



# City of Oak Hill

234 South U.S. Hwy. #1  
Oak Hill, Florida 32759

Phone 386-345-3522  
Fax 386-345-1834

CITY OF OAK HILL  
Planning and Land Development Regulation Commission  
Thursday May 18, 2023  
5:30 P.M.  
AGENDA

1. Roll Call
2. Variance: 244 Gary Avenue
3. Board Absences: NONE
4. Board Comments/ Concerns from board members
5. Adjournment

Members of the Commission may attend this meeting for informational purposes.

Note: In accordance with Resolution 2006-17, a three (3) minute time limitation per speaker will be imposed. A speaker may address the Committee for a maximum of three (3) minutes during the Public Participation portion of the meeting, and for a maximum of three (3) minutes during any specific Agenda topic. Pursuant to Florida Statute 166.041 (3) (A), if an individual decides to appeal any decision made with respect to any matter considered at a meeting or hearing, that individual will need a record of the proceedings and will need to ensure that a verbatim record of the proceedings is made.



## City of Oak Hill

234 South U.S. Hwy. #1  
Oak Hill, Florida 32759

Phone 386-345-3522

Fax 386-345-1834

To: PLDRC

From: Kohn Evans, City Administrator

Date: April 25, 2022

Subject: Setback Variance Request – 244 Gary Avenue

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### I. Project Summary:

- |                        |   |
|------------------------|---|
| 1. Applicant/Owner:    | Brent & Tina Appy   |
| 2. Project Name:       | 244 Gary Avenue Setback Variance                          |
| 3. Property Parcel ID: | 853805001550  |
| 4. Acres:              | 0.24 acres (10,350 sq. ft.)                               |
| 5. General Location:   | East terminus of Gary Avenue on<br>Indian River (See Map) |
| 6. Future Land Use     | Medium Density Residential                                |
| 7. Zoning:             | MH-1  |

### II. Request:

The applicant has submitted a variance petition in accordance with **Section 24-955** to request a variance from the following regulation:

1. Minimum setback of 10 feet from any property line for an accessory structure permitted only in the rear yard as required in **Section 24-493 (1) (Exceptions to minimum yard or lot coverage requirements)** for MH-1 zoned property located at 244 East Gary Avenue. The applicant is requesting a rear yard “setback” for an accessory structure ranging from 2 feet to 3.5 feet to the east property line for the proposed construction of a swimming pool and surrounding deck.

### III. Overview:

The subject property fronts on the east side of the cul-de-sac of East Gary Avenue and the rear property line fronts the Indian River. The subject property is zoned MH-1 with a future land use designation of Medium Density Residential. The property is developed

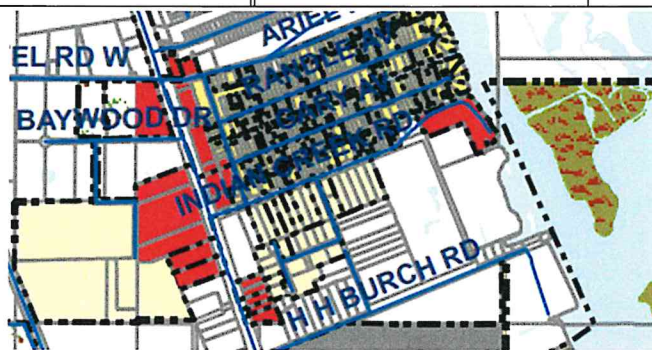
as a standard two-story single-family home. The applicant proposes to improve the developed property by adding a swimming pool and deck in the rear yard.

**IV. Land Use Analysis:** The currently adopted City of Oak Hill Future Land Use (FLU) designation and zoning classification of the subject property are shown in the following table and accompanying maps.

Property Location	City of Oak Hill FLU Designation	Volusia County Zoning District
318 Palm Avenue	Medium Density Residential	MH-1

The future land use designations and zoning classifications of the surrounding properties are shown in the following table. Corresponding maps showing the surrounding Future Land Use designations and Zoning Classifications are attached.

	North	East	South	West
FLU	Medium Density Residential	Medium Density Residential	Medium Density Residential	Medium Density Residential
Zoning	MH-1	MH-1	MH-1	MH-1
Existing Use	Single Family Residence	Single Family Residence	Single Family Residence	Single Family Residence



OAK HILL  
FUTURE LAND USE  
2025



Activity Center	Industrial
Agriculture	Low Density Residential
Commercial	Medium Density Residential
Conservation	Recreation/Open Space
Conservation-Water	Public/Semi-Public

#### **IV. Analysis:**

The future land use designation of Medium Density Residential and MH-1 zoning classification is compatible with the proposed accessory use/structure. The subject property at 70' x 150' meets the MH-1 minimum lot size of 5,000 square feet and the minimum width of 50 feet. The principal structure meets the minimum yard requirements of Front (20'), Rear (15') and Side (10') as well as the waterfront setback of 25 feet. The total area of principal and accessory buildings is well within the 35% maximum lot coverage limit.

