opposition

113 So.2d 849 (1959)

Helen M. ELWYN, a single woman, and Nelly Wilson, a widow, Appellants,

v.

CITY OF MIAMI, a municipal corporation of the State of Florida, Elgene, Inc., a Florida corporation, and Mary Loi, a single woman, Appellees.

No. 58-653.

District Court of Appeal of Florida. Third District.

June 2, 1959.
Rehearing Denied July 2, 1959.

850 *850 Franklin Parson, Miami, Robert D. Zahner and Alice Wainwright, Coconut Grove, for appellants.

Dubbin, Blatt & Schiff, William L. Pallot, City Attorney, and Edward Fitzpatrick, Asst. City Atty., Miami, for appellees.

CARROLL, CHAS., Chief Judge.

Appellants, plaintiffs below, appeal from an order of the circuit court dismissing their complaint by which they sought a decree to invalidate an ordinance allowing a zoning variance. The question for our determination is whether the complaint stated a cause of action.

The complaint, summarized, showed the following:

The City Commission of the City of Miami granted a variance permit, on the application of the appellee Elgene, Inc., for the construction and operation of a gasoline service station on certain property in the City of Miami, fronting on South Dixie Highway (U.S. No. 1) at the intersection of Southwest 30th Court. The property involved consisted of Lots 13, 14 and 15 of Block 2, Highway Park Sub., according to a plat thereof recorded in Plat Book 40, Page 29, of the Public Records of Dade County. For some years the property along the highway in that area had been zoned R2 (duplex). While it was so zoned, Mary Loi acquired the subject parcel. On May 15, 1957, property in that area for a number of blocks fronting on the highway was rezoned to the more liberal classification of R3, which was alleged to include the uses of "apartment, hotel, motel, private club, community garage, parking lot, public art gallery, public museum."

851 *851 Some nine months later, and while the subject parcel was owned by Mary Loi, an application was made by the appellee Elgene, Inc., for a "hardship" variance to allow the construction and operation of a gasoline service station on the property, being a use not authorized by the R3 zoning. The hardship claimed by the applicant was that the character of the neighborhood had changed; that two of the lots were not directly accessible to the highway; and that the property was no longer usable for residential purposes.

Appellants, who were owners and residents of adjoining properties, and numerous other owners of properties nearby, filed objections. The City Planning & Zoning Board heard and denied the Elgene, Inc., application for a hardship variance.

After its application had been denied, Elgene, Inc. purchased the property and took a conveyance from Mary Loi. Then Elgene, Inc. appealed the zoning board's ruling to the city commission.

Under § 72(t) of the charter of the city (Chapter 10847, Laws of Florida, Special Acts of 1925, as amended), variance permits were authorized and restricted as follows:

"A variance of the restrictions, regulations and boundaries established by the zoning ordinance may be granted under the same terms and conditions as an addition to, amendment, supplement, change, modification, or repeal of the Zoning Ordinance. No variance permit shall be issued, however, except in instances where practical difficulties and unnecessary hardship shall be incurred by the applicant if said permit were refused."

The city commission reversed the action of the zoning board, and granted the variance to authorize use of the property as a gasoline service station, by enacting ordinance No. 6174, dated April 16, 1958. The reason given in the ordinance for

granting the variance was: "Because it has been shown that the restrictions of the above described property under an R3 use will cause undue and unnecessary hardship."

The appellants in their complaint contended that the ordinance was invalid because (1) any hardship which the applicant Elgene, Inc. might claim was self-imposed, (2) there was no hardship basis to justify a variance, (3) the result was "spot zoning" which denied to plaintiffs equal protection of the laws, and (4) the variance would result in injury and depreciation in value of plaintiffs' adjoining properties, and destroy the use and enjoyment thereof.

Plaintiffs as abutting home owners were entitled to maintain the suit challenging the propriety, authority for and validity of the ordinance granting the variance. Wags Transportation System, Inc. v. City of Miami Beach, Fla. 1956, 88 So.2d 751; Hartnett v. Austin, Fla. 1956, 93 So.2d 86. See generally Foss, Interested Third Parties in Zoning, 12 U.Fla.L.Rev. 16 (1959).

But "unnecessary hardship" as used in the city charter, and as contemplated in this sense, has been given a special and limited meaning. The authorities seem uniform on the proposition that the difficulties or hardships relied on must be unique to the parcel involved in the application for the variance. They must be peculiar to that particular property, and not general in character, since difficulties or hardships shared with others in the area go to the reasonableness of the zoning generally, and will not support a variance. If the hardship is one which is common to the area the remedy is to seek a change of the zoning for the neighborhood rather than to seek a change through a variance for an individual owner. Thus some exceptional and undue hardship to the individual land owner, unique to that parcel of property and not shared by property owners in the area, is an essential prerequisite to the granting of such a variance. 58 Am.Jur., Zoning, §§ 203-204; 101 C.J.S. Zoning §§
852 290-294; 8 McQuillin, Municipal Corporations, §§ 25.166-25.169 (3d ed. rev. 1957); 1 *852 Yokley, Zoning Law and Practice, §§ 138-139 (2d ed. 1953).

A variance should not be granted where the use to be authorized thereby will alter the essential character of the locality, or interfere with the zoning plan for the area and with rights of owners of other property; and a variance which permits a use not authorized by an existing zoning classification fixed under a planned zoning of the area or neighborhood, generally is not justified unless the land can not yield a reasonable return when used only for purposes authorized in its present zoning. From the complaint it appears that the variance was sought for the economic advantage of the applicant, and not because the property was not reasonably and profitably usable for one or another of the purposes for which it was zoned.

The complaint in this case adequately raised the question of the existence vel non of any exceptional and undue hardship pertaining to the particular property involved, so as to justify or permit the ordinance for the variance, and therefore was sufficient to withstand the challenge of a motion to dismiss.

Moreover, the complaint showed that the hardship claimed was self-created and self-imposed. One who purchases property while it is in a certain known zoning classification, ordinarily will not be heard to claim as a hardship a factor or factors which existed at the time he acquired the property. That point is stronger in this case because here the purchaser of the property, aware of the permitted uses, sought to obtain a variance therefrom before it acquired the property, and the appellee corporation took conveyance of the property after the city zoning board had ruled against its application for a variance. A self-imposed or self-acquired hardship (such as by purchasing property under existing zoning and then applying for a variance) is not the kind of hardship for which variance should be granted. See Kazlow v. Peters, Fla. 1951, 53 So.2d 321; Josephson v. Autrey, Fla. 1957, 96 So.2d 784; Green v. City of Miami, Fla.App. 1958, 107 So.2d 390; City of Miami Beach v. Greater Miami Hebrew Academy, Fla. App. 1958, 108 So.2d 50.

In Josephson v. Autrey, supra [96 So.2d 784], the Supreme Court dealt with the question of "the effect of a zoning restriction existing when property is acquired on the claim of the property owner that a hardship exists by virtue of such zoning restriction." With reference thereto the Supreme Court there said (96 So.2d at pages 789-790):

"* * * In the instant case the appellees Cunningham acquired the land with full knowledge of the existing zoning restrictions. As a matter of fact, they paid to the seller a substantial profit over and above the amount paid for the land by the seller a short time before. They purchased the property burdened with the provision of the zoning ordinance that restricted its use to tourist accommodations and similar uses. They then appeared before the appeals board and contended `hardship' solely on the basis that the land was not worth what they paid for it burdened by the use restriction which they knew to be in existence when they bought the property

"The authorities are generally in accord on the proposition that in seeking a variance on the ground of a unique or unnecessary hardship, a property owner cannot assert the benefit of a `self-created' hardship. Appellee cites our cases where we have held that a property owner will not be precluded from attacking the basic validity of a zoning ordinance merely because the ordinance was in force when he acquired the property. The situation is entirely different. The invalid *ordinance* can have no effect whatsoever and its invalidity can be assaulted at any time. The application for a variance permit recognizes the basic validity of the ordinance and seeks the grant of a variance purely on the basis of some hardship
853 peculiar to his particular property. *853 **When the owner himself by his own conduct creates the exact hardship which he alleges to exist, he certainly should not be permitted to take advantage of it.** On the proposition of the effect of self-created hardships see the following: Garlick v. City of Miami, Fla. 1953, 67 So.2d 440; Miami Beach United Lutheran Church of the Epiphany v. City of Miami Beach, Fla. 1955, 82 So.2d 880; Mayer v. Dade County, Fla. 1955, 82 So.2d 513; Freitag v. Marsh, 280 App.Div. 934, 115 N.Y.S.2d 838; Stevens v. Connor, Sup., 120 N.Y.S.2d 345; Deer-Glen Estates v. Board of Adjustment and Appeal, 39 N.J. Super. 380, 121 A.2d 26; Keller v. Town of Westfield, 39 N.J. Super. 430, 121 A.2d 419; Gleason v. Keswick Improvement Ass'n, Inc., 197 Md. 46, 78 A.2d 164; Caccia v. Zoning Board of Review, [1955, 83 R.I. 146, 113] A.2d 870; Newcomb v. Teske, 225 Minn. 223, 30 N.W.2d 354; Rathkopf, Law of Zoning and Planning (3d Ed.), p. 748; 8 McQuillin, Municipal Corporations (3d Ed.), Sec. 25.168, p. 296. Also see City of Miami Beach v. Hogan, Fla. 1953, 63 So.2d 493."

The showing in the complaint was sufficient to state a cause of action to invalidate the challenged variance ordinance. The dismissal order appealed from is reversed, and the cause is remanded for further proceedings not inconsistent with this opinion.

Reversed.

HORTON and PEARSON, JJ., concur.

On Petition for Rehearing

PER CURIAM.

In their petition for rehearing appellees Elgene, Inc. and Loi set forth a number of grounds including the suggestion that in holding the adjoining property holders were entitled to bring the suit this court overlooked the case of Boucher v. Novotny, Fla. 1958, 102 So.2d 132, 135. That case was not applicable here because of material difference in the factual situations presented in the two cases.

