AGENDA

PLANNING COMMISSION

CITY OF PORT ORANGE

Meeting Date: Thursday, March 23, 2023

Time: 5:30 PM

Location: Council Chambers, City Hall
1000 City Center Circle
Port Orange

A. CALL TO ORDER

1. Pledge of Allegiance
2. Roll Call

B. DISCUSSION/ACTION

3. Consideration of Minutes - January 26, 2023
4. APPLICATION: MDA Amendment/4th Amendment to the Master Development Agreement (MDA) for the Riverwood Planned Unit Development
   CASE NO.: PRZA-23-0001
   APPLICANT: Jessica Gow, Esq., Cobb Cole
   STAFF CONTACT: Penelope Cruz, Planning Manager (386) 506-5671/pcruz@port-orange.org

   A request by the Applicant to amend the Master Development Agreement (MDA) for the Riverwood Planned Unit Development (PUD) to allow a portion of an elevated accessory structure within a 50-foot environmental buffer.

C. OTHER BUSINESS

5. Commissioner Comments
6. Staff Comments

D. PUBLIC COMMENTS

E. ADJOURNMENT

NOTICES – PURSUANT TO SECTION 286.0105 OF THE FLORIDA STATUTES, IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE PLANNING COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT THIS PUBLIC MEETING OR HEARING, SUCH PERSON WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT, FOR SUCH PURPOSE, SUCH PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THE CITY DOES NOT PREPARE OR PROVIDE SUCH A RECORD.

FOR SPECIAL ACCOMMODATIONS, PLEASE NOTIFY THE CITY CLERK'S OFFICE (PHONE: 386-506-5563) AS FAR IN ADVANCE AS POSSIBLE, BUT PREFERABLY WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO THE MEETING OR HEARING DATE.

HELP FOR THE HEARING IMPAIRED IS AVAILABLE THROUGH THE ASSISTIVE LISTENING SYSTEM RECEIVERS CAN BE OBTAINED FROM THE CITY CLERKS' OFFICE.

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA), IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS AN ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE CITY CLERK FOR THE CITY OF PORT ORANGE, 1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129, TELEPHONE NUMBER 386-506-5563, CITYCLERK@PORT-ORANGE.ORG, AS FAR IN ADVANCE AS POSSIBLE, BUT PREFERABLY WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO THE MEETING OR HEARING DATE. IF YOU ARE HEARING OR VOICE IMPAIRED, CONTACT THE RELAY OPERATOR AT 7-1-1 or 1-800-955-8771.

UPON REQUEST BY A QUALIFIED INDIVIDUAL WITH A DISABILITY, THIS DOCUMENT WILL BE MADE AVAILABLE IN AN ALTERNATE FORMAT. IF YOU NEED TO REQUEST THIS DOCUMENT IN AN ALTERNATE FORMAT, PLEASE CONTACT THE CITY CLERK WHOSE CONTACT INFORMATION IS PROVIDED ABOVE.

REGULAR PLANNING COMMISSION MEETING MINUTES
COUNCIL CHAMBERS – CITY HALL
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA
JANUARY 26, 2023

THE REGULAR PLANNING COMMISSION MEETING of the City of Port Orange was called to order by Chairman Stan Schmidt at 5:30 p.m.

Pledge of Allegiance

Roll Call	Present:	Commissioner Darrel "Bo" Bofamy Commissioner Thomas Jordan Commissioner John Junco Commissioner Newton White Commissioner Lance Green Commissioner Stan Schmidt
	Absent:	Commissioner Maria Mills-Benat (Excused)
	Also Present:	Shannon Balmer, Assistant City Attorney Tracee Cody, Assistant City Clerk

3. Election of Officers

Motion was made by Commissioner Thomas Jordan to nominate Lance Green as Chairman and seconded by Commissioner Newton White. Motion carried unanimously by roll call vote.

Motion was made by Commissioner Bo Bofamy to nominate Maria Mills-Benat as Vice Chair and seconded by Commissioner Newton White.

Motion was made by Commissioner Stan Schmidt to nominate Bo Bofamy as Vice Chair and seconded by Commissioner John Junco.

Commissioner Bo Bofamy declined the nomination.

Motion to nominate Maria Mills-Benat as Vice Chair carried unanimously by roll call vote.

Commissioner Maria Mills-Benat was later contacted by a phone call and accepted her nomination.

DISCUSSION/ACTION

4. Consideration of Minutes - December 15, 2022

Motion to approve the meeting minutes as presented from December 15, 2022 was made by Commissioner Thomas Jordan and Seconded by Commissioner Stan Schmidt. Motion carried unanimously by voice vote.

5. APPLICATION: REZONING / 662 HERBERT STREET
   CASE NO.: REZONING-22-0001
   APPLICANT: Elliot Meadows
   STAFF CONTACT: Gwen Perney, Principal Planner (386) 506-5673/gperney@port-orange.org

   A request by the Applicant to rezone ± 2.1 acres, located at 662 Herbert Street, from Two-Family Residential (R-2D) to Single-Family Residential (R-10SF).

