

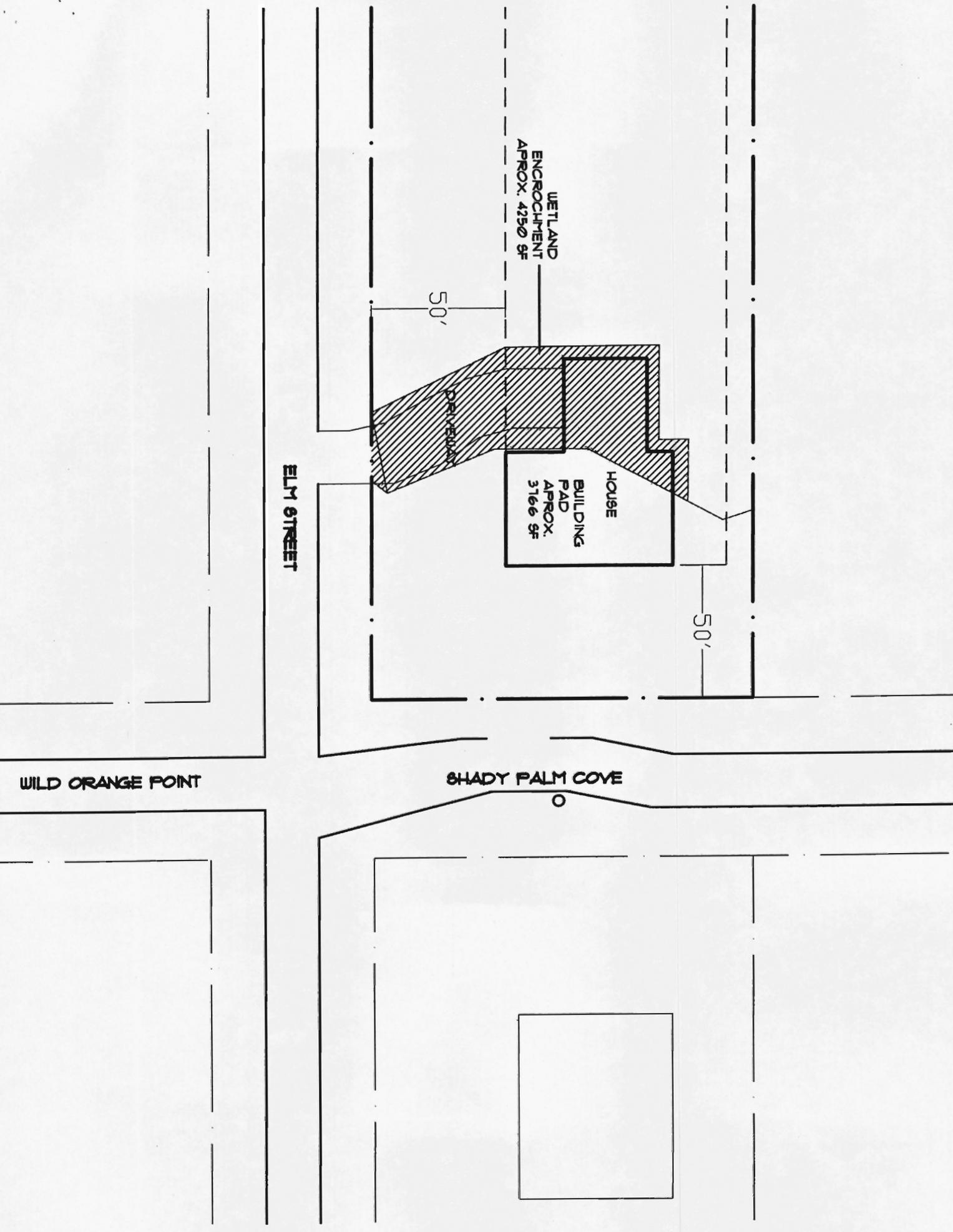
50'

