



Brian & Susan Barnes
Variance (Side Yard Setback)
P24-013



Project Location Map

SUMMARY

Applicant's Request:	To grant a variance of 4.3 feet to allow a reduced side yard setback for the construction of a driveway and retaining wall.
Application Type:	Variance, Quasi-Judicial
Applicant:	John M. Cherveney, JMC Contracting, Inc.
Property Owner:	Brian & Susan Barnes
Address:	1003 SE Kitching Cove Lane
Location:	The property is generally located west of SE Pruitt Road on the south side of SE Kitching Cove Lane.
Project Planner:	Francis Forman, Planner II

Project Description

The owner is requesting a variance of 4.3 feet to allow a 1.7-foot setback from the side property line for a driveway. Section 158.217(c)(2)(n) of the Zoning Code requires a minimum setback of six (6) feet from the side property lines for driveways in the RE (Estate Residential) zoning district.

Background

The subject property is located along the St. Lucie River and located within a portion of the city’s flood plain. Due to its location, any septic/drainage field must be located at the front of the property due to the rear of the property abutting the St. Lucie River waterway and could cause environmental risks if damage or spillage were to occur. The property consists of a newly redeveloped single-family home that was expanded from the previous residential structure. The construction of this new single-family structure included the addition of a side loading garage to accommodate for the existing septic/drainage field located within the front yard of the property. By constructing the side loading garage, the driveway to access the property was located within the required 6-foot side yard setback and will have a short retaining wall along the edge.

Review Criteria

An application for a variance is reviewed for consistency with Article XV of the Zoning Code, Sections 158.295 through 158.299. Final action on the application (approval or denial) is in the form of an Order of the Planning and Zoning Board following a quasi-judicial public hearing. A vote of approval by five (5) members of the Planning and Zoning Board is required to grant a variance.

Public Notice Requirements

Public notice was mailed to owners within 750 feet on February 22, 2024, and the file was included in the ad for the Planning & Zoning Board’s agenda.

Location and Site Information

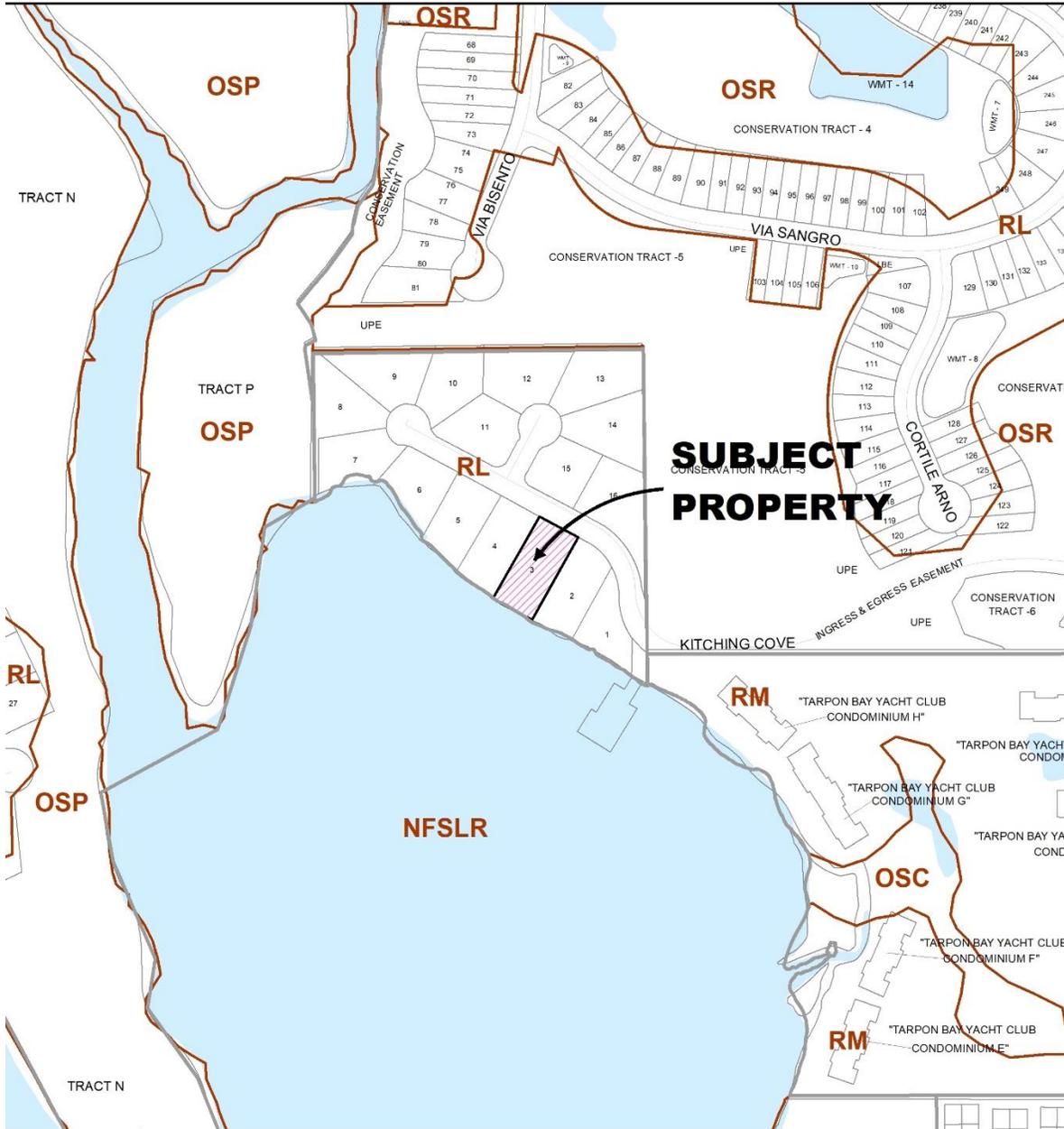
Parcel Number:	4415-801-0004-000-3
Property Size:	+/- 0.53 acres
Legal Description:	Kitching Cove Estates, Lot 3
Address:	1003 SE Kitching Cove Lane
Future Land Use:	RL (Low Density Residential)
Existing Zoning:	RE (Estate Residential)
Existing Use:	Single-Family Residence