   Motion to approve Case No. REZONING-22-0001 was made by Commissioner Thomas Jordan and Seconded by Commissioner Stan Schmidt.

Gwen Perney, Principal Planner, provided details of the request and answered questions from the Commissioners.

Elliot Meadows, Applicant, provided further details of the request and answered questions from the Commissioners.

Motion carried unanimously by roll call vote.

6. APPLICATION: MADELINE COMMONS SUBDIVISION PLAT & PLANS
   CASE NO.: 22-50000003
   APPLICANT: Cody Bogart, P.E., Newkirk Engineering, Inc.
   STAFF CONTACT: Gwen Perney, Principal Planner (386) 506-5673/gperney@port-orange.org

   A request by the Applicant for approval of the Madeline Commons Subdivision Plat and Plans to subdivide a ±34.6-acre property, located north of Charles Street, east of Madeline Avenue and McDonald Road,

west of 5th Street, into 149 single-family lots, along with tracts for tree preservation, stormwater retention, and open space.

Motion to approve Case No. 22-50000003 was made by Commissioner Thomas Jordan and Seconded by Commissioner Bo Bofamy.

Gwen Perney, Principal Planner, provided details of the request and answered questions from the Commissioners.

Cody Bogart, Applicant, provided further details and answered questions from the Commissioners.

Pamela Covert, resident who lives on Charles Street, inquired about the location of the sidewalks and access to the residents.

Chairman Green expressed his concerns regarding the small size of the lots and excessive traffic.

Motion carried 5-1 by roll call vote with Chairman Lance Green voting no.

OTHER BUSINESS

7. Commissioner Comments

Chairman Green commented on fallen business signs still down due to the storms, possible code requirements for new businesses to have access security cameras, and the status of the Millie's development process under the bridge.

8. Staff Comments

There were none.

PUBLIC COMMENTS

There were none.

ADJOURNMENT – 6:02 p.m.

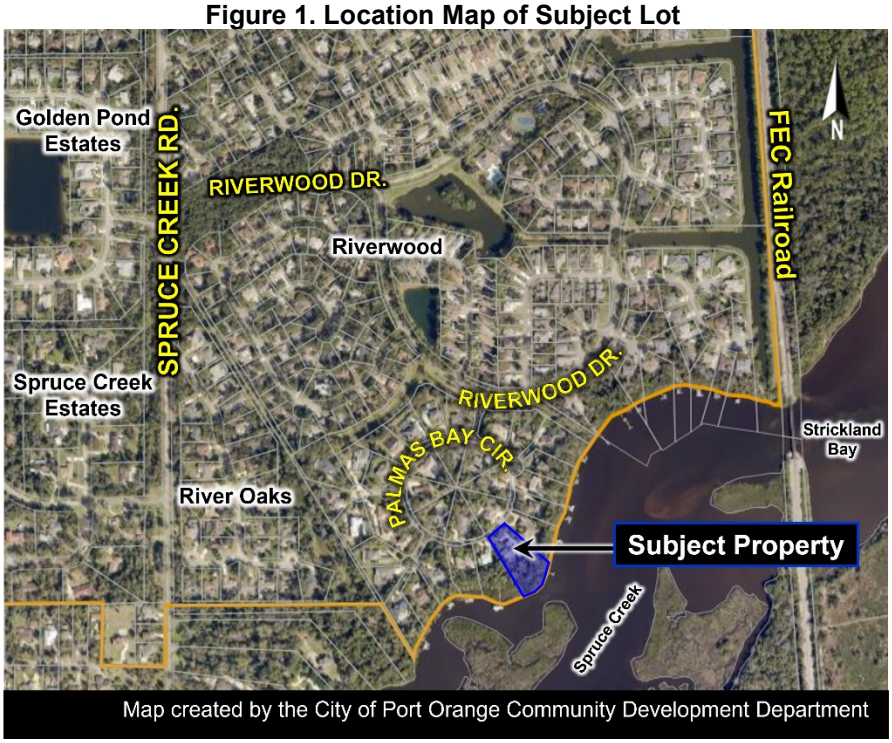
_____
Chairman Lance Green

STAFF REPORT
4th Amendment to the Master Development Agreement for the Riverwood Planned Unit Development
Case No. PRZA-23-0001

REQUEST:	Amend the Master Development Agreement (MDA) for the Riverwood Planned Unit Development (PUD) to allow a portion of an elevated accessory structure within a 50-foot environmental buffer.
LOCATION:	6315 Palmas Bay Circle (Figure 1)
APPLICANT:	Jessica Gow, Esq., Cobb Cole
PROPERTY OWNER:	Andrew and Shravanti Halpern
STAFF CONTACT:	Penelope Cruz, Planning Manager (386) 506-5671
STAFF RECOMMENDATION:	Approval
PLANNING COMMISSION:	March 23, 2023

REQUEST
The subject property is zoned Planned Unit Development (PUD) and is part of the Riverwood PUD. The Riverwood PUD was approved in 1982 and established a 149-acre residential subdivision adjacent to Spruce Creek. The proposed 4th Amendment to the Riverwood Master Development Agreement (MDA) is being requested by the applicant to address a current Code Enforcement case regarding the construction of an elevated accessory structure (to be referred to as the "structure") without a building permit where a portion of the structure is in a 50-foot Environmental Buffer (buffer).