ELM STREET

WILD ORANGE POINT

SHADY PALM COVE





ELM STREET

WETLAND
ENCROACHMENT
APPROX. 1100 SF

10'

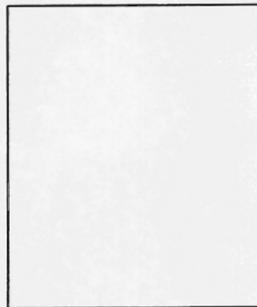
BUILDING
PAD
APPROX.
3300 SF

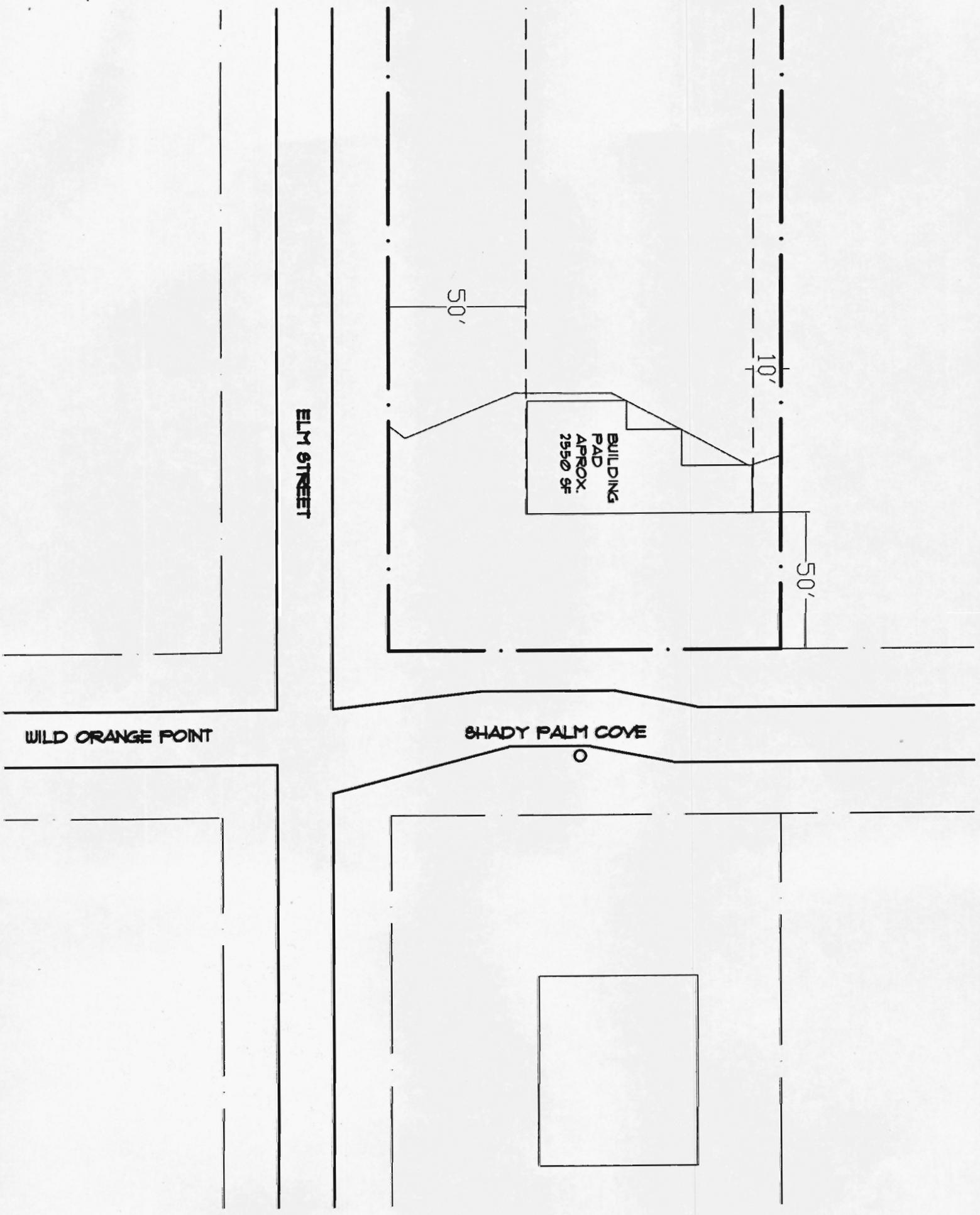
50'