The Novotny case dealt with a violation of a municipal zoning ordinance. The suit there was one by a nearby home owner to enjoin a motel owner from extending portions of his structure beyond the pre scribed setback lines, although the city had approved his building plans which called for such violation. In that case the Supreme Court noted that the only damage claimed by the plaintiff was one which, as he alleged it, was suffered by the whole community as a result of the setback violation. The court in that case announced the rule that an individual proceeding against an alleged "violation of a municipal zoning ordinance" must show "special damages peculiar to himself differing in kind as distinguished from damages differing in degree suffered by the community as a whole.[1]"

The instant case was not one dealing with the violation of a zoning ordinance, but one which challenged the validity of an amendatory zoning ordinance, which, by granting a variance amounting to spot zoning, permitted appellees to put their property to a liberal business use (gasoline service station), prohibited in the more restricted R-3 classification for which the area involved was zoned. The right of an adjacent or nearby home owner directly affected by an alleged improper intrusion of such liberal business to challenge the validity thereof, is recognized.[2]

854 *854 Here the plaintiffs alleged that loss of value and destruction of use of their property would result from the noise, traffic, and unsightliness which the service station would bring about. It should be noted that the claim of loss in the present case is direct, and the reasons for it are alleged, that is, noise, traffic and unsightliness of the service station, whereas in the Novotny case the allegation of loss was that of the community as a whole and not that of the individual plaintiff.

Under the rule referred to in the Novotny case, as to the need to allege special injury to the plaintiff rather than general injury to the community as a whole, it seems clear that in addition to general community injury, the plaintiffs in the instant case alleged and may show the requisite injury special or peculiar to them as residents adjacent and nearby to the proposed

gasoline service station. The noises from the traffic and from the operation of service stations such as from lubrication machines, pumping machinery, the use of and dropping of tools, and the unsightly factors alleged which would include the lights and glare from the place, could have a very serious effect on the value and use value of nearby residences, whereas other residents of the "community as a whole" would not be affected by those direct injuries. The noises, smells and lighting glare which might be an extreme injurious factor to one who lived next door to the service station could not be heard, smelled or seen by those members of the "community as a whole" who lived some distance away. Thus, injuries to the adjacent or nearby owners were special to them and different from and in addition to the injury which resulted to the entire area or community as a whole from the fact of down-grading of the zoning.

In the case presented, alleging special and direct injury, a denial of a right to sue would be counter to the command of Section 4 of the Declaration of Rights of the Florida Constitution, 25 F.S.A., which reads:

> "All courts in this State shall be open, so that every person for any injury done him in his lands, goods, person or reputation shall have remedy, by due course of law, and right and justice shall be administered without sale, denial or delay."

Having considered the several grounds presented in the petition for rehearing, and finding them to be without merit, we adhere to our opinion and judgment herein dated June 2, 1959, and the petition for rehearing is denied.

HORTON, C.J., PEARSON and CARROLL, CHAS., JJ., concur.

[1] But see Fortunato v. City of Coral Gables, Fla. 1950, 47 So.2d 321; and Conrad v. Jackson, Fla. 1958, 107 So.2d 369, where individual were allowed to attack violations of zoning ordinances where they alleged individual rather than community injuries.

[2] Wags Transportation System, Inc. v. City of Miami Beach, Fla. 1956, 88 So.2d 751; Hartnett v. Austin, Fla. 1956, 93 So.2d 86; Josephson v. Autrey, Fla. 1957, 96 So.2d 784. See, also, Mayor and Board of Aldermen, etc. v. White, 1957, 230 Miss. 698, 93 So.2d 852; and Annotation, 37 A.L.R.2d 1143.

opposition

600 So.2d 561 (1992)

Luis HERRERA, et al., Petitioners,

v.

CITY OF MIAMI, a Florida municipal corporation; and Juan M. Delgado, as General Partner of Vizcatran, Ltd., a Florida limited partnership, Respondents.

No. 91-2878.

District Court of Appeal of Florida, Third District.

June 23, 1992.

562 *562 John G. Fletcher, South Miami, for petitioners.

Ferrell, Cardenas, Fertel & Morales and Alberto R. Cardenas and A. Vicky Leiva and Alicia Morales, Miami, for Juan M. Delgado.

A. Quinn Jones, III, City Atty., and Warren Bittner, Asst. City Atty., for City of Miami.

Before SCHWARTZ, C.J., and HUBBART and FERGUSON, JJ.

CORRECTED OPINION

FERGUSON, Judge.

In land-use law, a variance seeker must demonstrate an exceptional and unique hardship to the individual landowner not shared by other property owners in the area. *Nance v. Town of Indialantic*, 419 So.2d 1041 (Fla. 1982). A variance which permits a use not authorized by existing zoning restrictions for a neighborhood is not justified unless no reasonable use can be made of the land without the variance. *Bernard v. Town Council of Palm Beach*, 569 So.2d 853 (Fla. 4th DCA 1990). *See also Metropolitan Dade County v. Betancourt*, 559 So.2d 1237, 1239 (Fla. 3d DCA 1990) ("Where land is zoned for residential use, deprivation of all beneficial use is proved only when it is established by competent evidence that the land cannot be used for any of the purposes permitted in such district"); *Town of Indialantic v. Nance*, 485 So.2d 1318, 1320 (Fla. 5th DCA) ("the hardship must be such that it renders it virtually impossible to use the land for the purpose for which it is zoned"), *rev. denied*, 494 So.2d 1152 (Fla. 1986); *Thompson v. Planning Comm'n*, 464 So.2d 1231 (Fla. 1st DCA 1985) (hardship may not be found unless there is a showing that under present zoning no reasonable use can be made of property).

The petitioners own single-family residential properties across the street from the site which the respondent seeks to develop. They made a showing that construction of the proposed multi-unit complex with inadequate parking facilities would burden their property and the road between the parties' properties with overflow parking from the respondent's property, thereby creating unsightly clutter and congestion.

The planning staff for the City of Miami recommended a denial of the developer's request for a variance for the reason that no legal hardship existed. The Zoning Board agreed and denied the variance. On a 3-2 vote the City Commission rejected the planning recommendation and reversed the Zoning Board's denial of the variance. The circuit court, appellate division, affirmed, holding that there was competent and substantial evidence to support the City Commission's finding that "[i]f the building is built and the parking variance granted, the traffic problem in the area would not be aggravated nor the neighborhood changed."

Nowhere in the circuit court's eight-page opinion is there the critical finding that, without the variance, it is virtually
563 impossible *563 to use the land as it is presently zoned.[1] Neither is there a finding that any alleged hardship was not created by the applicant.

There are three interrelated reasons why the variance to substantially reduce parking-space requirements should not have been granted: (1) the petitioner for the variance is the developer; the landowner made no claim or demonstration of

hardship; (2) the only argument of hardship was that the specific 100-unit federally-sponsored project for the elderly might not qualify for financing absent the variance; and (3) there was no showing whatever that the project could not be reduced in size to satisfy zoning conditions or that the land could not yield a reasonable return if used as authorized by present zoning restrictions for another project.

As neighboring property owners, the appellants had a right to rely on existing zoning conditions and they had a right to a continuation of those conditions in the absence of a showing that a variance was necessary. *Friedland v. City of Hollywood*, 130 So.2d 306 (Fla. 2d DCA 1961). On review of an administrative grant of a zoning variance, the standard is not whether variances have been granted to similarly-situated applicants in the community, or whether the grant of the variance would have a deleterious impact on the surrounding area.

Neither is it sufficient, for the purpose of placing this case beyond review by certiorari, that the circuit court incanted principles of law generally governing cases of this type. We must next determine whether that law has been correctly applied to the facts as they appear in the record. *See* *Bernard v. Town Council of Palm Beach*, 569 So.2d 853 (Fla. 4th DCA 1990) (held, on certiorari review, that circuit court was required to determine whether landowner presented competent substantial evidence that no reasonable use can be made of property absent the variance). Where, as here, factual findings made by the circuit court do not satisfy the legal requirements for a variance, the application must be denied. *Thompson v. Planning Comm'n*, 464 So.2d 1231 (Fla. 1st DCA 1985).

Certiorari granted; the order granting a variance is quashed.

SCHWARTZ, C.J., concurs.

HUBBART, Judge, dissenting.

By today's decision, this court concludes that the circuit court below stated the correct principles of law in reviewing the zoning decision of the City of Miami, but misapplied those principles so as to reach an incorrect result, thereby departing from essential requirements of law, because there is insufficient evidence in the record to support the parking variance ordinance which the circuit court sustained; based on this legal predicate, the court grants the instant petition for a writ of certiorari and quashes the circuit court decision. Because I think this court has misconceived the scope of its certiorari review of the circuit court's decision, I must respectfully dissent.

The Florida Supreme Court in *Educational Development Center, Inc. v. City of West Palm Beach Zoning Board of Appeals*, 541 So.2d 106 (Fla. 1989), states the scope of our review in cases of this nature:

> "In *City of Deerfield Beach v. Vaillant*, 419 So.2d 624 (Fla. 1982), the Court clearly set forth the standards governing certiorari review. When the circuit court reviews the decision of an administrative agency under Florida Rule of Appellate Procedure 9.030(c)(3), there are *three* discrete components of its certiorari review.
>
> Where a party is entitled as a matter of right to seek review in the circuit court from administrative action, the circuit court must determine whether procedural due process is accorded, whether the essential
> 564 requirements of *564 the law have been observed, and whether the administrative findings and judgment are supported by competent substantial evidence.
>
> *Vaillant*, 419 So.2d at 626. In so doing, the circuit court is not permitted to re-weigh the evidence nor to substitute its judgment for that of the agency. *Bell v. City of Sarasota*, 371 So.2d 525 (Fla. 2d DCA 1979).
>
> In turn, *the standard of review to guide the district court when it reviews the circuit court's order under Florida Rule of Appellate Procedure 9.030(b)(2)(B) is necessarily narrower. The standard for the district court has only two discrete components.*
>
> *The district court, upon review of the circuit court's judgment, then determines whether the circuit court afforded procedural due process and applied the correct law.*
>
> *Vaillant*, 419 So.2d at 626. In *Vaillant,* the Court adopted the rationale of the Fourth District Court of Appeal and quoted approvingly from its decision:
>
> `[C]ommon sense dictates that no one enjoys three full repetitive reviews to,

1. a[n] [administrative] board

2. a circuit court

3. a district court of appeal... .'

