

Marion County Board of County Commissioners

Growth Services

2710 E. Silver Springs Blvd. Ocala, FL 34470 Phone: 352-438-2600 Fax: 352-438-2601

ZONING SECTION STAFF REPORT July 1, 2024 BOARD OF ADJUSTMENT PUBLIC HEARING

Case Number	240701V
CDP-AR	31455
Type of Case	Requesting to reduce ESOZ waterfront setback from 75' to 35' for a proposed Single-Family Home in a Single-Family Dwelling (R-1) Zone.
Owner	James and Amanda Perry
Applicant	Rodney Rogers
Street Address	10843 SE 144 Th PL, Summerfield
Parcel Number	45824-000-00
Property Size	±0.52 ac
Future Land Use	Medium Residential (MR)
Zoning Classification	Single Family Dwelling (R-1)
Overlay Zone/Scenic Area	Environmentally Sensitive Overlay Zone (ESOZ), FEMA Flood Zone AE, and Secondary Springs Protection Overlay Zone (SPOZ)
Project Planner	Rachel Kruger, Zoning Technician I Elizabeth Madeloni, Zoning Technician III
Related Case(s)	None

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I. ITEM SUMMARY

This is a request filed by the applicant, Rodney Rogers, on behalf of the property owners, James and Amanda Perry, for a variance from the Land Development Code (LDC) Section 5.2.4.A to reduce the Environmentally Sensitive Overlay Zone (ESOZ) waterfront setback from 75' to 35' for a proposed Single-Family Dwelling. *Figure 1 is an aerial photograph displaying the general location of the subject property.*

FIGURE 1 GENERAL LOCATION MAP



II. PUBLIC NOTICE

Notice of public hearing was mailed to (11) property owners within 300-feet of the subject property on June 14, 2024. A public notice sign was posted on the subject property on May 21, 2024 and notice of the public hearing was published in the Star Banner on June 17, 2024. Evidence of the public notice requirements are on file with the Department and are incorporated herein by reference.

III. PROPERTY CHARACTERISTICS

This parcel is located on the south side of Little Lake Weir on a canal. It is in a subdivisiona subdivision established in 1970 by the name of Merrill, J C Lands Subdivision (See Attachment F). The subject property is .52-acres in size, located within the Medium Residential Map Series (FLUMS) designation, and has a Single-Family Dwelling (R-1) zoning classification. The northeast portion of the property is located in the canal. This property is also located in the Environmentally Sensitive Overlay Zone (ESOZ) and FEMA Flood Zone AE on a canal of Little Lake Weir (See Figure 2).



IV. REQUEST STATEMENT

The property owner's, Amanda and James Perry, and the applicant, Rodney Rogers, are requesting a variance from the LDC Section 5.2.4.A., to reduce the ESOZ waterfront setback line from 75' to 35' for a proposed Single-Family Dwelling in (R-1) Zoning.

V. ANALYSIS

LDC Section 2.9.2.E provides the Board of Adjustment shall not grant a variance unless the petition demonstrates compliance with the six (6) criteria. The six (6) criteria and staff's analysis of compliance with those criteria are provided below.

1. Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings with the same zoning classification and land use area.

Analysis: Since the parcel was developed in 1970, erosion of the canal has since moved the ordinary high-water line and significantly reduced the upland area of the parcel. Even a very small residence will not fit on the parcel using the 75ft setback from the ordinary high-water line.

Staff observed from their field inspection there are wetlands starting at the northern tip of the property, which runs along the angled eastern property line and continues south into the canal. The subdivision was establish in 1970, when Marion County did not have an ESOZ or Wetlands ordinance.

2. The special conditions and circumstances do not result from the actions of the applicant.

Analysis: Special condition outlined above was caused naturally over the years and already was existing when property was bought.

Staff finds since the 1970 development, ESOZ was not in effect nor was it required to acknowledge the wetlands, therefore, this was not a condition resulting from the applicant.

3. Literal interpretation of the provisions of applicable regulations would deprive the applicant of rights commonly enjoyed by other properties with the same zoning classification and land use area under the terms of said regulations and would work unnecessary and undue hardship on the applicant.

Analysis: Other residences along the canal were constructed many years ago are now 35ft from the ordinary high-water line (OHWL) due to the erosion of the canal.

Staff researched and found parcels near-by approved back in 2000, 2005, and 2007 for a reduction from the ESOZ ordinary high-water line. (See Attachment E)

4. The variance, if granted, is the minimum variance that will allow the reasonable use of the land, building or structure.

Analysis: The 35ft setback from the ordinary high water line (OHWL) from the canal would provide the minimum amount of upland area to construct a residence with the location and will be consistent with the existing older residences along the canal.