50'

WILD ORANGE POINT

SHADY PALM COVE





ELM STREET

50'

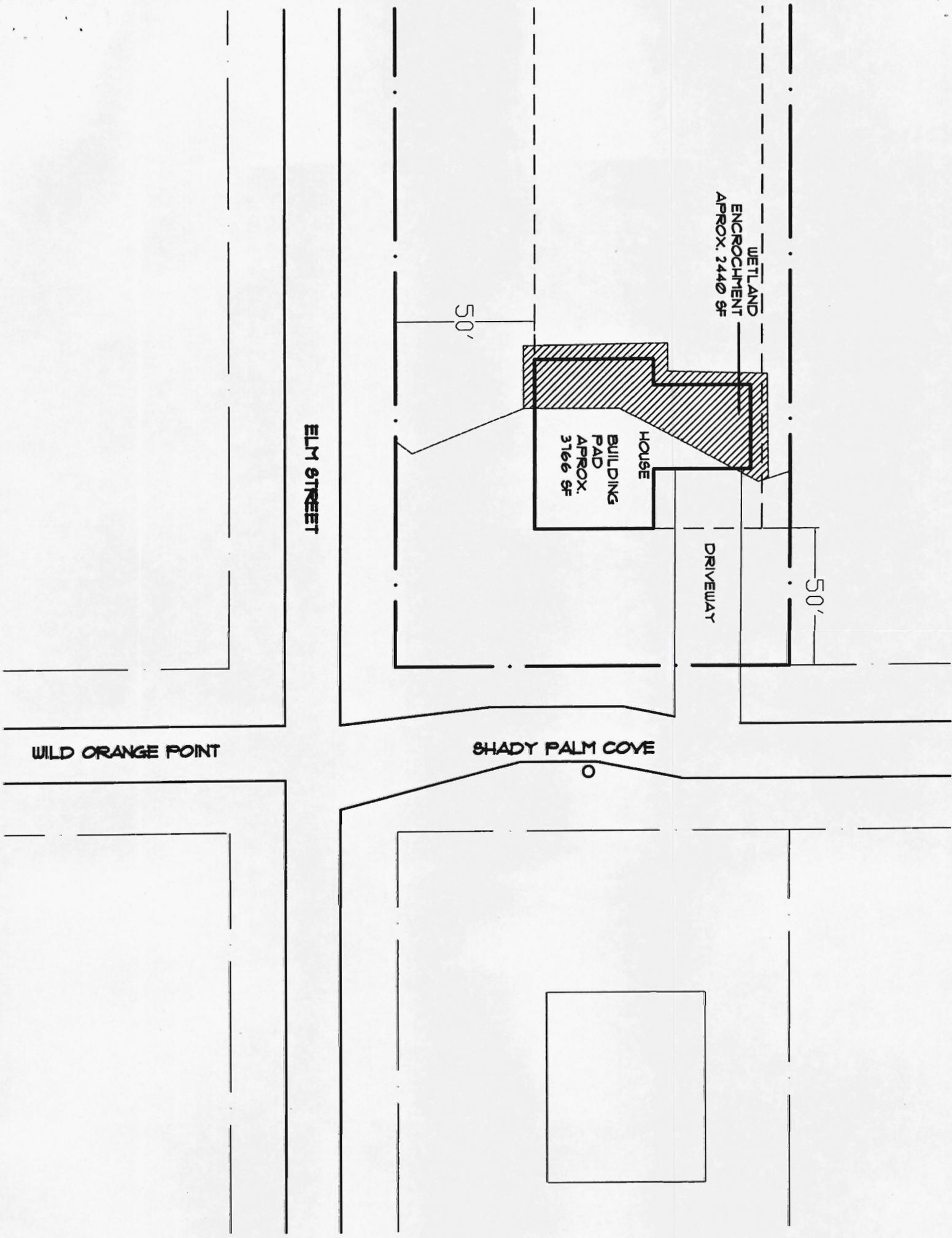
10'