The property survey indicates a lot depth of 175' along the south property line. While the depth of the lot as measured along the south property line indicates 175', there is clearly additional land beyond that point on both the applicant's property and the adjacent neighboring properties that would seemingly negate the need for the variance. An aerial map from the property appraiser showing the 175' depth along the south property line is included for reference and it clearly shows the property line significantly eastward of the 175' depth.

However, as noted on the survey site plan, the ownership of that additional land is currently unknown and being investigated. An application has been submitted to the Army Corps of Engineering (ACOE) to obtain ownership of the additional uplands. Should it be found that the property owner's land is to mean high water, this variance application would not be needed. Due to the uncertainty of the length of time needed to resolve the ownership question, or obtain the uplands from the ACOE, the applicant is submitting the variance request.

#### **V. Review Criteria:**

Per Section 24-955 (a), the variance request is reviewed for compliance for the following criteria:

- 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 in the same zoning classification.**

STAFF: The upland necessary to accommodate the accessory use's 10' setback without the need for a variance exists. However, ownership of a portion of this upland and land to the mean high water is disputed while rights are researched. This additional land beyond the platted lot depth can also be seen on the neighboring lot to the south. This additional land has been landscaped, improved, and maintained to the point shown on the property appraiser aerial.



Many of the canal front lots in the neighborhood have a more uniform waterfront line, with property lines out to the middle of the canal as shown on the property appraiser aerials. Not being able to use the same point of reference (mean high water and or the property line as shown on the property appraiser aerial) for their rear lot line, the applicant is forced to request the variance and denying the variance would deprive the applicant of a reasonable accessory use/structure that others in the neighborhood currently enjoy.

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

**STAFF:** According to property records the existing house was constructed in 2014, while other improvements such as a shed, boathouse, and boat dock date back to 1985, 1998, and 2008. The applicant only purchased the property in 2022. Per the proposed site plan the proposed deck is located as far from the rear lot line as possible to conjoin existing improvements (covered patio and 2<sup>nd</sup> floor balcony and stairs).

**(3). Literal interpretation of the provisions of these regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning classifications, under the terms of these regulations, and would work an unnecessary and undue hardship on the applicant.**

**STAFF:** By measuring from the lot line indicated on the survey and not the lot line shown on the property appraiser would deprive the applicant of the same rights that canal front property owners in the neighborhood enjoy who have erected accessory structures and uses, some of which appear less than 10' from their seawall cap.

Staff also researched the typical dimensions of a standard rectangular swimming pool in Florida and found a range of 10' - 20' wide by 20' - 40' long, with a typical average of 16' x 32'. The applicant is proposing a 13' x 29' pool, below the typical size quoted. Five (5) feet of decking (which may be an ADA minimum requirement) is proposed on the east and west sides of the pool. Without the variance the width of the pool would be 5', which is not viable for its intended use.

**(4). The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.**

**STAFF:** By proposing a pool size that is less than the typical, and by meeting the 10' setback on the south and north sides, the applicant has minimized the variance request. The variance is on paper shows a setback of 2'-3.5', but once constructed the condition reflected in reality will look and feel like 10'.

- (5). **The grant of the variance will be in harmony with the general intent and purpose of these regulations and that such variance will not be injurious to the area involved.**

**STAFF:** The grant of the variance request will not be injurious to the area involved as there are a few lots in the area that appear to have some accessory use within 10' of their seawall cap. Additionally, there is no rear neighbor, and never will be in the area where riparian rights are contested as the applicant, like many properties on the Indian River, already has a permitted boathouse over the water. The proposed deck is at least 10' from the closest neighboring property line to the south and far from the neighbor to the north who has a pool in the rear yard.

**VI. Staff Findings:**

Given the extent of the improved and maintained property available as shown on the property appraiser records, this variance request to permit an accessory pool and decking to encroach 8 feet into the required 10' rear yard for accessory structures, resulting in the deck being 2' from the rear property line as indicated on the applicant's survey, subject to compliance with all applicable permitting and licensing requirements and regulations of the Oak Hill and Volusia County regulations and Florida Statutes, and any condition of approval would be consistent with the existing character the area.