Staff found from researching the property, there's an approved variance from back in 1998 for a smaller home with an ordinary high-water line (OHWL) of 50ft from the required 75ft. The house was approved for a 45X45 sf home with 2,025 sf. The applicant is requesting a 2,200 sf home that shows a 52.7' radius area with a 35ft setback form the ordinary high-water line (OHWL).

5. Granting the variance requested will not confer on the applicant any special privilege that is denied by these regulations to other lands, buildings or structures in the same zoning classification and land use area.

Analysis: Granting the variance will allow the owner to construct a residence in the same proximity to the canal as other existing residences.

Staff has found most homes have been in this area since the 1960's and 70's. Granting the variance would not be a special privilege as there are other homes near by have been approved in the past for a reduction of the OHWL for a Single-Family Residence.

6. The granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Analysis: Granting the variance will not have an effect to the neighborhood.

Staff concludes if the variance granted it would not be injurious to the neighborhood or detrimental in any way.

VI. LIST OF ATTACHMENTS

- A. Application
- B. Marion County Property Appraiser Property Record Card, 2024 Certified Assessment Roll
- C. Site Plan
- D. Deed
- E. Aerial Map of approved prior variances
- F. Platted Subdivision
- G. DEP Report
- H. Photos

H.I. 300ft Mailing Notice Map

	M i o	APPLICATION COMPLETE OFFICE USE ONLY
01 / 11	Marion County D. Board of County Comr	
1 23	Growth Services • Zoning	TENTATIVE MEETING DATES
	2710 E. Silver Springs Blvd. Ocala, FL 34470	TENTATIVE MEETING DATES BOA PRZPH 7/01/24 Date Received: 4/19/24
mul 1st	Phone 357-438-2675	BECK/PEZPH
	tax 172-430-2010	IANCE APPLICATION AR#: 31455
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	FOR COUNTY USE ONLY	Parcel Account Number of Subject Property
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THE FILING FEE IS \$450 NON-REPORDABLE. WE RECOMMEND THAT THE OWNER, AFFLICANT OR AGENT BE PRESENT AT THE HEARING. IF NO REPRESENTATIVE IS PRESENT AND THE BOARD REQUIRES ADDITIONAL INFORMATION, THEY MAY DECIDE TO POSTPONE OR DENY THE REQUEST. NOTICE OF SAID HEARING WILL BE MAILED TO THE ABOVE ADDRESS. ALL INFORMATION GIVEN MUST BE CORRECT AND LEGIBLE TO BE PROCESSED. PLEASE NOTE THAT A WRITTEN PETITION (REFER TO PAGE 2 & 3) MUST BE PROVIDED WITH THIS APPLICATION, ALONG WITH A SITE PLAN IN ORDER TO BE CONSIDERED COMPLETE. FOR FURTHER INFORMATION CONTACT THE MARION COUNTY GROWTH SERVICES. \mathcal{O} = \mathcal{O} = \mathcal{O} = \mathcal{O} = \mathcal{O}

PROJECT: 2024010088 AR: 31455

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Page 2

WRITTEN PETITION FOR VARIANCE

WRITE YOUR ANSWERS IN THE SPACE PROVIDED AFTER EACH STATEMENT. PLEASE COMPLETE ALL REPLIES USING A SENTENCE FORM. A VARIANCE FROM THE TERMS OF THESE REGULATIONS SHALL NOT BE GRANTED BY THE BOARD OF ADJUSTMENT UNLESS A WRITTEN PETITION FOR A VARIANCE IS SUBMITTED JUSTIFYING THE FOLLOWING:

A. Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings with the same zoning classification and land use area.

Applicant's justification:

Erosion and relection of canal since the parcel was created has moved the ordinary high water line and significantly reduced the upland area of the parcel. Even a very small residence will not fit on the parcel using a 75 feet setback from the ordinary high water line.

B. The special conditions and circumstances do not result from the actions of the applicant.

Applicant's justification:

The special condition outlined above was caused naturally over many years and existed when the applicant purchased the parcel.

C. Literal interpretation of the provisions of applicable regulations would deprive the applicant of rights commonly enjoyed by other properties with the same zoning classification and land use are under the terms of said regulations and would work unnecessary and undue hardship on the applicant.

Applicant's justification:

35

Other residences along the canal that were constructed many years ago are now +/- feet from the ordinary high water line due to the erosion and relection of the canal.

D. The Variance, if granted, is the minimum Variance that will allow the reasonable use of the land, building or structure.

Applicant's justification:

A **III** feet setback from the ordinary high water line of the canal would provided the minimum amount of upland area to construct a residence and will be consistent with the location of existing older residences along the canal.