BUILDING
PAD
APPROX.
2550 SF

50'

WILD ORANGE POINT

SHADY PALM COVE



List of Residents in Support of this Request to Maintain reasonable Buffer

Printed Name	Address	Signature	Date
1 DAVID HIRK EGROEN WALKER	1140 SHADY PALM COVE	[Signature]	9/15/07
2 Ellen + Dan Hutter	1185 SHADY PALM COVE	[Signature]	9/15/07
3 Jeff and Michele Peterson	498 Elm Street Oviedo FL 32765	[Signature]	9/15/07
4 Greg + Penny Weinstock	1031 Elm St Oviedo 32765	[Signature]	9/15/07
5 Larry + Ann Hendershot	1500 Wild Orange Pt	[Signature]	9/15/07
6 Louise + Vincent Falcone	1501 Wild Orange Pt	[Signature]	9/15/07
7 Justin Miner	1735 Elm St.	[Signature]	9/15/07
8 DORE E KRISTINA JO RIAHT	1376 ELM STREET	[Signature]	9/15/07
9 GAC WILSON	1340 ELM STREET	[Signature]	9/15/07
10 Robert McLaughlin	1230 ELM STREET	[Signature]	9/15/07
11 Mr. Alan Maggi	1420 Mirkwood Cove	[Signature]	9/15/07
12 Douglas MacCarbney	1483 Mirkwood Cove	[Signature]	9/15/07
13 MICHAEL + MARGIE MILLS	971 Elm St.	[Signature]	9/15/07
14 DAVID H. JONES	1160 ELM ST.	[Signature]	9/16/07
15 James D. Stiles	1150 Elm St.	[Signature]	9/16/07
16 SCOTT + DICK BREWSTER	1450 ELM ST	[Signature]	9/16/07
17 John + Ruby + Boyer	1145 Elm St	[Signature]	9/15/07
18 John + Linda Kieftmire	1330 Elm St.	[Signature]	9/22/07
19 BABAK NEGAHRAN	1173 ELM ST	[Signature]	9/23/07
20 Ron Egan	1155 Elm St	[Signature]	9/23/07

(2 of 2)

20 OF 23 Known households Signatures
 2 not available
 1 not wanting to sign

Fee: \$150.00 plus \$50.00 for each additional variance

Application # BV 2007-78
Meeting Date Aug 27, 07



VARIANCE APPLICATION

SEMINOLE COUNTY PLANNING DIVISION

1101 East First Street Sanford FL 32771 (407) 665-7444

RECEIVED JUN 24 2007

PROPERTY OWNER / APPLICANT (If you are not the owner please provide a letter of authorization from the owner)

Name: George & Sandarah Wilkes
Address: 3409 Bellingham Drive City: Orlando Zip code: 32825
Project Address: 1100 Elm Street City: Orlando Zip code: 32765
Contact number(s): 407-709-6582
Email address: GWilkesSBJ@aol.com

Is the property available for inspection without an appointment? Yes No

What type of structure is this request for?	
<input type="checkbox"/> Shed	Please describe:
<input type="checkbox"/> Fence	Please describe:
<input type="checkbox"/> Pool	Please describe:
<input type="checkbox"/> Pool screen enclosure	Please describe:
<input type="checkbox"/> Covered screen room	Please describe:
<input type="checkbox"/> Addition	Please describe:
<input checked="" type="checkbox"/> New Single Family Home	Please describe:
<input checked="" type="checkbox"/> Other	Please describe:
<input type="checkbox"/> This request is for a structure that has already been built.	