Figure 1. Location Map of Subject Lot



BACKGROUND

According to the Riverwood MDA, all lots in the PUD that abut Spruce Creek are required to have a 50-foot Environmental Buffer (to be referred to as the "buffer") along the rear property line that abuts the creek/marsh where no vegetation shall be removed or disturbed except for the construction of an elevated walkway to access the creek from the rear of the lot. Typically, elevated walkways within this subdivision are built with wood posts, framing, and deck boards, and used for lot owners to access the creek. The walkways are typically four (4) feet wide and are elevated anywhere from slightly above the ground to four (4) feet above the ground.

In March 2022, Code Enforcement was contacted regarding the construction of a structure within the buffer at 6315 Palmas Bay Circle (subject property) and the over-trimming and removal of mangroves adjacent to the lot. In May 2022, the property owners submitted an after-the-fact building permit to permit the structure. The building permit submitted was for a 252-square-foot structure, elevated six (6) feet above grade. The structure included a wood deck platform with a ±100 square-foot enclosed space with electric, along with a small second-level observation deck. However, during the review of the building permit, it was determined that a portion of the structure was within the buffer and the permit could not be approved.

Pictures taken of the elevated accessory structure by Code Enforcement in March 2022

In July 2022, a meeting was held with the property owners and City staff to review the building permit comments and options the property owners had to come into compliance

with the Riverwood MDA, Land Development Code (LDC), and Florida Building Code (FBC). The following options were discussed:

1) Remove the structure and rebuild it on the lot outside the buffer.
2) Remove the portions of the structure within the buffer and permit the portion of the structure outside the buffer.
3) Request an amendment to the Riverwood MDA and an amendment to the Palmas Bay Club subdivision plat to revise a plat note to allow the portion of the structure to remain within the buffer

The over-trimming and removal of the mangroves adjacent to this lot is under the jurisdiction of the Florida Department of Environmental Protection (FDEP) and not part of the requested MDA Amendment. The property owners were cited by FDEP for over-trimming and removal of mangroves and coordinated with FDEP on replanting measures and paid a $5,500.00 fine to FDEP. According to the property owners and a representative from FEDP, replanting activities were completed before March 2023. FDEP will require a report with photos from the property owners every 6 months and FDEP will inspect the replanting as needed over the next five years before they close the case.

Pictures of FDEP Accepted Mangrove Replanting in March 2023

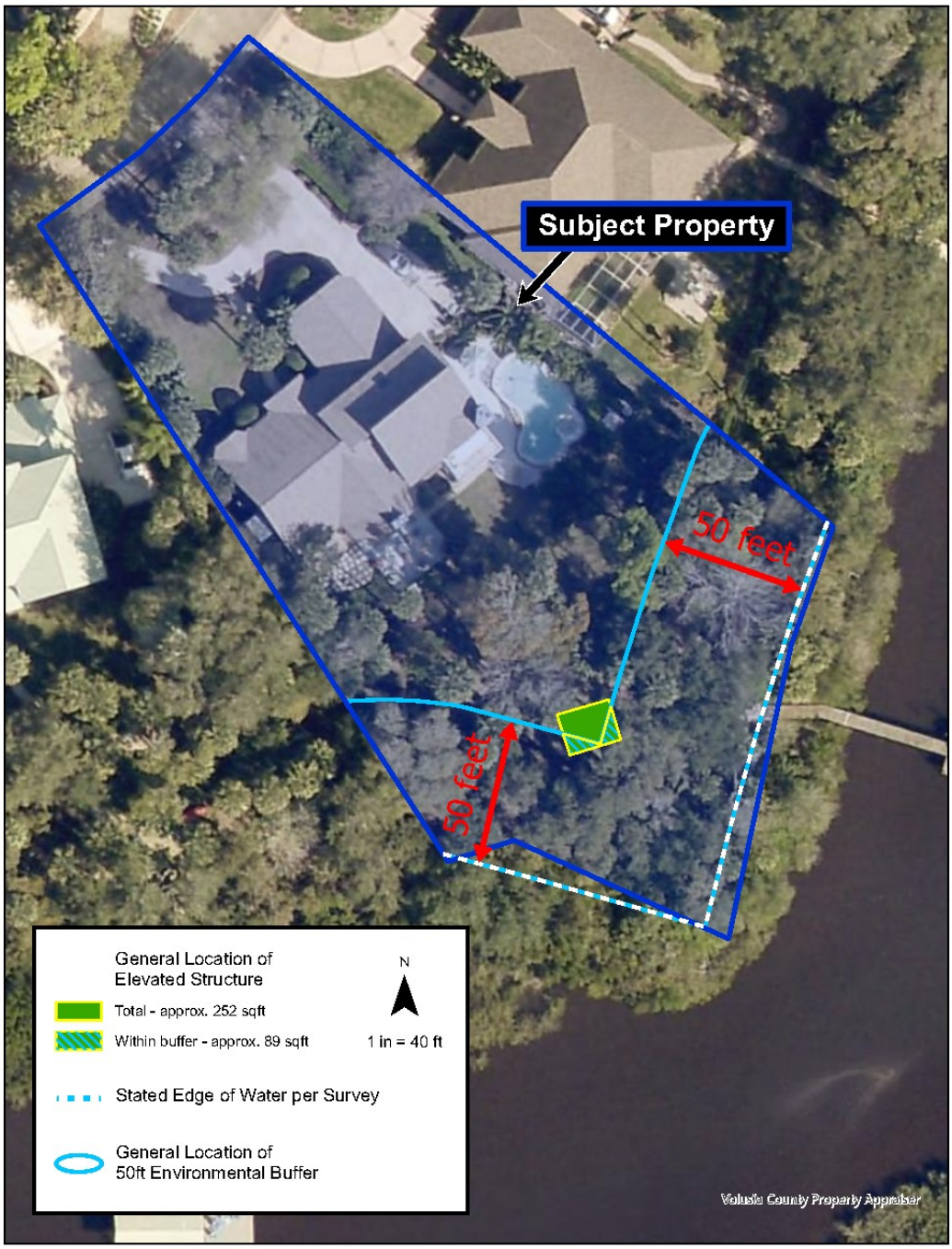
According to the updated survey provided by the applicant for the subject lot in early 2023 and aerial photographs from the Volusia County Property Appraiser's website, the following encroachment and impacts to the buffer have been determined:

- The overall footprint of the structure is 252 square-feet.
- The area of the structure located in the buffer is roughly ±89 square feet of the 252 square-foot structure or 35% of the structure encroaches into the buffer.
- The area of the structure located outside the 50-foot buffer is roughly ±163 square feet of the 252 square-foot structure or 65% of the structure is located outside the buffer.
- The area of the lot covered with the buffer is approximately 11,020 square feet and the portion of the structure that encroaches into the buffer is ±89 square feet, which is less than 1% (0.81%) of the overall buffer area on the subject lot.

The graphic below shows the subject lot, the 50-foot Environmental Buffer on the subject lot, 252 square-foot structure, and the portions of the structure located within and outside the buffer. The graphic was created using the survey provided by the applicant for the

subject lot in early 2023 and aerial photographs from the Volusia County Property Appraiser's website.

According to the applicant, the property owners' preference is for the structure to remain in its current location since only a small portion of the structure is within the buffer. The portion of the structure (163 square feet) located outside the buffer is allowed per the Riverwood MDA and does not require the proposed amendment to remain. The request to amend the Riverwood MDA and Palmas Bay Plat is only to allow for the encroachment of ±89 square feet of the structure into the buffer which is 0.81% of the overall buffer area on the subject lot.



PROPOSED AMENDMENT

The applicant is requesting to amend the Riverwood MDA to allow the subject lot to be allowed a ±90 square-foot portion (rounded number used for the MDA Amendment) of one 252-square-foot elevated accessory structure within the 50-foot environmental buffer, no closer than 40 feet from the edge of the water of Spruce Creek.

According to the applicant, the portion of the structure (±89 square feet) constructed in the buffer is elevated six (6) feet above the ground and does not result in an impact on the area within the buffer, the mangroves adjacent to the lot, or the creek. In addition, the applicant states that the structure is generally built like an elevated walkway with posts and wood deck boards with space for stormwater runoff and elevated off the ground as allowed by the Riverwood MDA within the buffer.

The applicant also states that the structure does not create any adverse environmental impacts and was built in a portion of the rear yard that has historically been manicured and there was no vegetation removed or damaged in the buffer as part of the build. As part of the application, the applicant provided pictures of the rear yard in 2017, before the purchase of the subject lot by the current property owners, taken from the Zillow real estate website that shows the buffer area on the subject lot has consisted of a manicured yard and mature trees for at least +6 years. According to the applicant, the property owners purchased the lot in February 2017 and were not aware of the buffer on their lot since the buffer area resembled the rest of their yard in appearance along with neighboring properties, or that a portion of the rear yard was not buildable. The impact of the mangroves was not related to or caused by the construction of the structure.

Photos from Zillow.com from 2017 before the current property owners purchased the subject lot showing a manicured rear yard

There are no specific criteria to be used as a base for staff recommendation for the requested MDA Amendment. Staff recommendations on zoning matters are generally based on consideration of compatibility with adjacent uses, availability of adequate infrastructure, and consistency with adopted plans (such as Comprehensive Plan, City Vision, budget, etc.). Staff compared the subject request to similar regulations in the City's Land Development Code (LDC).