E. Granting the Variance requested will not confer on the applicant any special privilege that is denied by these regulations to other lands, buildings or structures in the same zoning classification and land use area.

Applicant's justification:

Granting of the variance will allow the applicant to construct a residence in the same proximity to the canal as existing residences are currently located.

F. The granting of the Variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Applicant's justification:

Granting of the variance will have no effect to the neighboring parcels.

Page 3

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Attachment C



File Number: OL2302006S

General Warranty Deed

Made this March 3^{25} , 2023 A.D. By Marvin Dumeny, a single person, hereinafter called the grantor, to James Edward Perry and Amanda Warner Perry, husband and wife, whose post office address is: 13311 SE 102nd Court, Belleview, FL. 34420, hereinafter called the grantee:

(Whenever used herein the term "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

Witnesseth, that the grantor, for and in consideration of the sum of Ten Dollars, (\$10.00) and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the grantee, all that certain land situate in Marion County, Florida, viz:

Commence at the SW corner of the East 1/2 of Government Lot 1, Section 14, Township 17 South, Range 23 East, Marion County, Florida; thence North along the West boundary of the East 1/2 of said Government Lot, 298.00 feet; thence S. 89 degrees 08'10" E. 360.00 feet for the Point of Beginning; thence S. 89 degrees 08'10" E. 254.13 feet; thence N. 55 degrees 13'07" W. 199.81 feet; thence North 8 feet, more or less, to the Southerly edge of a 50 foot canal; thence Northwesterly along the edge of said canal to a point lying 189 feet, more or less, North of the Point of Beginning; thence South, 189 feet, more or less, to the Point of Beginning; thence South, 189 feet, more or less, to the Point of Beginning.

LESS AND EXCEPT:

Any portion thereof lying within the lands described in Quit Claim Deed recorded March 31, 2022 in Official Records Book 7740, Page 22 of the Public Records of Marion County, Florida.

Parcel ID Number: 45824-000-00

Subject to covenants, restrictions, easements, limitations and reservations of record (if any) and taxes for the current year.

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same in fee simple forever.

And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances except taxes accruing subsequent to December 31, 2023.

DEED Individual Warranty Deed - Legal on Face

Prepared by: Christine Albright Ocala Land Title Insurance Agency, Ltd. 503 East Silver Springs Boulevard Ocala, Florida 34470

File Number: OL2302006S

In Witness Whereof, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in our presence:

	Mann Without (Seal) arvin Dumeny dress: 709 Cortez Avenue, Lady Lake, FL. 32159
State of Florida County of Marion The foregoing instrument was acknowledged before me by means of March, 2023, by Marvin Dumeny, a single person. March, 2023, by Marvin Dumeny, a single person. Signature Notary Public Notary Public Printed Name: My Commission Expires:	physical presence or online notarization, this day of JACQUELINE M. BECKER Notary Public - State of Fiorida Commission # HH 057244 Bonded Thru National Notary Services
Personally Known OR Produced Identification Type of Identification Produced DL	(SEAL)

DEED Individual Warranty Deed - Legal on Face



Attachment E



Attachment G



FLORIDA DEPARTMENT OF Environmental Protection

Marjory Stoneman Douglas Building 3900 Commonwealth Boulevard Tallahassee, FL 32399 Ron DeSantis Governor

Jeanette Nuñez Lt. Governor

Shawn Hamilton Secretary

Memorandum

TO: Eugene F. Hart, Jr., PLS CFL Surveying Solutions 4012 Northeast 174th Court Silver Springs, FL 34488 Telephone: 352-454-4844 Email: <u>cflsurveying@gmail.com</u>

FROM: Kevin Mears, PLS II Email: <u>Kevin.Mears@FloridaDEP.gov</u>

SUBJECT: Safe Upland Line (SUL)

River/Lake:Man-made waterway from Little Lake WeirCounty:MarionSTR:Section 14, Township 17 South, Range 23 EastLocation:10843 Southeast 144th Place, Summerfield

DATE: October 31, 2023

Dear Mr. Hart,

Our records indicate that the submerged lands lying below the Ordinary High Water Line of the man-made waterway adjacent to the site are not state-owned sovereignty submerged lands.

The Ordinary High Water Line (OHWL) at this site is a regulatory line and has not been determined. Based on available records, as of this date, an elevation of 55.0 feet North American Vertical Datum of 1988 along the natural shoreline is sufficient for use as a Safe Upland Line (SUL), at or above the OHWL. The OHWL is an ambulatory line that will shift in response to long term natural changes in the shoreline (i.e., accretion, erosion, reliction and submergence). Changes in water levels in the future may require subsequent review and adjustment of this elevation.