What type of variance is this request?				
<input checked="" type="checkbox"/> Minimum lot size	Required lot size:	<u>43560</u>	Actual lot size:	<u>40,904</u>
<input checked="" type="checkbox"/> Width at the building line	Required lot width:	<u>150</u>	Actual lot width:	<u>142</u>
<input checked="" type="checkbox"/> Front yard setback	Required setback:	<u>50</u>	Proposed setback:	<u>40</u>
<input type="checkbox"/> Rear yard setback	Required setback:		Proposed setback:	
<input type="checkbox"/> Side yard setback	Required setback:		Proposed setback:	
<input checked="" type="checkbox"/> Side street setback	Required setback:	<u>50</u>	Proposed setback:	<u>10</u>
<input type="checkbox"/> Fence height	Required height:		Proposed height:	
<input type="checkbox"/> Building height	Required height:		Proposed height:	
Use below for additional yard setback variance requests:				
<input type="checkbox"/> _____ yard setback	Required setback:		Proposed setback:	
<input type="checkbox"/> _____ yard setback	Required setback:		Proposed setback:	
<input checked="" type="checkbox"/> Total number of variances requested <u>4</u>				

NO APPLICATION WILL BE ACCEPTED AND/OR SCHEDULED unless all of the information in the Variance application and submittal checklist are provided to the planning division.