An environmental protection measure within the LDC is the Flood-Plain Conservation zone (F-C Zoning District) which is typically applied to certain portions of properties along major water bodies in the city. Although the F-C Zoning District is not on the subject

property, the purpose and intent of the F-C Zoning District are worth referencing because it is similar to the 50-foot Environmental Buffer requirement in the Riverwood MDA. The F-C Zoning District is intended to protect persons and private property from the hazards of floodwater inundation and protect the community from costs that are incurred when urban development occurs in a flood plain, and conserve important natural and historic resources for ecological purposes and the enjoyment and education of future residents. According to the LDC, the F-C Zoning District allows structures, such as elevated paths, docks, and other outdoor recreation facilities provided the first-floor level is elevated at or above the flood hazard elevation and no filler material is used to achieve the finished floor elevation.

In the early 1990s, a requirement was added to the LDC that requires a 50-foot conservation easement landward of the top of the creek bank on newly created lots along Spruce Creek. The purpose of this easement is to provide for the preservation of existing native vegetation or, the planting of native vegetation if the disturbance of native vegetation has occurred in the past, and development within the easement area is limited to water-dependent uses such as docks and piers. Since the subject lot was platted in 1982 an easement is not on the subject lot, only the buffer restriction in the MDA. However, the buffer restriction in the MDA and the 50-foot conservation easement requirement are very similar in protecting the areas adjacent to Spruce Creek.

The applicant's request to allow the small portion of a built structure (±89 square feet of the 252 square-foot structure) within the buffer is different than originally planned in the 1982 Riverwood MDA. However, the applicant states that the structure was designed in a manner generally consistent with an elevated walkway which is allowed by the MDA in the buffer. In addition, the applicant states that there are similar provisions in the LDC that would allow for certain types of elevated structures that are designed to minimize impacts on natural communities and adjacent properties to be constructed within the area adjacent to Spruce Creek. As stated above by the applicant, the structure does not create any adverse environmental impacts and was built in a portion of the rear yard that has historically been manicured and there was no vegetation removed or damaged in the buffer as part of the build.

According to the applicant, the property owners now understand that a building permit was necessary to construct the structure and these building restrictions would have been addressed during the permitting of the structure; and the structure could have been permitted if it had been located outside the buffer. However, since the structure has been built and design plans have been prepared and submitted to the City for review, the property owners are requesting approval of the MDA amendment to allow it to remain in its current location based on the following:

- The structure is located approximately six (6) feet above the base flood elevation (BFE) at an elevation of 12.4 feet. According to the LDC, any structure within the buffer area on the subject lot is to have a minimum elevation of 7.0 feet or one (1) foot above BFE (6 feet).
- Only ±89 square feet of the 252-square-foot structure is located within the buffer. Therefore only 35% of the overall structure is in the buffer
- The structure meets all required building setbacks for the subject lot.

- The structure only encroaches ±89 square feet into the 11,020 square feet of 50-foot Environmental Buffer area on the subject lot, which is less than 1% (0.81%) of the overall area of the buffer.
- The ground under the structure was not disturbed beyond previous conditions as part of constructing the structure and it was built consistent with construction methods that allowed for an elevated walkway within the buffer, allowed by the MDA.

The proposed amendment has been reviewed and approved by the Staff Development Review Committee (Community Development, Public Utilities, Public Works, Police, Fire, and City Attorney's Office).

CONSISTENCY WITH COMPREHENSIVE PLAN

The original MDA was found to be consistent with the City's Comprehensive Plan and City's Future Land Use (FLU) Map when it was approved in 1982. The proposed 4th MDA Amendment does not change the FLU designation for the property, does not increase the number of allowed residential units, and is consistent with the general intent of the Comprehensive Plan and provisions in place to minimize impacts to natural communities and adjacent properties.

PUBLIC NOTICE

The property was posted by Staff on January 30, 2023, according to the City Council public notice policy adopted in 2014, notifying the adjacent properties of the proposed rezoning. As of the time this agenda item was prepared, there has been one phone call on the proposed amendment and the objection email from this caller is attached as Exhibit 4 to the staff report.

RECOMMENDATION

Based on the portion of the structure located within the 50-foot Environmental Buffer being less than 1% of the overall buffer area (11,020 square feet), staff is recommending approval of the 4th Amendment to the Master Development Agreement for the Riverwood Planned Unit Development, subject to the following:

1. The area of impact for any structure, except a typical wooden walkway, within the buffer area on the subject lot, is limited to 90 square-feet; and
2. Review and approval by the City Attorney's Office for legal form and content.

NEXT STEPS

If the proposed 4th Amendment is approved, the property owners are still required to amend a plat note on the Palmas Bay Club subdivision plat and submit the necessary documents to receive approval of the building permit for the structure to resolve the ongoing Code Enforcement case.