Please contact me at the letterhead address, mail station 105, or by phone at (850) 245.2640 if you have any questions.

M. Kevin	Digitally signed by M. Kevin Mears, P.S.M.		
Mears, P.S.M.	Date: 2023.10.31		
iviears, r.J.ivi.	15:17:05 -04'00'		

Approved



2324 LEU ROAD ORLANDO, FLORIDA 32803 407.374.3681 – tel 407.405.8725 – cell

April 8, 2024

James and Amanda Perry 13311 SE 102nd Court Belleview, Florida 34420

RE: Wetland Jurisdictional Delineation and Report of Findings Little Lake Weir Property Marion County, Florida Thomson Project No. 24-1442-A

Thomson Environmental Consulting, LLC (Thomson) completed a Wetland Jurisdictional Delineation of the property identified as the Little Lake Weir Property (the "property"). The property is identified by the Marion County Property Appraiser as Parcel Identification No. 45824-000-00.

DOCUMENTED LITERATURE SEARCH

Prior to the field visit, documented literature sources, such as aerial photography, county soil surveys, topographic maps, and the National Wetland Inventory (NWI), were reviewed to identify potential areas of concern. The documented literature search is summarized below:

<u>Aerial Photography</u> – The property is visible in recent (2021) aerial photography as undeveloped land with dominant canopy tree coverage. A canal is visible along the eastern property boundary. See Figure 1 for an aerial photograph.

<u>Marion County Soil Survey</u> – The entire property (and surrounding area) is mapped as Samsula-Martel Complex, Depressional, which is a hydric soil typically indicative of wetland areas. See Figure 2 for a soils map.

<u>USGS Topographic Map</u> – The property is located within the *Lake Weir, Florida* USGS topographic quadrangle, and is identified at an elevation of approximately 55 feet above mean sea level (MSL). Open water is depicted along the eastern portion of the property, and no structures are depicted on the property. See Figure 3 for a USGS topographic map.

<u>National Wetland Inventory (NWI)</u> – The NWI identifies the eastern approximate ½ of the property as an excavated, open freshwater area with unconsolidated bottom. Refer to Figure 4 for the National Wetland Inventory (NWI) map.

WETLAND JURISDICTIONAL DELINEATION

A field visit to the property was conducted on April 1, 2024.

During the field visit, the entire property was visually surveyed for potential jurisdictional wetland and/or surface water areas.



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Entering the property from SE 144th Place, the property was observed to contain uplands vegetated by scattered bahiagrass, carpetgrass, witchgrass, dog fennel, and other ruder upland species, as wfell as bare substrate with leaf litter. Several laurel oak trees provided a canopy coverage over much of the upland area. The soils were noted to be sandy in texture, light gray in color, and contain no hydric indicators. No indicators of hydrology were present in this area.

Along the eastern property boundary the elevation sloped downward approximately 5 feet in elevation to the surface water of a canal from Little Lake Weir. Near the water's edge a line of wetland vegetation was noted, including soft rush, pickerelweed, and beaksedge. This vegetation coincided with a marked change in soil texture to muck, and the wetland line was flagged with six wetland flags and/or pin flags placed in the ground (labeled "W1-1" through "W1-6") along this ecotone, which represented the jursidictional wetland line on the property.

Refer to Figure 5 for a depiction of the wetland flags placed on the property, as well as a depiction of the jurisdictional wetland area (identified as Wetland 1 and measuring ± 0.17 acre). Note that the depictions of wetlands and uplands is based on Thomson's opinion and has not been reviewed and/or approved by any regulatory agency.

Thomson appreciates the opportunity to provide these services to you. If there are questions regarding this report, or a need for further information, please contact the undersigned at your convenience.

Respectfully, Thomson Environmental Consulting, LLC

Joel A. Thomson President

Attachments: Figures 1 – 5



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General Location







2324 LEU ROAD ORLANDO, FLORIDA 32803 TEL 407.374.3681 CELL 407.405.8725 WWW.THOMSONENV.COM Figure 2 Soils Map Little Lake Weir Property Marion County, Florida

Section 14, Township 17 S, Range 23 E Thomson Project No. 24-1442-A April 2024



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Figure 4 National Wetland Inventory Map Little Lake Weir Property Marion County, Florida Section 14, Township 17 S, Range 23 E



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Attachment H



Canal photo



Looking beyond wetland line



Looking East



Looking North from the road



Looking West



Northernly marker



Property line West side



Property line in the wetlands



Sign posting



Wetlands line



Wetlands photo



Jimmy H. Cowan, Jr., CFA Marion County Property Appraiser - Beta Map It+

Attachment I

Updated every 24 hrs