Signed: [Signature] Sandarah S. Wilkes

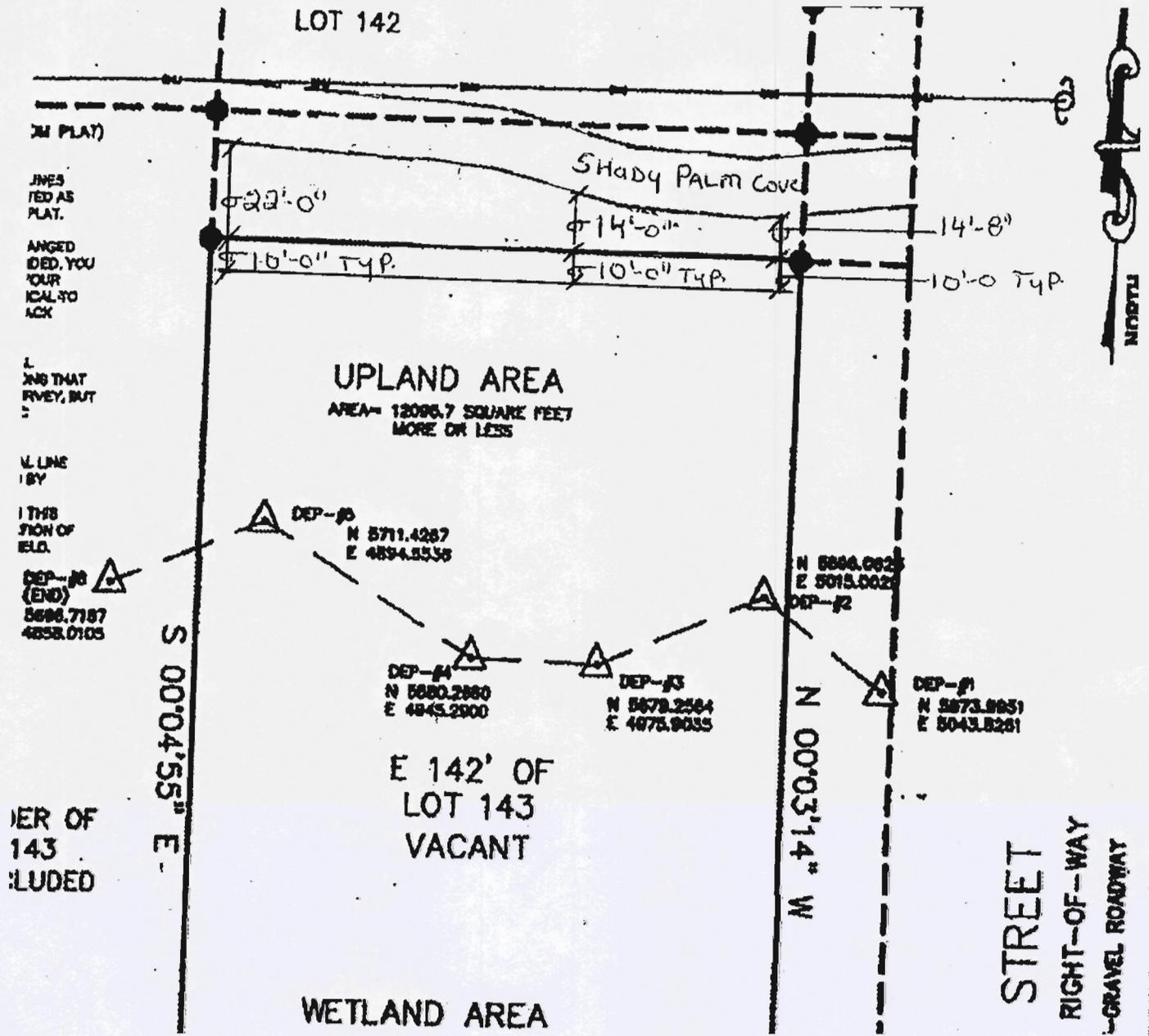
FOR OFFICE USE ONLY

Date Submitted: 6-25-07 Reviewed By: D. Gibbs / P. Johnson
 Tax parcel number: 25-20-31-5BA-0000-143A Zoning/FLU: A-1/SE
 Legally created parcel (1971 tax roll, 5-acre dev, lot split)
 Platted Lot (check easements as shown on lots, in notes or in dedication)
 Lot size _____ Meets minimum size and width
 Application and checklist complete
 Notes: _____

VARIANCE SUBMITTAL CHECKLIST

Please return this checklist with your application!

<p>After the application is reviewed by staff for completeness, any items required that were not provided at the time of the application will be check marked below. These must be provided prior to scheduling of the Board of Adjustment hearing.</p>	
	1. Completed application.
	2. Owner's authorization letter (if needed). <i>This form can be obtained at http://www.seminolecountyfl.gov/pd/planning/forms.asp</i>
	3. Provide a legible 8 1/2 x 11 inch site plan with the following information NOTE: Please use your property survey for your site plan, if available. See the attached site plan as an example of the information needed; please draw to scale and note the scale used on the plan.
	<input type="checkbox"/> Please start with a clean survey (ex: white out old approval stamps)
	<input type="checkbox"/> Size and dimension of the parcel
	<input type="checkbox"/> Location and name of all abutting streets
	<input type="checkbox"/> Location of driveways
	<input type="checkbox"/> Location, size and type of any septic systems, drainfield and wells
	<input type="checkbox"/> Location of all easements
	<input type="checkbox"/> Existing or proposed house <u>or</u> addition <i>(Label existing, label proposed, and include square footage and dimensions of each)</i>
	<input type="checkbox"/> Existing and/or proposed buildings, structures and improvements <i>(Label existing, label proposed, and include square footage and dimension of each)</i>
	<input type="checkbox"/> Building height
	<input type="checkbox"/> Setbacks from each building to the property lines
	<input type="checkbox"/> Location of proposed fence(s)
	<input type="checkbox"/> Identification of available utilities <i>(ex: water, sewer, well or septic)</i>
	4. Attach additional information and supporting documents such as letters of support from adjacent property owners or Home Owners Association DRB approvals, as desired.



To the Board of Adjustment at Seminole County Planning Division

We have utilized the partial survey above to show where Shady Palm Cove will be in reference to our property line and home. The first measurement at the front of the property is twenty four feet eight inches from the road to our proposed ten foot set back.