Id. (quoting City of Deerfield Beach v. Vaillant, 399 So.2d 1045, 1047 (Fla. 4th DCA 1981))."

541 So.2d at 108 (emphasis added).

The circuit court meticulously adhered to the scope of its review of the City of Miami's zoning decision. The circuit court expressly considered whether procedural due process had been accorded to the parties by the City of Miami zoning proceedings, whether essential requirements of law had been observed in such proceedings, and whether the parking variance ordinance was supported by substantial, competent evidence. In so doing, the circuit court wrote an extensive 8 1/2 page opinion concluding that procedural due process had been accorded the parties, that essential requirements of law had been observed, and that substantial, competent evidence had been adduced supporting the parking variance ordinance. Upon certiorari review of this decision, we are required to determine whether the circuit court afforded procedural due process to the parties and applied the correct law. Clearly, the circuit court did both in its decision below; without dispute, procedural due process requirements were observed, and the circuit court, without question, applied the correct principles of law. It therefore follows that the petition for a writ of certiorari must be summarily denied. *Educational Dev. Center.*

This court, however, reaches a different result by impermissibly broadening the scope of our review. The court grants the instant petition for writ of certiorari and quashes the decision below upon a holding that the circuit court misapplied otherwise correct principles of law and reached an incorrect result by sustaining the parking variance ordinance, thereby departing from essential requirements of law, because there is insufficient evidence in the record to sustain such a result. This holding, however, misconceives the scope of our review. Our function is to determine whether the circuit court applied the correct law, not whether the circuit court applied the correct law to reach the correct result based on otherwise sufficient evidence in the record. If the latter was the scope of our review, the petitioner would, in effect, be entitled to a second full review in this court of the City of Miami zoning decision herein — which is decidedly not the case. "We hold that where full review of administrative action is given in the circuit court as a matter of right, one appealing the circuit court's judgment is not entitled to a second full review in the district court." City of Deerfield Beach v. Vaillant, 419 So.2d 624, 626 (Fla. 1982). Indeed, the Fifth District Court of Appeal has stated in St. Johns County v. Owings, 554 So.2d 535 (Fla. 5th DCA 1989), *rev. denied,* 564 So.2d 488 (Fla. 1990):

> "As recently emphasized by the Florida Supreme Court in Education Development Center, Inc. v. City of
> 565 West Palm Beach Zoning Board of Appeals, 541 So.2d 106 (Fla. 1989), a district court *565 of appeal plays a very limited role in reviewing a circuit court's action in a zoning dispute such as this. *Only the circuit court can review whether the judgment of the zoning authority is supported by competent substantial evidence.* The district court of appeal merely determines whether the circuit court afforded due process and applied the correct law. *See also* City of Deerfield Beach v. Vaillant, 419 So.2d 624 (Fla. 1982). As the court in *Education Development Center* noted, *a district court of appeal may not quash a circuit court's decision because it disagrees with the circuit court's evaluation of the evidence."*

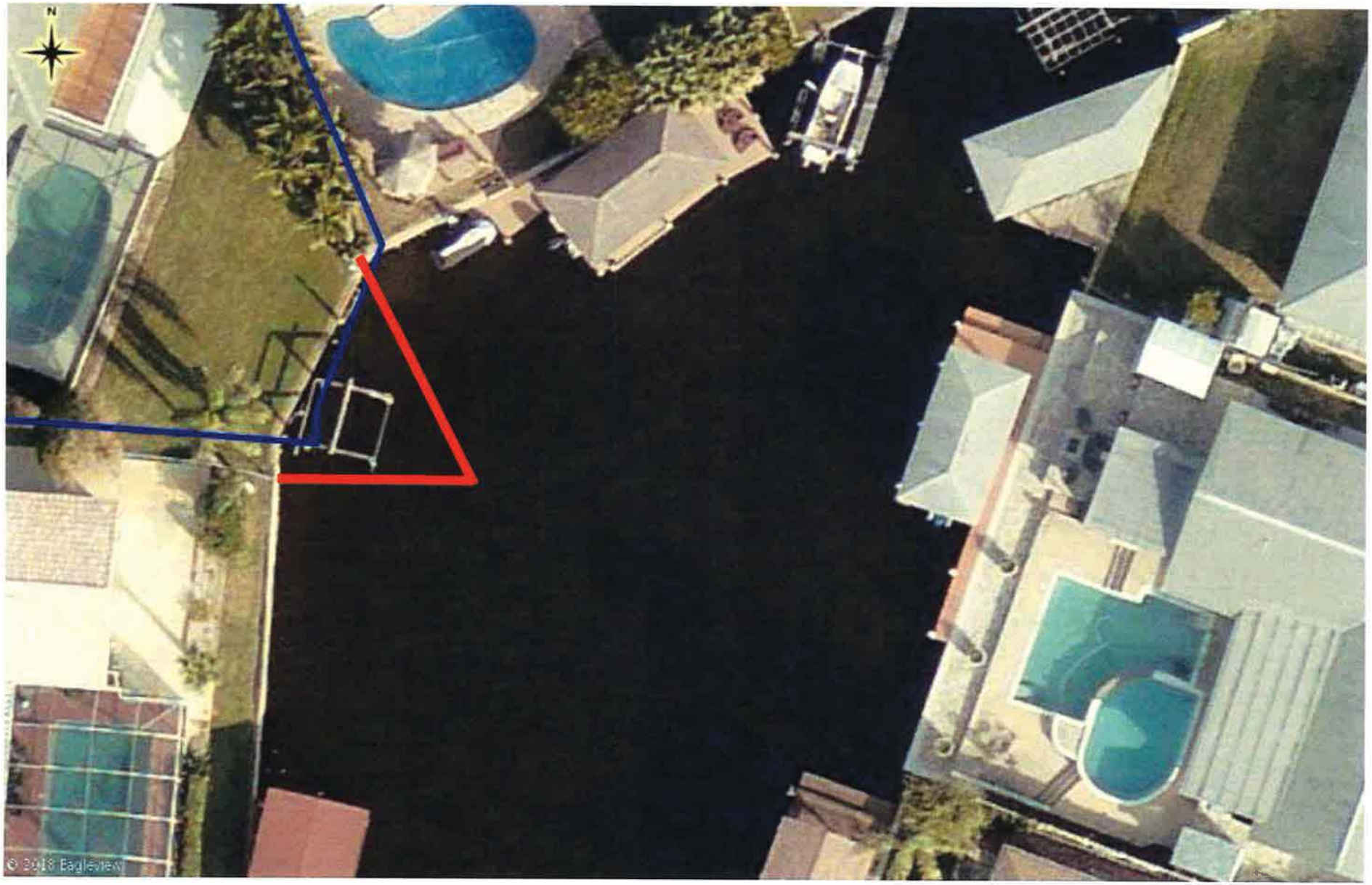
554 So.2d at 537 (emphasis added). Stripped to its essentials, this court by today's decision simply disagrees with the circuit court over whether there is substantial, competent evidence in the record to support the parking variance ordinance. Without question, we have no authority to quash the circuit court's decision on that basis. Accordingly, I dissent.

[1] Section 1901, City of Miami Zoning Ordinance provides:

A variance is relaxation of the terms of the ordinance where such action will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of actions of the applicant, a literal enforcement of this ordinance would result in unnecessary and undue hardship on the property.

opposition

2018 Overhead Pictometry



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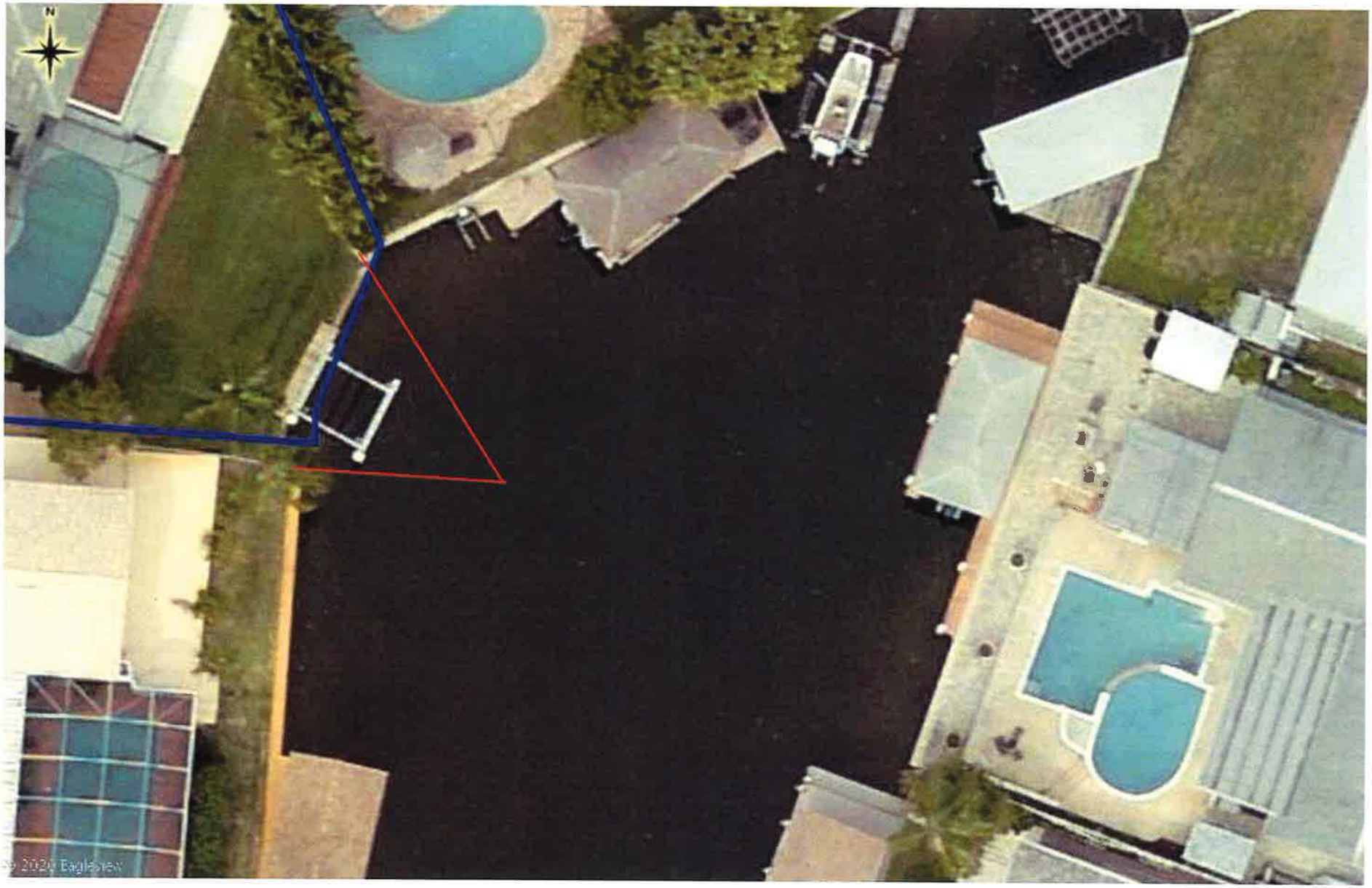
2020 Overhead Pictometry