Surrounding Uses

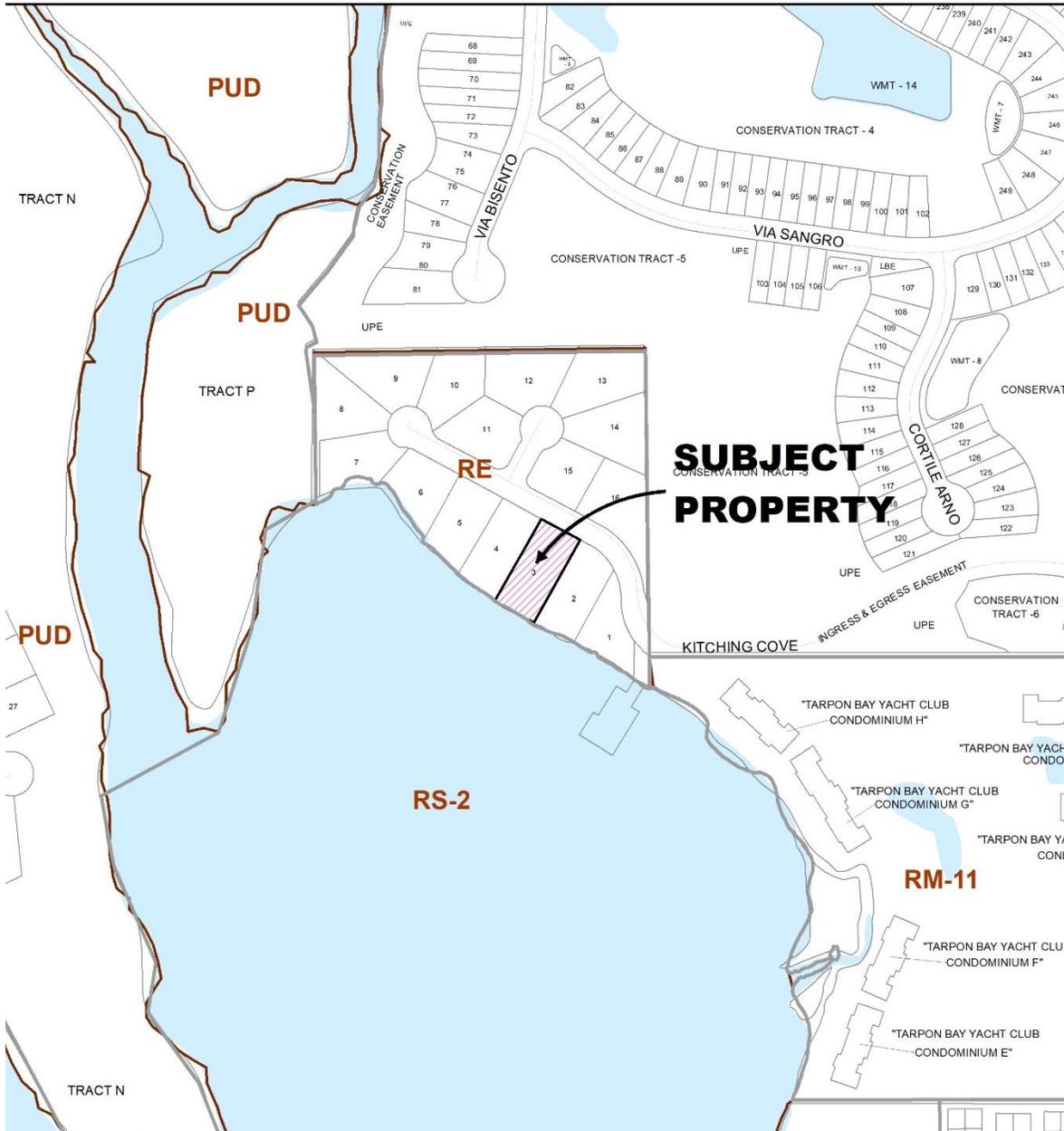
Direction	Future Land Use	Zoning	Existing Use
North	RL	RE	Single-Family Residence
South	NFSLR	RS-2	St. Lucie River
East	RL	RE	Single-Family Residence
West	RL	RE	Single-Family Residence