The second measurement taken is twenty four feet to our proposed set back and beginning of our home site. The third and final measurement is thirty two feet to our proposed set back as the board will see by the photographs, Shady Palm Cove is presently into our thirty foot easement due to an oak tree that keeps the road from splitting the easements.

Our intention is to leave the entire easement buffer that remains we do not want to remove any more trees than necessary it is also our intent to excavate small trees and shrubs keeping them transplanted until the home is complete the replanting to conform to the natural beauty of the area.



Department of Environmental Protection

Jeb Bush
Governor

Central District
3319 Maguire Boulevard, Suite 232
Orlando, Florida 32803-3767

Colleen M. Castille
Secretary

Mr. William Barolet
Coldwell Banker Residential Real Estate
521 E. Mitchell Hammock Road
Oviedo, FL 32765

Seminole County - ERP
File No. 59-262803-001
Parcel 25-20-31-5BA-0000-143A
Informal Wetlands Determination

Dear Mr. Barolet:

This is in response to your request for an informal wetland determination. Information you provided to the Department indicates that the property is known as Parcel 25-20-31-5BA-0000-143A, Seminole County.

Site inspections were conducted on February 28 and March 3, 2006. The property is situated on the southwest corner of Elm Street and Shady Palm Cove.

The property location and property boundary lines were determined using information submitted by the applicant and the county property appraisers web site and is only an estimate of the property location and not a precise determination.

The north end and the southeast corner of the site are primarily dominated by magnolia, live oak, American beautyberry, dog fennel, and other mostly non-wetland plant species, and do not meet the definition or criteria to be classified as wetlands pursuant to Section 62-340 Florida Administrative Code (F.A.C.).

The remainder and majority of the site is dominated by hackberry, ash, sweetgum and other mostly wetland plant species, contains hydric soil and or hydrologic indicators, and meets the definition and or criteria to be classified as wetlands pursuant to Section 62-340 Florida Administrative Code (F.A.C.).

Two wetland lines were established for this site. The wetland area on the north end was identified with pink wetland delineation flags numbered 1-5. The wetland line in the southeast corner was identified with flags numbered A1-A5. For planning purposes you should have the wetland lines surveyed and indicated on your property survey.

Any development and or dredge/fill activity within the surface water or wetland areas of this site will require an Environmental Resource Permit from this Department pursuant to Section 62-343.050 F.A.C. **Please contact Jennifer Cotch at 407-893-7868 with any questions regarding the permitting process.** A permit application can be obtained by calling the office at 407-893-3307 or from the Department's web site at www.dep.state.fl.us/water/wetlands/erp.

"More Protection, Less Process"

Printed on recycled paper.

Mr. William Barolet
Coldwell Banker Residential Real Estate
Page Two

After May 1, 2003, construction activities (CGP) that will result in disturbance of one or more acres of land are required to obtain an NPDES Permit under the Large and Small CGP. Please contact Fred Noble at 850-245-7522. Disturbance includes, but is not limited to soil disturbance, clearing, grading and excavation.

Dredging- Excavation, by any means, in surface waters or wetlands, as delineated in subsection 373.421(1), F.S. Excavation also means the excavation, or creation, of a water body which is, or is to be, connected to surface waters or wetlands, as delineated in subsection 373.421(1), F.S., directly or via an excavated water body or series of water bodies (subsection 373.403(13), F.S.).

Filling-The deposition, by any means, of materials in surface waters or wetlands, as delineated in subsection 373.421(1), F.S. (subsection 373.403 (14), F.S.).

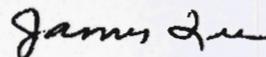
In order to obtain a permit an applicant must meet the permitting conditions listed in Section 40C/E-4.301 F.A.C. "Conditions for Issuance of Permits", and Section 40C/E-4.302 F.A.C. "Additional Conditions for Issuance of Permits". The mere application for a permit does not guarantee that a permit will be issued. The application request may be denied, or modified.