opposition

2022 Overhead Pictometry

Dana Blickley, CFA
PROPERTY APPRAISER
Brevard County

opposition

1:250

0 15 30 60 ft

0 5 10 20 m

Dana Blickley, CFA
PROPERTY APPRAISER
Brevard County

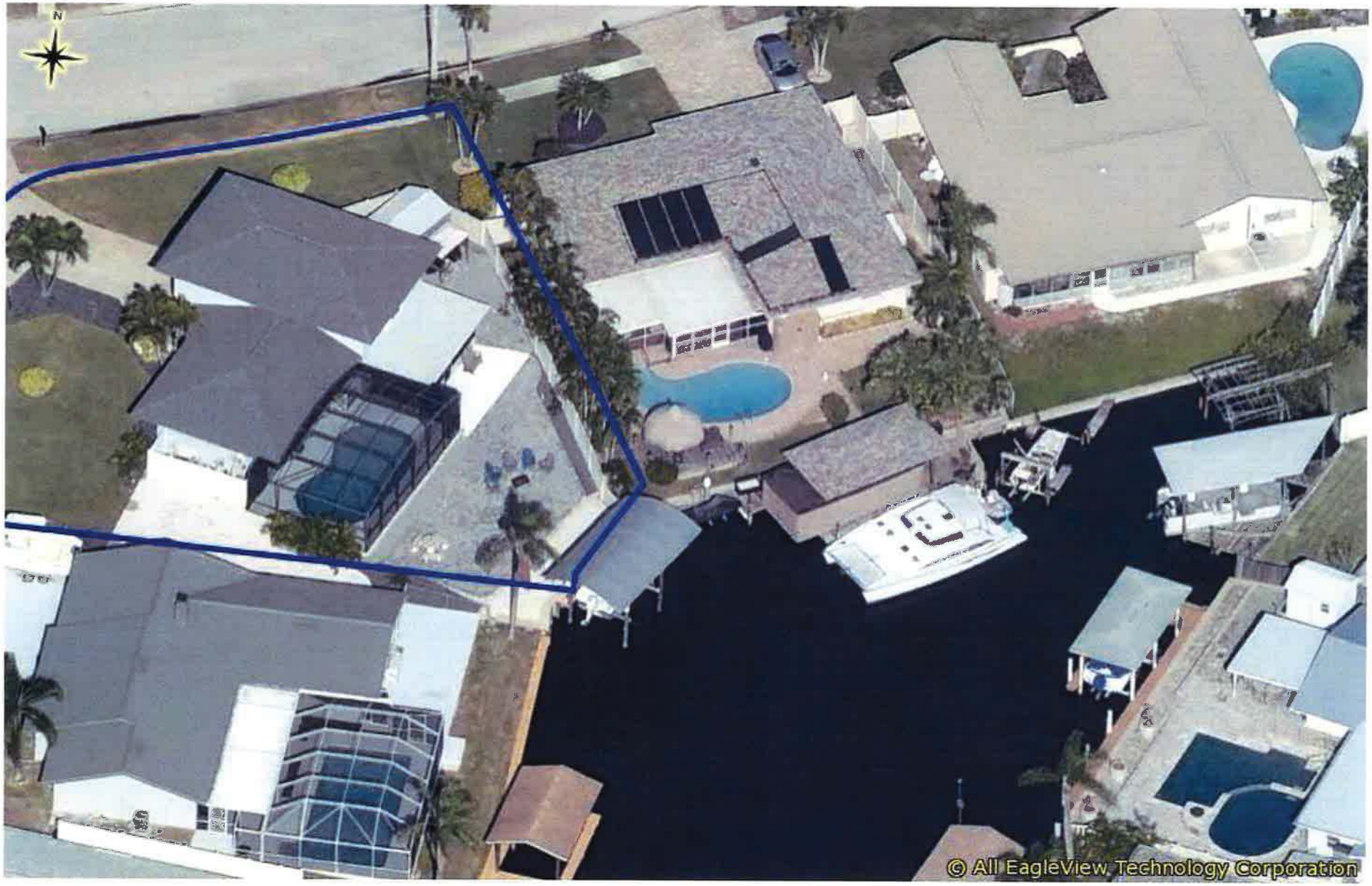
opposition

2024

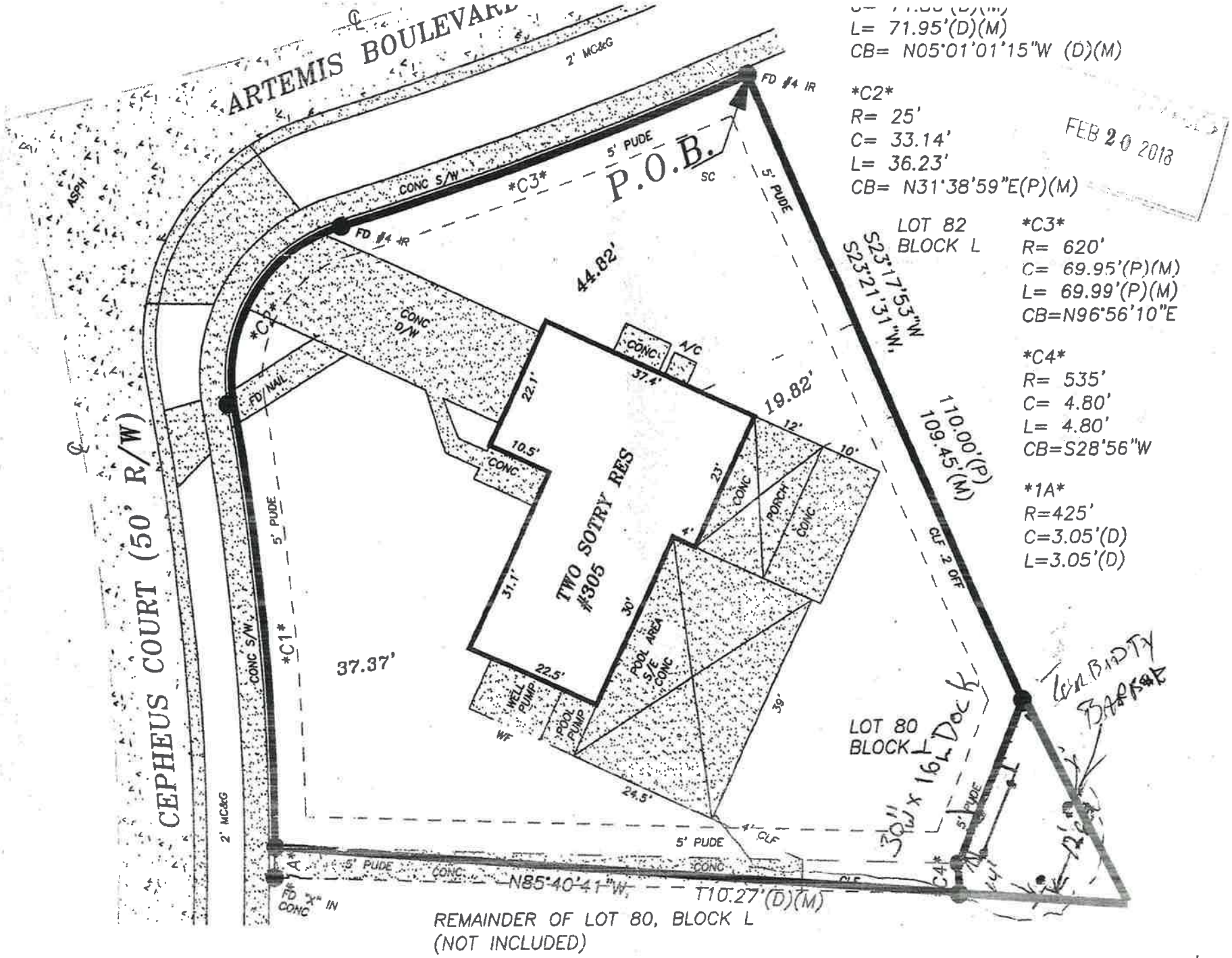
All BCPAO maps and/or map applications are maintained for assessment and illustrative purposes only and do not represent surveys, plats, or any other legal instrument. Likewise, measurement and location tools are for assessment and illustrative purposes only and do not necessarily reflect real-world conditions. Due to the nature of Geographic Information Systems (GIS) and cadastral mapping, map layers may not precisely align and may not represent precise location, shape, and/or legal boundaries. Only a Florida-licensed surveyor can determine legally-relevant property boundaries, elevation, distance, area, and/or location in Florida.