ATTACHMENT

Exhibit 1: Application Request Letter and Support Materials
Exhibit 2: 4th Amendment to the Master Development Agreement for the Riverwood Planned Unit Development
Exhibit 3: Pictures taken by Code Enforcement March 2022
Exhibit 4: Objection email from Ken Riopel - 6240 Poplar Grove Drive

EXHIBIT 1

Document Prepared By:
Robert A. Merrell III, Esquire
Cobb Cole
149 S. Ridgewood Ave. Suite 700
Daytona Beach, FL 32114

Return Recorded Document To:
City of Daytona Beach Records Clerk
P.O. Box 2451
Daytona Beach, FL 32115-2451

FOURTH AMENDMENT TO RIVERWOOD
PUD (PLANNED UNIT DEVELOPMENT) AGREEMENT

THIS FOURTH AMENDMENT TO RIVERWOOD PUD (PLANNED UNIT DEVELOPMENT) AGREEMENT ("Fourth Amendment") is made and entered into by and between **THE CITY OF PORT ORANGE, FLORIDA**, a Florida municipal corporation located in Volusia County, Florida (the "City"), and **ANDREW AND SHRAVANTI HALPERN,** as individuals ("Owner").

WHEREAS, RIVERWOOD REAL ESTATE PARTNERS, LTD., a Florida Partnership and THE CHARLES WAYNE COMPANY, a Florida Partnership ("Original Developer") and THE CITY OF PORT ORANGE, a Florida Municipal Corporation ("City"), entered into a Development Agreement dated May 12, 1982, and recorded in Official Records Book 2357, page 1421, Public Records of Volusia County, Florida, which Development Agreement pertains to certain property as fully described therein, as amended by that certain First Amendment to Riverwood PUD (Planned Unit Development) Agreement, recorded in Official Records Book 2722, page 0777, Public Records of Volusia County, Florida (First Amendment), that certain Second Amendment to Riverwood PUD (Planned Unit Development) Agreement, recorded in Official Records Book 3754, page 1801, Public Records of Volusia County, Florida (Second Amendment), and that certain Third Amendment to Riverwood PUD (Planned Unit Development) Agreement, recorded in Official Records Book 3754, page 1085, Public Records of Volusia County, Florida (Third Amendment); and

WHEREAS, Owner is the real property owner for a portion of the Property subject to the original Planned Unit Development, described as Lot 8 of the Palmas Bay Club Subdivision, according to the map thereof recorded in Map Book 39, page 146, Public Records of Volusia County, Florida ("Owners' Property"); and

WHEREAS, Owner proposes to amend the Agreement as set forth herein in order to clarify the required setbacks for Owners' Property; and

WHEREAS, the City is willing to grant Owner's request, subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree to amend the Agreement as follows:

Section H. of the Agreement is amended as follows: [additions shown in UNDERLINE, deletions shown in ~~STRIKETHROUGH~~]

Section H. Lot Areas and Buffers.

There will be no minimum square footage requirement for lots, except that single family lots will be no less than 1/5 acre and estate lots will be no less than 1/2 acre.

There will be a fifty (50) foot environmental buffer between structures in the PUD and the highest part of the Spruce Creek embankment, except that for Lot 8 of the Palmas Bay Club Subdivision, according to the map thereof recorded in Map Book 39, page 146, Public Records of Volusia County, Florida a ±90-square-foot portion of one 252 square-foot elevated accessory structure may be located no closer than 40 feet from edge of water of the Spruce Creek; where the embankment top cannot be easily determined, said buffer shall begin at the marsh, saw grass, other salt water growth, Or the high water mark, whichever is highest.

Environmental buffer is defined as an area in which no flora shall be removed or disturbed except for elevated walkway construction.

NO OTHER MODIFICATIONS

Except as otherwise expressly provided for herein, the Agreement shall continue in full force and effect.

[Remainder of Page Intentionally Left Blank. Signatures on following page.]

IN WITNESS WHEREOF, the parties hereto have set their hands, this ____ day of _____, 2023.

Signed, sealed and delivered in the presence of:

THE CITY OF PORT ORANGE, FLORIDA, a Florida municipal corporation

_____
Witness 1

By: _____
Donald Burnette, Mayor

_____
Print Name of Witness 1

Attest: _____
_____, City Clerk

_____
Witness 2

Date: _____

_____
Print Name of Witness 2

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2023 by _____ and _____, Mayor and City Clerk, respectively, of The City of Port Orange, Florida, a chartered municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.

_____
Notary Public
Commission No: _____

Signed, sealed and delivered in the presence of:

ANDREW AND SHRAVANTI HALPERN, as individuals

_____
Witness 1

_____
Andrew Halpern

_____
Print Name of Witness 1

_____
Shravanti Halpern

_____
Witness 2

Date: _____

_____
Print Name of Witness 2

[Corporate Seal]

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by Andrew Halpern, referred to in this agreement as "Owner." He or she is [_] personally known to me or [_] produced as identification and did not take an oath.