Permits may also be required from the Army Corps of Engineers (321-504-3771), and Seminole County (407-665-7331).

This is an informal pre-application jurisdictional determination pursuant to Sections 373 Florida Statutes (F.S.). It does not bind the Department, its agents or employees, nor does it convey any legal rights, expressed or implied. Persons obtaining this informal pre-application jurisdictional determination are not entitled to rely upon it for purposes of compliance with Sections 373 F.S., nor any other provision of law or Department rules. A binding jurisdictional determination may be obtained by petitioning the Department for a jurisdictional declaratory statement pursuant to F.A.C. Rule 62-343.040 or by applying for a dredge and fill permit. The results of this informal determination are valid for no more than 5 years from the date of the site inspection.

Please contact me at the letterhead address or by calling 407/893-3310, between the hours of 8:00 a.m. and 5:00 p.m., should you have any questions.

Sincerely,



James Lee
Environmental Specialist
Submerged Lands and Environmental
Resource Permitting

JL

Date: 3/13/06

cc: Wendy Meyer, Seminole County Development Review

**MINUTES FOR THE SEMINOLE COUNTY BOARD
OF ADJUSTMENT SEPTEMBER 24, 2007 MEETING
CONTINUED ITEM #4**

Members Present: Mike Hattaway, Chairman; Dan Bushrui, Alan Rozon, Tom O' Daniel and Curtis Gashlin

Staff Present: Kathy Fall, Principal Planner; Denny Gibbs, Senior Planner; Joy Williams, Planner; Kim Romano, Assistant County Attorney; and Patty Johnson, Staff Assistant

1100 Elm Street – George & Sandarah Wilkes, applicants; Request for a 1) lot size variance from 43,560 square feet to 40,904 square feet, 2) front yard setback variance from 50 feet to 40 feet and 3) side street setback variance from 50 feet to 10 feet for a proposed single family home in A-1 (Agricultural District); Located on the south west corner of the intersection of Elm Street and Shady Palm Cove; (BV2007-78).

Kathy Fall, Principal Planner

Kathy Fall introduced the location of the property and stated that this item was continued from the August 27th hearing because the applicant was not in attendance when the item was pulled from the Consent Agenda. She further stated that last month there were neighbors who had concerns about the side street setback variance from 50 feet to 10 feet. She then stated that the neighbors did not believe the request was the minimum variance needed and that the house could be turned to reduce the request.

George Wilkes stated that they sent over some additional information to the Board of Adjustment with some pictures of Shady Palm Cove. He further stated that one of the things that had been mentioned last month was the wetlands on the property. He then stated that they were trying to build inside the upland area of the property. He also stated that they were told by the Florida Department of Environmental Protection that no environmental resource permit would be required on the upland property. He further stated that if they could move the house to the middle of the property they would, but at the present time mitigation of any of the wetlands is not possible from the Department of Environmental Protection. He then stated that the distance from the road and his proposed home is actually 32 feet, but his request is 10 feet. He lastly stated that he wanted to maintain the nature of the property by keeping as many trees as possible.

Dan Hutter stated that he was the property owner to the immediate west of the subject property. He further stated that he provided a petition with 20 signatures out of 23 residents in the neighborhood in support of the denial of the variance. He then stated that they appreciated the applicant's desire to maintain the nature of the property and that it was their desire to keep the neighborhood as it was. He also stated that a 10 foot setback was more of an urban edge and had no place in an A-1 or A-3 zoning district. He further stated that they felt that the property does allow enough upland area to build and still maintain the required setbacks. He then stated that if they faced the house on Shady Palm Cove the setback issues would almost go away.

George Wilkes stated that the home would be a two story custom home. He further stated that they have tried to fit the home in the upland area. He lastly stated that they did their homework before purchasing the property.

Mr. Bushrui made a motion to approve the request.

Mr. O' Daniel seconded the motion.

The motion passed by (4-1) vote. Mr. Hattaway was in opposition.