Map created November 20, 2024 (map data dates may vary)

Opposition



01/10/2024



C1
L= 71.95'(D)(M)
CB= N05°01'01"15"W (D)(M)

C2
R= 25'
C= 33.14'
L= 36.23'
CB= N31°38'59"E(P)(M)

C3
R= 620'
C= 69.95'(P)(M)
L= 69.99'(P)(M)
CB=N96°56'10"E

C4
R= 535'
C= 4.80'
L= 4.80'
CB=S28°56"W

1A
R=425'
C=3.05'(D)
L=3.05'(D)

FEB 20 2018

DESCRIPTION AS FURNISHED:

PART OF LOTS 80 AND 81, BLOCK L, OF DIANA SHORES, UNIT NO. 5, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 21, PAGE 87, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

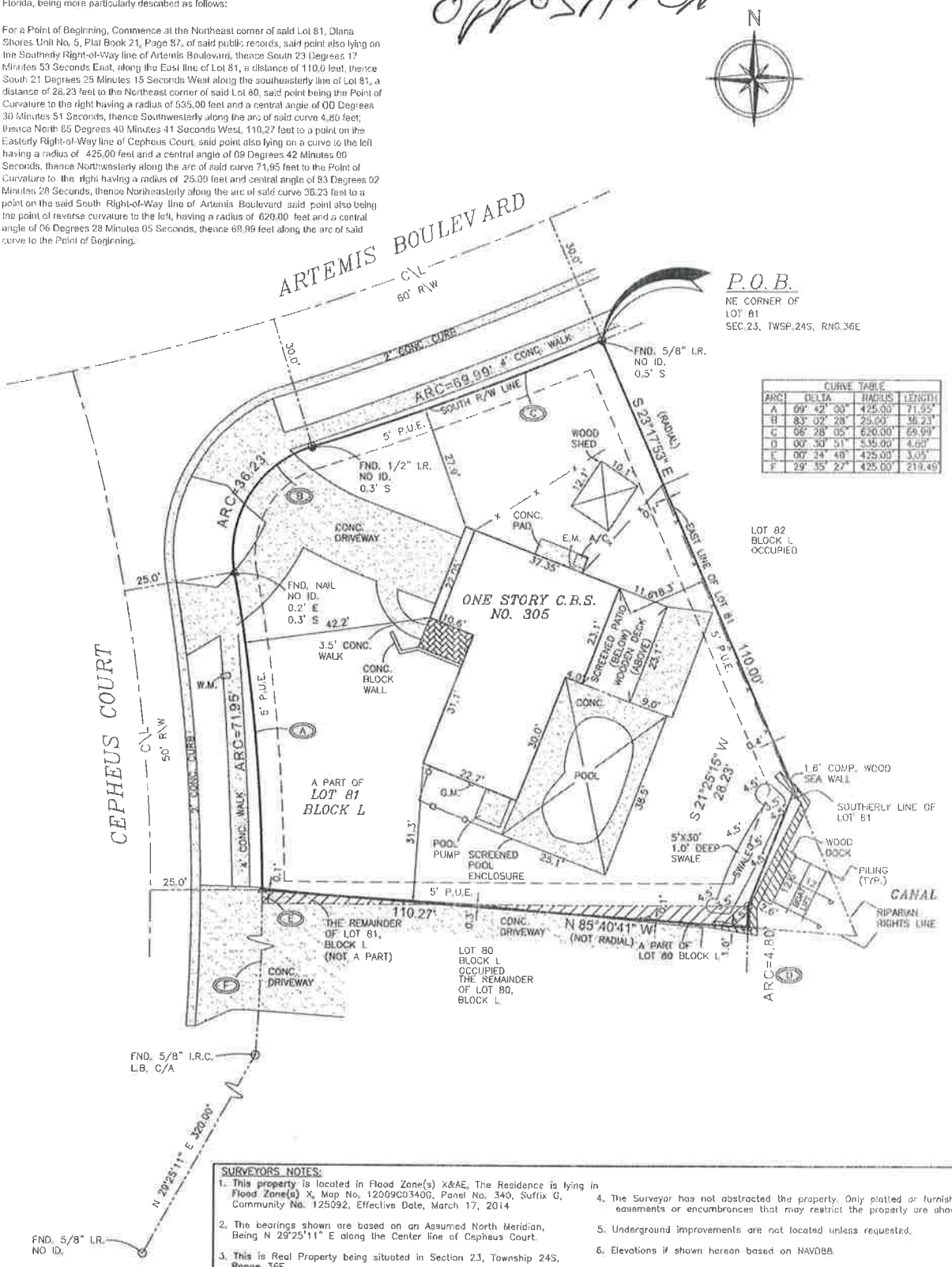
DESCRIPTION:

Part of Lots 80 and 81, Block L, of Diana Shores Unit No. 5, according to the plat thereof, as recorded in Plat Book 21, Page 87, public records of Brevard County, Florida, being more particularly described as follows:

For a Point of Beginning, Commence at the Northeast corner of said Lot 81, Diana Shores Unit No. 5, Plat Book 21, Page 87, of said public records, said point also lying on the Southerly Right-of-Way line of Artemis Boulevard, thence South 23 Degrees 17 Minutes 53 Seconds East, along the East line of Lot 81, a distance of 110.0 feet, thence South 21 Degrees 25 Minutes 15 Seconds West along the southeasterly line of Lot 81, a distance of 28.23 feet to the Northeast corner of said Lot 80, said point being the Point of Curvature to the right having a radius of 535.00 feet and a central angle of 00 Degrees 30 Minutes 51 Seconds, thence Southwesterly along the arc of said curve 4.80 feet; thence North 85 Degrees 40 Minutes 41 Seconds West, 110.27 feet to a point on the Easterly Right-of-Way line of Cepheus Court, said point also lying on a curve to the left having a radius of 425.00 feet and a central angle of 09 Degrees 42 Minutes 00 Seconds, thence Northwesterly along the arc of said curve 71.95 feet to the Point of Curvature to the right having a radius of 25.00 feet and central angle of 83 Degrees 02 Minutes 28 Seconds, thence Northeasterly along the arc of said curve 36.23 feet to a point on the said South Right-of-Way line of Artemis Boulevard said point also being the point of reverse curvature to the left, having a radius of 620.00 feet and a central angle of 06 Degrees 28 Minutes 05 Seconds, thence 69.99 feet along the arc of said curve to the Point of Beginning.

MAP OF BOUNDARY SURVEY

opposition



SURVEYORS NOTES:

1. This property is located in Flood Zone(s) X&AE. The Residence is lying in Flood Zone(s) X, Map No. 12009C0340G, Panel No. 340, Suffix G, Community No. 125092, Effective Date, March 17, 2014
2. The bearings shown are based on an Assumed North Meridian, Being N 29°25'11" E along the Center line of Cepheus Court.
3. This is Real Property being situated in Section 23, Township 24S, Range 36E.
4. The Surveyor has not abstracted the property. Only platted or furnished easements or encumbrances that may restrict the property are shown.
5. Underground improvements are not located unless requested.
6. Elevations if shown hereon based on NAVD88.

LEGEND & ABBREVIATIONS: ○ = Set 5/8" I.R.C.
△ = Set nail with metal disc □ = Set concrete monument with disc
—o— = 4' C.L.F. XXX = Existing Elevations
—□— = 6' W.F. (XXX) = Proposed Elevations
- - - - - = OHPL ——— = Center line

(B.M.)=Benchmark,(CONC.)=Concrete,(C\L)=Centerline,(C.B.S.)=Concrete Block Structure (C.B.S.)=Concrete Block Structure,(C.&.S)=Covered and Screened, (C.M.)=Concrete Monument,(C.M.P.)=Corrigated Metal Pipe,(C.L.F.)=Chain Link Fence (D)=Deed,(E.M.)=Electric Meter,(F.F.E.)=Finished Floor Elevation,(Fnd.)=Found, (F.P.R.)=Fixed Point of Reference, (IRC)=Iron Rod with Cap,(I.P.)=Iron Pipe (G.M.)=Gas Meter,(L.B.)=Licensed Business,(L.S.)=Licensed Surveyor,(M)=Measured (M.E.S.)=Mitered End Section,(N&D)=Nail & Disc,(O.R.B.)=Official Records Book, (OHPL)=Over Head Power Line,(P.C.P.)=Permanent Control Point, (P)=Plat (P.O.B.)=Point of Beginning,(P.O.C.)=Point of Commencement (P.R.M.)=Permanent Reference Monument,(P.U.& D.E.)=Public Utility & Drainage Easement, (RNG.)=Range,(R.C.P.)=Reinforced Conc. Pipe,(R\W)=Right of Way,(SEC.)=Section (TWP.)=Township,(WUP)=Wood Utility Pole,(W.F.S.)=Wood Frame Structure,(W.M.)=Water Meter

CERTIFIED TO: JOHN N. BECKSTROM JR. AND LISA M. BECKSTROM

Certified By: Eric Nielsen Digitally signed by Eric Nielsen Date: 2022.11.07 15:38:12 -05'00' Signature Date:

I Eric Nielsen Profesional Surveyor & Mapper, No. 5386, L.B. 6946, State of Florida certify this map of survey meets the stanciards set per Florida Administrative Code 5J-17.051 pursuant to Chapter 472.027 per Florida Statutes.

ERIC NIELSEN License Number 5386 STATE OF FLORIDA Professional Surveyor and Mapper

Eric Nielsen Land Surveying, Inc.