_____
Notary Public
Commission No. _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by Shravanti Halpern, referred to in this agreement as "Owner." He or she is [_] personally known to me or [_] produced as identification and did not take an oath.

_____
Notary Public
Commission No. _____

Approved as to legal form:

By: _____
_____, City Attorney

EXHIBIT A

Legal Description of the Property

LOT 8 PALMAS BAY CLUB SUB MB 39 PGS 145-146 INC PER OR 2571 PG 1141 PER OR 6948 PG 3943 PER OR 7367 PG 2727

Scott W. Cichon
Robert A. Merrell III
John P. Ferguson
Mark A. Watts
Heather Bond Vargas
Michael J. Woods
Raymond L. Schumann
Kathleen L. Crotty
Michael O. Sznapstajler
Matthew S. Welch
Robert E. Doan
William A. Rice
Douglas J. Collins
Sara E. Glover
Holly W. Zitzka
Jessica L. Gow
Nika K. Hosseini
Sydney V. Cichon
Brandon T. Byers
Baylee D. Bunyard
Anne M. Kehrli
James P. Love III

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William M. Cobb
(1881-1939)
Thomas T. Cobb
(1916-2004)
W. Warren Cole, Jr.
(1926-2008)

January 9, 2023

VIA Mail

City of Port Orange
Attn: Penelope Cruz
Planning Manager
1000 City Center Cir.
Port Orange, FL 32129

Re: 4th Amendment to Riverwood PUD – Halpern Property

Dear Penny:

As you know, we represent the Halpern's in relation to a request for an amendment to the existing PUD for the Riverwood project to allow for a revised setback for an elevated accessory structure within their lot. The original PUD set forth a fifty (50) foot environmental buffer between structures in the PUD and the highest part of the Spruce Creek embankment, but allows for uses that do not disturb the existing flora. The original approved PUD provides an exception to the setback for elevated walkways, which allow for flora to continue growing without an overt impact. The accessory structure that was installed within the property is elevated, and does not result in an impact to the natural area within the environmental buffer. The structure allows for use and enjoyment of the property by the current owner, without creating adverse environmental impacts that the original PUD was intended to prevent.

In support of this request, enclosed please find the following PUD application packet:

- PUD Application;
- Application Fee Check in the amount of $6,500.00;
- Executed Authorization of Owner;
- Deed;
- Draft Fourth Amendment to Riverwood PUD Agreement.

If you have any questions regarding this matter, please don't hesitate to contact me. Thank you for your consideration.

Sincerely,

Jessica Gow
Direct Dial (386) 323-9226
Email Jessica.Gow@CobbCole.com
Fax (386) 323-9207

JLG/tmn
Enclosures

CITY OF PORT ORANGE

PUBLIC HEARING APPLICATION

Case No.
Date Application Received

Department of Community Development
1000 City Center Circle
Port Orange, Florida 32129

Telephone: (386) 506-5674
Fax: (386) 506-5699
Website: www.port-orange.org

Instructions: A pre-application conference must be held with Department Staff prior to filing an application for any of the items listed below. Please type all information (excluding signature lines). Application must be filled out accurately and completely in order to be accepted for processing. Do not leave any items blank.

NOTE TO APPLICANT: If you would like assistance in completing this form, please call or stop by the Department of Community Development, (386) 506-5674. Our offices are located on the second floor of City Hall, 1000 City Center Circle. Office hours are Monday through Friday 8:00 a.m. to 4:00 p.m.

Please Select Appropriate Application Type: PUD / PCD Amendment

(Public Notice sign for Rezoning, Future Land Use, and PUD/PCD applications will be installed by staff within 10 days of receiving the application.)

Name of Proposed Development: Fourth Amendment to Riverwood PUD Agreement

Property Address/Location: 6315 Palmas Bay Cir. Port Orange FL 32127

Short Parcel ID Number(s): 633806000080

Current Zoning Classification: (select one of the following) PUD

Proposed Zoning Classification: (select one of the following) PUD

Existing Use:

Current FLU Designation: Rural Transition (0-2 units/acre)

Proposed FLU Designation: Rural Transition (0-2 units/acre)

Property Size: 1.10 +/- acres

Description of Proposed Development:

Property Owner: Andrew Halpern

Authorized Agent's Name: Jessica Gow, Esq./ Cobb Cole

Address: 149 S. Ridgewood Ave. Suite 700

City, State, Zip: Daytona Beach, FL 32114

Email: Jessica.Gow@cobbcole.com **Phone:** 386-323-9226

(Property owner(s) are required to sign Owner Affidavit of Authorization, page 3 of this application, if applicable.)

Engineer's Name: _____ **Company:** _____

Address: _____

City, State, Zip: _____

Email: _____ **Phone:** _____

LEGAL ADVERTISING FEES: Processing and review fees do not cover the cost of any required legal advertising. Advertising fees will be billed separately through the City Clerk's office. If you have any questions regarding advertising fees, please contact the Deputy City Clerk at (386) 506-5566.