**VII. Recommendation:**

1. Find the variance request in compliance and approve; or
2. Find the variance request in compliance subject to condition(s) and approve;  
or
3. Find the variance request not in compliance and deny.

## 244 Gary Avenue 1-15-23



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# APPLICATION FOR VARIANCE

Application/Project # \_\_\_\_\_

City of Oak Hill, Florida  
234 South U.S. Highway #1  
Oak Hill, Florida 32759

Telephone: (386) 345-3522 Fax: (386) 345- 1834

## **Section 24-955- Written Petition**

(a) A written petition for a variance shall be submitted to the development regulations administrator demonstrating:

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 in the same zoning classification.

Response: The property is located on the inter coastal waterway however the rear property line is not the edge of the water. The land between the rear lot line and the waterline on the survey indicates the ownership is "unknown". The distance of this land is approximately 30.5 feet. The rear setback for a swimming pool is 10 feet. Also, the wetland separation distance to water line is 25 feet.

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

Response: This portion of the rear property is a "as is" condition and not the work of the owner.

3. Literal interpretation of the provisions of these regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning classifications, under the terms of these regulations, and would work an unnecessary and undue hardship on the applicant.

Response: Constructing a swimming pool under the current setback requirements would make the pool width less than 5 feet. Granting a variance from 10 feet to 2 feet would allow the pool width 13 feet.

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

Response: Allowing the rear set back to 2 feet would allow the pool width to be 13 feet. The land that is "unknown" is under application by the owners to obtain it from the Corp of Engineers as the uplands property owners.





# APPLICATION FOR VARIANCE

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5. The grant of the variance will be in harmony with the general intent and purpose of these regulations and that such variance will not be injurious to the area involved.

Response: There are numerous properties in this area that have pools in the rear yard facing the water. Other property owners have ownership of the land to the water's edge.



# APPLICATION FOR VARIANCE

Application/Project

# \_\_\_\_\_

City of Oak Hill, Florida  
234 South U.S. Highway #1  
Oak Hill, Florida 32759

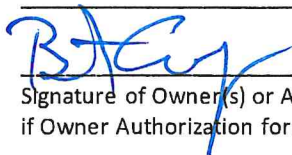
Telephone: (386) 345-3522 Fax: (386) 345- 1834

PROPERTY OWNERS(S)	Name(s): BRENT AND TINA APPY		
	Mailing Address: 244 GARY AVE.		
	City: OAK HILL	State: FL	Zip: 32759
	Phone Number ( 386 ) 295-0945	Email: BrentAppy@outlook.com	

APPLICANT/AGENT	Name(s):		
	Mailing Address:		
	City:	State:	Zip:
	Phone Number ( )	Email:	

SUBJECT PROPERTY	SITE LOCATION (Street Address): 244 GARY AVE.		
	LEGAL DESCRIPTION (briefly describe, do not use "see attached"): LOT 155 INDIAN HARBOR ESTS UNIT 4 MB 26 PG 19 PER OR 2034 PG 0618 PER OR 6519 PG 1125 PER OR 6667 PG 3816 PER OR 6702 PG 0735 PER OR 7716 PG 3817 PER OR 7722 PG 3932 PER OR 8263 PG		
	Parcel # (Tax ID #): 853805001550		
	Parcel Size: 10,350 sq.ft. TRIANGLE SHAPE WITH SIDE DIMENTIONS ON 175', 125' AND 210.39'		

**Relief Requested:** REQUEST VARIANCE OF 8'0" TO EAST PROPERTY LINE TO ALLOW POOL DECK LEAVING 32' TO TOP OF BULKHEAD.

  
Signature of Owner(s) or Applicant/Agent  
if Owner Authorization form attached

March 23, 2023  
Date

STATE OF FLORIDA, COUNTY OF VOLUSIA



# APPLICATION FOR VARIANCE

Application/Project

# \_\_\_\_\_

City of Oak Hill, Florida  
234 South U.S. Highway #1  
Oak Hill, Florida 32759

Telephone: (386) 345-3522 Fax: (386) 345- 1834

Sworn to (or affirmed) and subscribed before me by means of ☒ Physical Presence -or- ☐ Online Notarization, this 23 day of

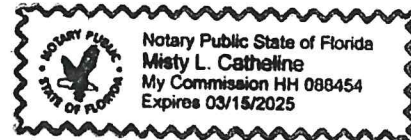
March, 2023 by Brent Appy

Misty L. Catheline  
(Signature of Notary)