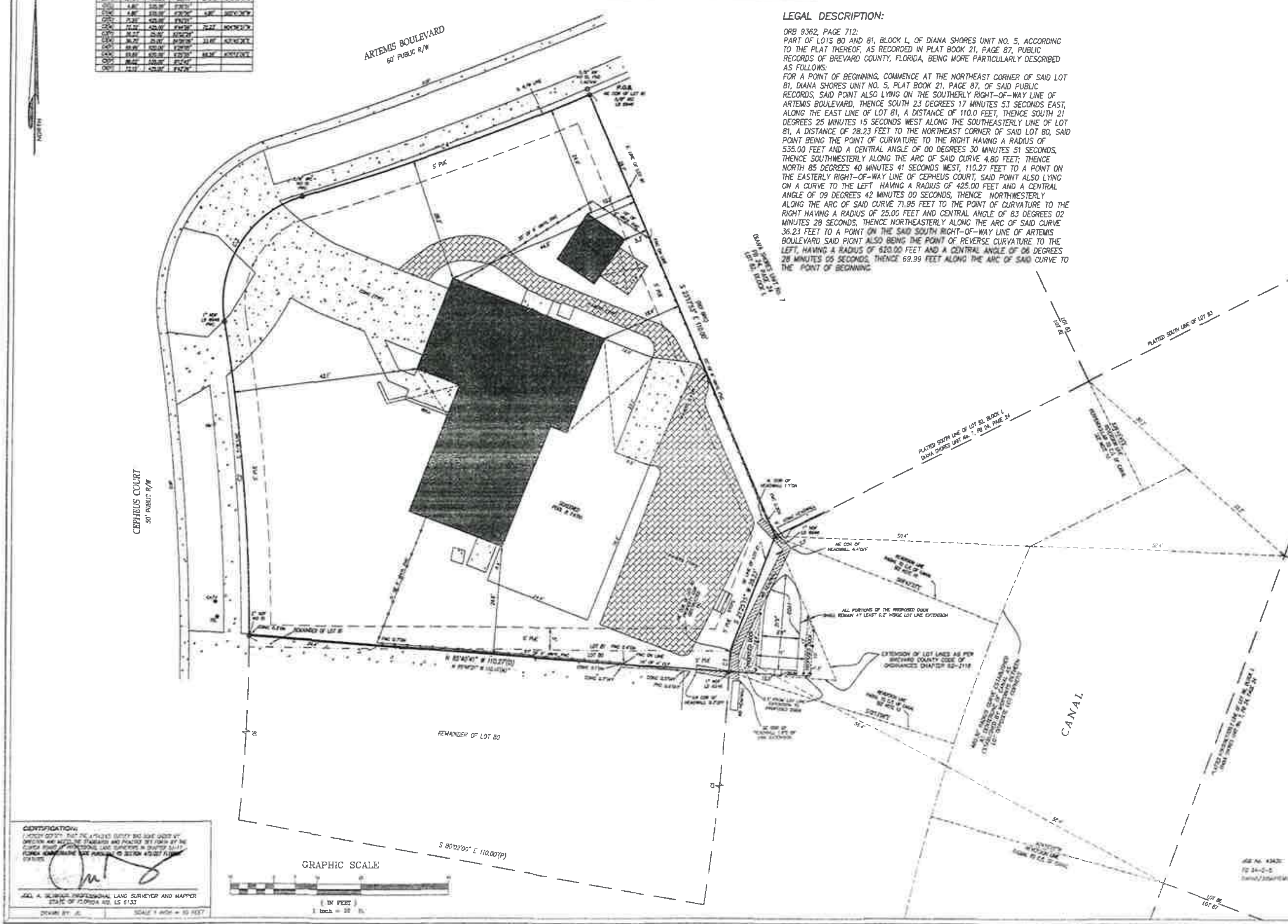
Revisions:
RECERT 7-5-2022
RECERT 10-17-2022

12 STONE STREET, COCOA, FL. 32922
Ph: (321) 631-5654 Fax: (321) 631-5974

SCALE:	DATE:	JOB NO
1" = 20'	03-02-2020	20-079-02

UNLESS IT BEARS THE SEAL & SIGNATURE OF A FLORIDA LICENSED SURVEYOR THIS SURVEY IS FOR INFORMATIONAL PURPOSES ONLY.

MAP OF BOUNDARY SURVEY



LEGAL DESCRIPTION:

ORB 9362, PAGE 712:
PART OF LOTS 80 AND 81, BLOCK L, OF DIANA SHORES UNIT NO. 5, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 21, PAGE 87, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
FOR A POINT OF BEGINNING, COMMENCE AT THE NORTHEAST CORNER OF SAID LOT 81, DIANA SHORES UNIT NO. 5, PLAT BOOK 21, PAGE 87, OF SAID PUBLIC RECORDS, SAID POINT ALSO LYING ON THE SOUTHERLY RIGHT-OF-WAY LINE OF ARTEMIS BOULEVARD, THENCE SOUTH 23 DEGREES 17 MINUTES 53 SECONDS EAST, ALONG THE EAST LINE OF LOT 81, A DISTANCE OF 110.0 FEET, THENCE SOUTH 21 DEGREES 25 MINUTES 15 SECONDS WEST ALONG THE SOUTHEASTERLY LINE OF LOT 81, A DISTANCE OF 28.23 FEET TO THE NORTHEAST CORNER OF SAID LOT 80, SAID POINT BEING THE POINT OF CURVATURE TO THE RIGHT HAVING A RADIUS OF 535.00 FEET AND A CENTRAL ANGLE OF 00 DEGREES 30 MINUTES 51 SECONDS. THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE 4.80 FEET; THENCE NORTH 85 DEGREES 40 MINUTES 41 SECONDS WEST, 110.27 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF CEPHEUS COURT, SAID POINT ALSO LYING ON A CURVE TO THE LEFT HAVING A RADIUS OF 425.00 FEET AND A CENTRAL ANGLE OF 09 DEGREES 42 MINUTES 00 SECONDS, THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE 71.95 FEET TO THE POINT OF CURVATURE TO THE RIGHT HAVING A RADIUS OF 25.00 FEET AND CENTRAL ANGLE OF 83 DEGREES 02 MINUTES 28 SECONDS, THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE 36.23 FEET TO A POINT ON THE SAID SOUTH RIGHT-OF-WAY LINE OF ARTEMIS BOULEVARD SAID POINT ALSO BEING THE POINT OF REVERSE CURVATURE TO THE LEFT, HAVING A RADIUS OF 620.00 FEET AND A CENTRAL ANGLE OF 06 DEGREES 28 MINUTES 05 SECONDS, THENCE 69.99 FEET ALONG THE ARC OF SAID CURVE TO THE POINT OF BEGINNING.

LEGEND

NOTES:

1. BEARINGS BASED ON THE E. LINE OF LOT 81 BEING S 23°17'53" E AS PER PLAT (SEE SKETCH)
2. ELEVATIONS BASED ON (NOT APPLICABLE)
3. FLOOD ZONE "X", MAP No. 12009C0340H COMMUNITY No. 125092, FIRM INDEX DATE: JANUARY 29, 2021. FLOOD ZONE INFORMATION DEPICTED HEREON IS APPROXIMATE. FEMA RETAINS SOLE AUTHORITY REGARDING BOUNDARY AND EXTENT OF SFHA.
4. HORIZONTAL CLOSURE MEETS OR EXCEEDS THE ACCURACY REQUIREMENTS FOR SUBURBAN LAND AS PER FLORIDA STATUTE 5J-17-6.003
5. BEARINGS, DISTANCES OR ANGLES SHOWN ARE THE SAME AS PLAT, DEED OR RECORD UNLESS SHOWN OTHERWISE.
6. NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER. ADDITIONS OR DELETIONS TO SURVEY MAPS OR REPORTS BY OTHER THAN THE SIGNING PARTY OR PARTIES IS PROHIBITED WITHOUT WRITTEN CONSENT OF THE SIGNING PARTY.
7. THE SURVEYOR HAS NOT LOCATED NOR ATTEMPTED TO LOCATE ANY UNDERGROUND UTILITIES, FOUNDATIONS, OR STRUCTURES OTHER THAN THOSE THAT MAY BE SHOWN HEREON.
8. ONLY BOUNDARY CORNER MONUMENTS AS SHOWN HEREON ARE TO BE USED FOR THE LOCATION AND CONSTRUCTION OF IMPROVEMENTS.
9. UNLESS OTHERWISE INDICATED THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF A TITLE SEARCH OR ATTORNEY'S TITLE OPINION.
10. IN THE EVENT THAT THE CANAL EASEMENT WERE TO BE ABANDONED BY THE PUBLIC ALL OF THE CANAL AREA WOULD REVERT TO THE UPLAND OWNERS OF DIANA SHORES UNIT NO. 5, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 21, PAGE 87, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.
HOWEVER THE REVERSION LINES SHOWN HEREON ARE FOR THE SOLE PURPOSE OF DEPICTING AN EQUITABLE SPLIT OF THE CANAL AREA WITH ALL THE UPLAND OWNERS ALONG THE CANAL.

CERTIFIED TO:
JOHN A. BECKSTROM JR AND LISA M. BECKSTROM

BOUNDARY SURVEY	FIELD WORK DATE: 4/18/24
ADDITIONAL DOCK DIMENSIONS	DATE: 6/14/24
AWNING REMOVED	DATE: 6/24/24
PROPOSED DOCK AND AWNING	DATE: 7/21/24
REMOVED AWNING	DATE: 8/21/24
PROPOSED DOCK DIMENSIONS ADDED	DATE: 8/21/24
ADDED DOCK DIMENSION	DATE: 8/30/24

Kane Surveying, Inc.
FLORIDA LICENSED BUSINESS No. LB 7838
505 DISTRIBUTION DRIVE
MELBOURNE, FLORIDA 32904
(321) 676-0427

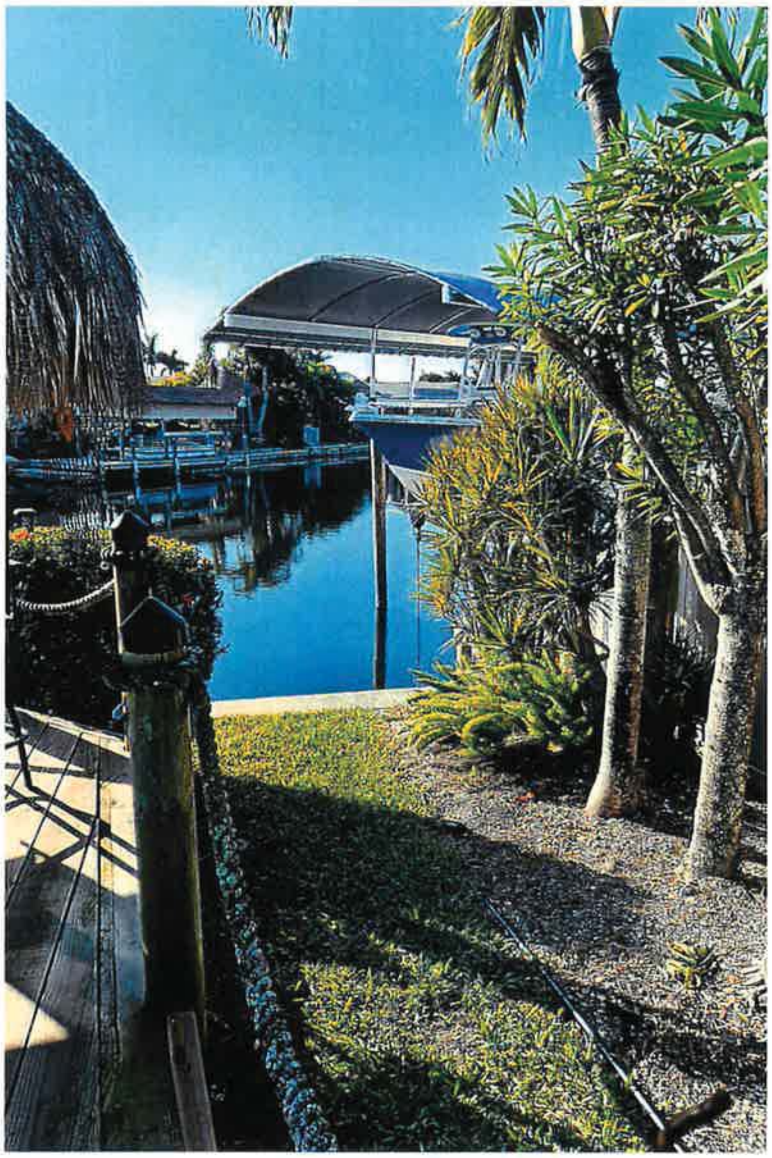
CERTIFICATION:

JAG A. SEJBOOM PROFESSIONAL LAND SURVEYOR AND MAPPER
STATE OF FLORIDA NO. LS 6133

DRAWN BY: JL
SCALE 1 INCH = 20 FEET

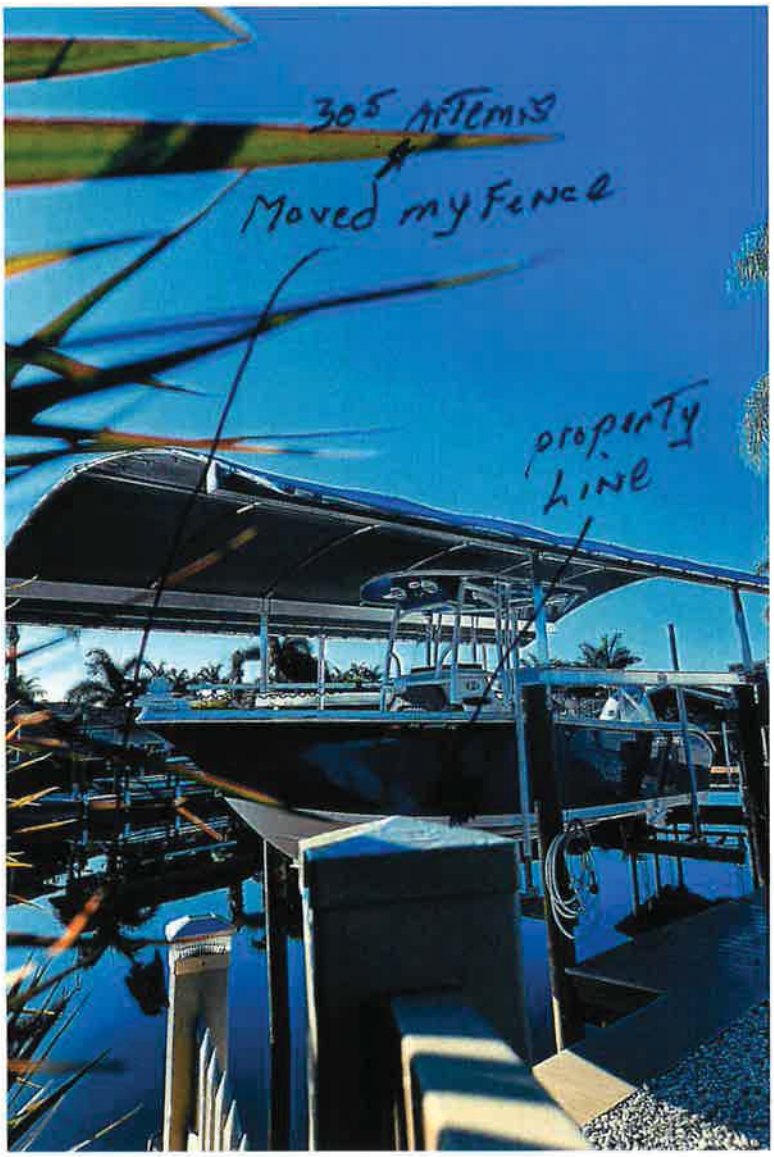
H

opposition



J

Opposition



K

7

Opposite

opposition

Dana Blickley, CFA
PROPERTY APPRAISER
Brevard County

1660 VEGA AVE MERRITT ISLAND FL 32953

opposition

Dana Blickley, CFA
PROPERTY APPRAISER
Brevard County

101 VIA HAVARRE MERRITT ISLAND FL 32953

Map created November 19, 2024 (map data dates may vary)

2

Dana Blickley, CFA
PROPERTY APPRAISER
Brevard County

225 INLET AVE MERRITT ISLAND FL 32953

opposite

All BCPAO maps and/or map applications are maintained for assessment and illustrative purposes only and do not represent surveys, plats, or any other legal instrument. Likewise, measurement and location tools are for assessment and illustrative purposes only and do not necessarily reflect real-world conditions. Due to the nature of Geographic Information Systems (GIS) and cadastral mapping, map layers may not precisely align and may not represent precise location, shape, and/or legal boundaries. Only a Florida-licensed surveyor can determine legally-relevant property boundaries, elevation, distance, area, and/or location in Florida.

Map created November 19, 2024 (map data dates may vary)

Thomas M. Phagans II and Maria Samuda

1440 Cepheus Ct

Merritt Island, FL 32953

November 18, 2024

Planning & Development Department
2725 Judge Fran Jamieson Way
Building A, Room 114
Viera, FL 32940

RE: 24V00044 John N. Beckstrom and Lisa M Beckstrom Variance

To Whom It May Concern:

Please accept this as our written consent and support in favor of the above stated variance. We fully support the **Beckstroms** and do not oppose any aspect of this proposed variance.

Please fell free to contact us should you require any additional information.

Respectfully,

Thomas M. Phagans II

Maria E. Samuda

Thomas M. Phagans II and Maria Samuda

1440 Cepheus Ct

Merritt Island, FL 32953

November 18, 2024

Planning & Development Department
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Please fell free to contact us should you require any additional information.

Respectfully,

Thomas M. Phagans II

Maria E. Samuda

November 20,2024

To whom it my concern, the Auricchio Family trust has no issues with the variances for the property at 305 Artemis Blvd. We have no issues with the dock and watercraft on this property. Our property is at 325 Artemis Blvd within 200 feet of this request and we have no issues with this request.

Sincerely,

The Auricchio Family Trust

Melissa and Richard Auricchio

Melissa Auricchio 11/20/2024

opposition

400 So.2d 37 (1981)

TOWN OF INDIALANTIC, Brevard County, Florida, a Municipal Corporation, and Clayton Test, Jr., Mayor-Chairman, Gus Carey, Kay Kovac, Barbara Willey, and Charles Settgast, As Members of the Town Council, Town of Indialantic, Florida, Appellants,

v.

James H. NANCE, As Trustee, Appellee.

No. 80-389.

District Court of Appeal of Florida, Fifth District.

May 20, 1981.
Rehearing Denied June 23, 1981.

Edward J. Silberhorn of Reinman, Harrell, Silberhorn, Moule & Boyd, P.A., Melbourne, for appellants.

Joseph S. Gillin, Jr. of Storms, Krasny, Normile, Dettmer & Gillin, P.A., Melbourne, for appellee.

38 *38 COBB, Judge.

The Town of Indialantic (Indialantic) denied appellee Nance's request for a zoning variance based on hardship. A three-judge circuit court panel sitting in review of Indialantic's decision granted Nance's petition for certiorari and ordered Indialantic to grant the requested variance. Indialantic appeals the final judgment of the circuit court, and we reverse.

In July, 1978, Nance purchased Lots 8 and 9 of Indialantic-By-The-Sea, the two contiguous lots in question. The property was oceanfront property, bounded to the north by an existing three-story motel and to the south by six contiguous lots owed in whole or in part by Nance. The motel to the north, built before mean high-water and dune set-backs were required, is non-conforming to the extent that a portion of it lies east of the dune line. Over three hundred feet to the south on Lots 14 and 15, a contractual restriction required a motel to be built, if anything.

In August, 1978, Nance submitted a plan with Indialantic's Zoning Board, proposing construction of dual, three-story buildings. The two buildings were to provide a total of twenty-four dwelling units. Because of the plan's vagueness and also because it lacked the requisite number of off-street parking units, the Zoning Board rejected the plan suggesting that Nance file for a variance with Indialantic's Board of Adjustment.

Other than the parking deficiency, the dual three-story plan met all other Indialantic zoning requirements, including a thirty-five-foot height restriction. The Zoning Board was required to deny the site plan, however, because it lacked the authority to grant a variance as to the parking deficiency.

Instead of filing an application for a parking variance on the dual three-story proposal, Nance applied to the Board of Adjustment for a height *and* parking variance for a single six-story building. Though containing twenty-four dwelling units, the same as the original plan, the six-story proposal provided four less parking units than the already parking-deficient original plan. The Board of Adjustment rejected Nance's six-story plan, finding, among other things, that Nance had not demonstrated hardship, nor had he demonstrated the property at issue to be of an unusual nature.[1]

Nance appealed the Board's decision to Indialantic's Town Council.[2] During the Town Council hearing, Nance argued that Indialantic's set-back, breeze-way parking, and landscape requirements, the state coastal, set-back restriction,[3] the narrow shape of the subject property, the existence of the three-story motel to the north, and the requirement that a motel be built, if anything, three hundred feet to the south (on land also owned by Nance), combined to create such a hardship that he should be granted a height and parking variance. When questioned by council members, Nance admitted being aware of the thirty-five-foot height restriction at the time he purchased Lots 8 and 9. Nance's architect admitted that the single six-story building would be less expensive to construct than the dual, three-story version. The council unanimously rejected Nance's hardship contention, and denied the requested height and parking variances.[4]

Subsequent to the Town Council's rejection, Nance petitioned the Circuit Court of Brevard County for review of the council's
39 decision.[5] The circuit court found that the height restriction combined with other Indialantic *39 zoning requirements to create an unusual and unnecessary hardship to Nance, and that the hardship was not self-created. Finding additionally that the variance requested did not violate any conditions or limitations to the granting of the variance,[6] the court reversed Indialantic's rejection of the six-story plan, and ordered Indialantic to grant Nance's application for variance. Indialantic petitioned this court for writ of certiorari to review the circuit court's decision; we treat the petition for certiorari as a timely notice of appeal.[7]

On appeal, Indialantic argues four points. Because of our holding today, it is unnecessary to consider the final three. Indialantic first argues that the Town Council's rejection of Nance's plan was "fairly debatable," requiring the circuit court below to affirm the Council's decision. Nance agrees that the "fairly debatable" standard is the correct test where an appellant seeks a zoning change or a change in use, but maintains the "fairly debatable" test does not apply when one seeks a variance from a zoning ordinance. Nance contends that the correct standard of review in this case is whether he, as variance seeker, established "unique or unnecessary hardship."