RL, Low Density Residential – RS-2, Single Family Residential – RE, Estate Residential – NFSLR, St. Lucie River

FUTURE LAND USE



EXISTING ZONING



IMPACTS AND FINDINGS

Section 158.295 (B) of the Zoning Code establishes the duties of the Planning and Zoning Board in authorizing a variance. The Planning and Zoning Board may authorize a variance from the provisions of the Zoning Code as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary and undue hardship. Pursuant to Section 158.296, a variance is authorized only for height, area, and size of structure, yard size, building setback, lot size requirements, and other applicable development regulations, excluding use. To authorize a variance, the Planning and Zoning Board should consider the criteria listed under Section 158.295 (B) (1) through (7) of the Zoning Code. The applicant's response to this criterion is attached to the application. Staff's review is provided below:

Compatibility with variance criteria Section 158:295 (B).

- 1) That 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 in the same zoning district.
 - *Applicant's Response: Granting the Variance will not confer any special privilege upon me because of the septic being moved to the front of home, the driveway had to be moved as shown in the original plans and survey at the time of permit.*
 - *Staff Findings: The granting of this variance request will confer special privilege that is denied by this chapter to other lands in the same zoning district, however, per the applicant's responses to comments #1 and #2, special conditions and circumstances do exist due to the required location of the septic tank in the front of the house due to the flood plain.*
- 2) That the special conditions and circumstances do not result from any action of the applicant.
 - *Applicant's Response: Granting the Variance will not confer any special privilege upon me because the change was due to changes for the health permit regarding the septic tank placement.*
 - *Staff Findings: Special conditions and circumstances which are peculiar to the land, structure, or building do exist, however the size and footprint of the house is also a factor in the location of the proposed driveway.*
- 3) That granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings, or structures, in the same zoning district.
 - *Applicant's Response: Granting the Variance will not confer any special privilege upon me that is denied to other lands, buildings, or structures in the same zoning district. The variance is being sought to address the location of the driveway at the recommendation of the health department.*
 - *Staff Findings: The granting of this variance request will confer special privilege that is denied by this chapter to other lands in the same zoning district, however, per the applicant's responses to comments #1 and #2, this variance is requested to construct a driveway to access the property while also meeting the requirements of the health department.*
- 4) That literal interpretation of the provisions of the chapter would deprive the applicant of

rights commonly enjoyed by other properties in the same zoning district under the terms of the chapter and would work unnecessary and undue hardship on the applicant.

- Applicant's Response: *The literal interpretation of the code provision would deprive the applicant of their property rights in that, the regulations would cause the driveway to be constructed over the septic tank.*
 - Staff Findings: *The literal interpretation of the provisions would deprive the applicant of any commonly enjoyed rights by other property owners, since the proposed driveway cannot be constructed without the variance. The house has been constructed and needs access to the garage.*
- 5) That the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure.
- Applicant's Response: *The request for this variance is the minimum possible since moving the driveway is the only item needed to complete the home.*
 - Staff Findings: *The request for this variance is the minimum possible that will allow the applicant to provide access to the garage with the design of the house.*
- 6) That the granting of the variance will be in harmony with the general intent and purpose of the chapter and that the variance will not be injurious to the area involved or otherwise detrimental to the public welfare.
- Applicant's Response: *Granting the Variance will not confer any special privilege upon me that is denied to other lands, buildings, or structures in the same zoning district. The variance is being sought to address the location of the driveway at the recommendation of the health department.*
 - Staff Findings: *Granting the variance will allow the proposed driveway to be constructed to the house. Per the Kitching Cove HOA, the applicant's engineer designed the site drainage (see attached HOA letter).*
- 7) That there will be full compliance with any additional conditions and safeguards which the Planning and Zoning Board or Zoning Administrator may prescribe, including but not limited to reasonable time limits within which the action for which variance is required shall be begun or completed, or both.
- Applicant's Response: *The applicant will fully comply with any additional conditions and safeguards which the Planning & Zoning Board or Zoning Administrator may prescribe.*
 - Staff Findings: *Acknowledged.*

PLANNING AND ZONING BOARD ACTION OPTIONS

The Board may choose to approve, deny or table the proposed variance. If the Board finds that the variance application is consistent with the criteria as listed in Section 158.295 (B) (1) through (7) of the City code (listed above), then the Board may:

- Motion to approve
- Motion to approve with conditions

If the Board finds that the variance application is inconsistent with the criteria as listed in Section 158.295 (B) (1) through (7) of the City code, then the Board may:

- Motion to deny

Should the Board need further clarification or information from either the applicant and/or staff, the Board may:

- Motion to table or continue the hearing or review to a future meeting

(NOTE TO APPLICANTS: Any request for a variance that is denied by the Planning and Zoning Board may be appealed to the Board of Zoning Appeals. Appeal applications are made through the City Clerk's office and must be submitted within 15 days after the Planning and Zoning Board hearing).