Personally Know ☒ OR Produced Identification \_\_\_\_\_

Type of Identification Produces \_\_\_\_\_

SEAL



**\*\*OFFICIAL USE ONLY\*\***

PLDRC RECOMMENDATION/ACTION:

APPROVED [ ]

\* APPROVED WITH CONDITIONS [ ]

DENIED [ ]

Signature of Chairman: \_\_\_\_\_ Date: \_\_\_\_\_

CITY COMMISSION RECOMMENDATION/ACTION:

APPROVED [ ]

\* APPROVED WITH CONDITIONS [ ]

DENIED [ ]

Signature of Mayor: \_\_\_\_\_ Date: \_\_\_\_\_

\*approved with conditions, see attached.

Note: The Applicant or representative must be present at the Public Hearing since the Board, at its discretion, may defer action, table, or take decisive action on any application.

## REQUIRED ATTACHMENTS for Variance Application:

1. Copy of Owner(s) recorded Warranty Deed;
2. Application fee \$200.00. Payable to the City of Oak Hill.
3. 3 sets of complete site plan, a digital copy and required exhibits meeting all requirements of City's Land Development Regulations, Chapter 14, Article IX, Division 3.
4. Written Petition filled out and turned in with application.
5. A 15% Administrative Fee will be charged in addition to the fees listed above.

**NOTE: All applicants are requested to provide at least one set of documents/plans in a size no larger than 11" x 17".**



**Record and Return to:**  
Southern Title Holding Company, LLC  
2335 Beville Road  
Daytona Beach, Florida 32119

**Prepared By:**  
Southern Title Holding Company, LLC  
Dawn Jones, CLC, LLE  
400 Seabreeze Blvd  
Daytona Beach, FL 32118

File Number: SB223526

(Space Above This Line for Recording Data)

## WARRANTY DEED

This Warranty Deed made this 26<sup>th</sup> day of May, 2022., between Richard Glenn Slater, married, whose post office address is 2646 Cherokee Rd Unit 6, Johnson City, TN 37604, Grantor, to Brent Appy and Tina Appy, husband and wife, whose post office address is 244 Gary Avenue, Oak Hill, FL 32759, Grantee:

(Whenever used herein the terms "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, trusts and trustees)

Witnesseth, that said Grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable considerations to said Grantor in hand paid by said Grantee, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to the said Grantee, and Grantee's heirs and assigns forever, the following described land, situate, lying and being in the Volusia County, Florida, to-wit:

LOT 155, INDIAN HARBOR ESTATES, UNIT NO. 4, ACCORDING TO PLAT THEREOF AS RECORDED IN MAP BOOK 26, PAGE 19 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

The subject property is not the homestead, nor is it contiguous to the homestead, of the Grantor.

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 for 2022 and thereafter.

In Witness Whereof, Grantor has hereunto set Grantor's hand and seal the day and year first above written.

Signed, sealed, and delivered in our presence:

SOUTHERN TITLE

[Signature]  
First Witness Signature

Cosey Middleton  
First Witness Printed Name

George Stanley  
Second Witness Signature

George Stanley  
Second Witness Printed Name

[Signature]  
Richard Glenn Slater, by his Attorney-In-Fact Ruby Slater

State of TENNESSEE, County of WASHINGTON,

The foregoing Instrument was acknowledged before me by means of (X) physical presence or ( ) online notarization, this 26<sup>th</sup> day of May, 2022, by Ruby Slater, as Attorney-in-Fact for Richard Glenn Slater, who ( ) is personally known to me or (X) has produced Driver(s) License as identification.

Cathy A. Staton  
Notary Public Signature  
Printed Name: Cathy A. Staton  
My Commission Expires: 10/29/2025





IRN Paradise LLC  
c/o Barry & Kathryn Jordan  
1803 Hill Street  
New Smyrna Beach, FL 32169

City of Oak Hill  
234 South Highway U.S. 1  
Oak Hill, FL 32759

Re:   Applicant Name:   Brent and Tina Appy  
      Parcel Numbers:   8538-05-00-1550  
      Location Address:  244 Gary Avenue  
                            Oak Hill, FL 32759

Dear Gentlemen/Madam:

Please be advised that we have no objection to the variance petition that the applicant is requesting. We will not be in attendance at the scheduled meetings.

Our property is at 242 Gary Avenue, next to the property as described above.

If you have any questions, we can be reached at 305-205-9708.

Very Truly Yours,

  
Barry B. Jordan