The "fairly debatable" rule is a rule of reasonableness; it answers the question of whether, upon the evidence presented to the municipal body, the municipality's action is reasonably based. *Wolff v. Dade County*, 370 So.2d 839 (Fla.3d DCA 1979), *cert. denied*, 379 So.2d 211 (Fla. 1979); *Central Bank & Trust Co. v. Board of County Commissioners of Dade County*, 340 So.2d 503 (Fla.3d DCA 1976), *cert. denied*, 354 So.2d 979 (Fla. 1977). The primary purpose of the "fairly debatable" test is to allocate decision-making authority over zoning matters between the legislative municipal body and the judiciary. J. Juergensmeyer and J. Wadley, *Florida Zoning — Attacks and Defenses*, § 4.2 (1980). *See: Broward County v. Capeletti Brothers, Inc.*, 375 So.2d 313, 316 (Fla.4th DCA 1979), *cert. denied*, 385 So.2d 754 (Fla. 1980). The test purports to prevent the court from substituting its judgment *with regard to zoning ordinance enactments* for that of the zoning authority. 375 So.2d at 316; 370 So.2d at 842. In other words, the "fairly debatable" test was created to review the *legislative*-type enactments of zoning ordinances. Under the "fairly debatable" test, the reviewing court must uphold the ordinance so long as a reasonable basis exists to support the zoning ordinance (assuming no constitutional violations).

In a strict sense, then, Nance correctly argues that the "fairly debatable" test is limited to the review of a municipality's "legislative" zoning decisions. However, we do not agree with Nance's contention that the proper standard of review in zoning variance cases is "unique and unnecessary hardship."[8] Unique and unnecessary hardship cannot be a standard of review. It is the category, the end-result, in which the variance seeker attempts to place himself in order to qualify for the variance. A standard of review must supply the reviewing court with guidelines it can use to determine the propriety of the municipality's decision that classified the variance seeker as either a hardship or non-hardship. The propriety of the municipality's decision must be determined by examining the evidence presented to it; the standard of review establishes the quantum and quality of evidence that will make a zoning variance determination irreversible by the reviewing court. Utilizing unique and unnecessary hardship as a standard of review simply begs the question of whether the evidence presented to the municipal body reasonably demonstrated unique and unnecessary hardship. We decline to follow the
40 majority holding in *Allstate Mortgage Corp. of Florida v. City of Miami Beach*, 308 So.2d 629 *40 (Fla.3d DCA 1975), *cert. denied*, 317 So.2d 763 (Fla. 1975), and agree with Judge Pearson's dissent in that case, which maintained that the proper standard of review in a zoning variance case is *whether the lower tribunal had before it competent substantial evidence to support its findings*. *DeGroot v. Sheffield*, 95 So.2d 912 (Fla. 1957).[9]

At issue in *DeGroot* was the proper method and scope of review of a quasi-judicial county board determination. 95 So.2d at 914. The *DeGroot* court held that where, as in the present case, notice and hearing are required and the judgment of the board is contingent on the showing made at the hearing, the action is judicial or quasi-judicial. *Id.* at 916. The *DeGroot* court further held that the proper method of review in such cases is by certiorari, and that the scope of review was limited:

> The [reviewing] court merely examines the record made below to determine whether the lower tribunal had before it competent substantial evidence to support its findings and judgment which must also accord with the essential requirements of the law.

Id. at 916. The court then explained that "competent substantial evidence" was evidence a reasonable mind would accept as adequate to support a conclusion. *Id.* at 916.

The *DeGroot* "competent substantial evidence" standard of review of quasi-judicial action effectively provides the same standard the "fairly debatable" test provides for review of legislative municipal zoning action: For the action to be sustained,

it must be reasonably based in the evidence presented. The two concepts have been blurred; for example, in *Bell v. City of Sarasota*, 371 So.2d 525 (Fla.2d DCA 1979), the court utilized both the competent substantial evidence standard and the "fairly debatable" standard to decide a zoning variance issue. In *Bell*, the city's board of adjustment granted the requested minimum land variance and the city sought review in the circuit court, alleging a lack of substantial competent evidence to sustain the board's finding; the circuit court reversed the grant. The Second District reversed the circuit court and reinstated the board's decision, finding substantial competent evidence to justify the board's action and finding the conflicting evidence also made the board's decision fairly debatable. 371 So.2d at 527.

By whatever name it is called, the task of the court reviewing a zoning variance decision is to insure that the authority's decision is based on evidence a reasonable mind would accept to support a conclusion. *Compare* *DeGroot*, 95 So.2d at 916, *with* *Wolff v. Dade County*, 370 So.2d at 841-842. If there was such evidence presented, the authority's determination must stand. *Martin v. First Apostolic Church*, 321 So.2d 471 (Fla.4th DCA 1975). A prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship to the individual landowner, unique to that parcel and not shared by other property owners in the area. *City of Miami v. Franklin Leslie, Inc.*, 179 So.2d 622 (Fla.3d DCA 1965). In the instant case, the evidence reasonably supports Indialantic's conclusion that Nance did not suffer the requisite hardship. The lots at issue are typical of Indialantic oceanfront lots in size, shape and topography; the town's height, set-back, breezeway, parking, and landscape requirements, as well as the state coastal construction set-back restriction, apply equally to all beachfront property situated in Indialantic. Indialantic's zoning restrictions are common difficulties shared by all other oceanfront lot owners in the area, and are therefore not the unique hardship required to support a variance.

Additionally, Nance possessed a viable, dual, three-story plan that, with the exception of the parking deficiency, met all
41 Indialantic *41 zoning requirements, including the height restriction. Nance never presented this plan to the Board of Adjustment, the body vested with the authority to grant such variance. The viability of this dual three-story plan itself illustrates a lack of hardship.

Nance, however, maintains that the motel to the north and the possibility of a motel being built three hundred feet to the south make his land unique. He contends that the non-conforming motel materially blocks the view to the north, and the possibility of a motel to the south threatens his view in that direction, and that this entitles him to a height variance. In ordering the variance to be granted, the circuit court placed central emphasis on the uniqueness of Nance's asserted lack of view.[10] We find the circuit court erred by considering the impaired view to be such a hardship that reversal of the determination by the Town Council was mandated as a matter of law. In the absence of some contractual or statutory obligation, a landowner has no absolute legal right to unobstructed air and light from the adjoining land. *Fontainebleau Hotel Corp. v. Forty-Five Twenty-Five, Inc.*, 114 So.2d 357 (Fla.3d DCA 1959), *cert. denied*, 117 So.2d 842 (Fla. 1960).

The evidence before the Town Council reasonably supported its conclusion that Nance does not suffer the unique and unnecessary hardship required for the issuance of a variance. The circuit court erroneously substituted Indialantic's reasonable finding that Nance suffers no legal hardship with its own finding that he does. Absent an abuse of discretion or a clearly erroneous decision, Indialantic's decision should not have been set aside by the circuit court. *Bell v. City of Sarasota*, 371 So.2d 525 (Fla.2d DCA 1979); *Alachua County v. Reddick*, 368 So.2d 653 (Fla.1st DCA 1979); *City of Naples v. Central Plaza of Naples, Inc.*, 303 So.2d 423 (Fla.2d DCA 1974). Such did not exist in the present case. We reverse the circuit court below and remand the case to it with directions to reinstate Indialantic's decision.

REVERSED and REMANDED with instructions.

DAUKSCH, C.J., and ORFINGER, J., concur.

[1] Indialantic, Fla., Zoning Code § 28-102 (1977), gives the Board of Adjustment the authority to grant a variance in such cases where additional requirements are met.

[2] Appeal of Board decisions to the Town Council is provided by section 28-107, Indialantic Zoning Code (1977).

[3] § 161.053, Fla. Stat. (1977).

[4] Indialantic acted consistent with past beachfront height-variance denials: The Town had never previously granted a variance from the thirty-five-foot height restriction on beachfront property.

[5] Such review by certiorari is authorized by Article V, Section 5, of the Florida Constitution.

[6] Indialantic, Fla., Zoning Code § 28-102(2), (4) (1977).

[7] Fla.R.App.P. 9.040(b).

[8] In support of this position, Nance cites, *Allstate Mortgage Corp. of Florida v. City of Miami Beach*, 308 So.2d 629 (Fla.3d DCA 1975), *cert. denied*, 317 So.2d 763 (Fla. 1975). For the reasons discussed hereinafter, we reject this view.

[9] We note that the *Allstate* court failed to cite its own precedent of *Shaughnessy v. Metropolitan Dade County*, 238 So.2d 466 (Fla.3d DCA 1970), which used a combination "fairly debatable"/"competent substantial evidence" test to leave undisturbed the action of a county board that granted a special use. 238 So.2d at 468-469.

[10] In its decision, the circuit court stated:

The plight of [Nance] is due to unique circumstances and conditions in that he will be deprived of a view of the ocean because of the three-story structure extending to the dune line on the north and the motel restriction imposed on the property to the south. The difficulty or hardship of [Nance] is special or unique and perculiar [sic] to the application of the height restriction to his property and not general in character.