Applicant's Name: Jessica Gow, Esq. OBO Andrew Halpern

Address: 149 S. Ridgewood Ave. Suite 700

City, State, Zip: Daytona Beach FL 32114

Email: Jessica.Gow@cobbcole.com **Phone:** 386-323-9226

Applicant is: ☐ **Owner** ☐ **Developer** ☐ **Contract Purchaser** ☑ **Agent**

Applicant's Signature: _____ **Date:** 11923

Please Type Above Signatory's Name: Jessica Gow

STATE OF FLORIDA

COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [X] physical presence or [ ] online notarization on this 11923 (Date) by Jessica Gow (Name of Person(s) Acknowledging), who is personally known to me or who has produced _____ (Type of Identification) as identification and who did (did not) take an oath.

Tequila Nelson (Signature) Notary Public, Commission No. HH273939

Tequila Nelson (Name of Notary typed, printed or stamped)

TEQUILA MIA NELSON
Notary Public - State of Florida
Commission # HH 273939
My Comm. Expires Feb 12, 2023
Bonded through National Notary Assn.

Note: The following owner affidavit of authorization is only required when the Applicant is not the Property Owner.

OWNER AFFIDAVIT OF AUTHORIZATION

Andrew C. Halpern (Property Owner's Name) hereby authorizes Cobb Cole (Applicant's Name),

and its agents, to make application for PUD / PCD Amendment (Type of Application requested) to the City of Port Orange for property described on the attached application form.

Property Owner's Signature: [signature]

Please type first and last name of Signatory: Andrew C. Halpern

Date: 12/6/2022

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [X] physical presence or [ ] online notarization on this 12/6/22 (Date) by Andrew C. Halpern (Name of Person(s) Acknowledging), who is personally known to me or who has produced FLDL H416-003-68-292-0 (Type of Identification) as identification and who did (did not) take an oath.

[signature] (Signature) Notary Public, Commission No. _____

(Name of Notary typed, printed or stamped)

NOTARY PUBLIC STATE OF FLORIDA
DEBORAH D. LACROIX
Commission # HH 237824
Expires April 8, 2026

Andrew Halpern <ahalpern1@gmail.com> 4/15/2021 6:46 PM

Re: RWP ARC approval

To Kim Rosen <kimr@cliftonmanagement.com>

Thank you Kim.

Andrew Halpern

> On Apr 15, 2021, at 6:42 PM, Kim Rosen <kimr@cliftonmanagement.com> wrote:
>
> Hello,
>
> Your ARC request to install a treehouse/playhouse has been approved by both Palmas Bay and Riverwood Plantation ARC committees. Color of treehouse/playhouse: natural wood. The approval is filed in your resident file should you need a copy.
>
> Best regards,
> Kim

ARCHITECTURAL SUBMITTAL

YOU MUST HAVE ASSOCIATION APPROVAL BEFORE APPLYING FOR CITY PERMITS

6338060000 80

OWNER ANDREW HALPERN LOT# ~~6315~~ PHONE# 315-225-6090

EMAIL AHALPERN1@GMAIL.COM

ADDRESS 6315 PALMAS BAY CIRCLE

TYPE OF SUBMITTAL (Please Check)

TREEHOUSE / PLAYHOUSE IN BACK YARD

New Home Review ( ) Addition ( )

Modification ( ) Fence ( )

Tree Removal ( ) Other (X)

Information Required For New Home or Addition- Must submit samples of colors for all material

One set of clean, concise, drafted to scale architectural plans of proposed building and or addition showing floor and all elevations. Include all necessary details to convey design and construction intent (typical wall sections, window treatments, roof venting, roof overhang, etc).

One set of plot plans indicating all setback dimensions from building and appurtenant structures, and location of proposed building and/or addition.

Specifications of materials to be used in construction:

1. Exterior color: Roof SHINGLE Walls WOOD
   Windows 3 Trim N/A Garage Doors N/A
   Fence N/A Other
2. Exterior Materials and Surface Treatments: Walls
   Roof Trim Garage Door

Explanations to Clarify Any Of Above

PLAYHOUSE, FREESTANDING & WRAPPED AROUND A TREE IN THE BACKYARD. location = middle of distant backyard.

Date Received 4-1-2021 Committee Review Date 4-12-20 (PBC)

OWNER NOTIFICATION

Your request to the Architectural Review Committee is: APPROVED (X) DENIED ( ) for the following reasons:

Use of 'natural' wood colors agreed to with homeowner

RWP: BMW 4.13.2021 Other PBC Hold 4-12-

RWP: Heather Brown 4/13/2021 Other 4-13-2

RWP: Barbara Mullaney 4/13/2021 Approved Homeowner notified on: BY

4-15-2021 emailed attache

Describe work to be performed:

Exterior Painting must include actual paint sample(s), brand, color code, and color name. All areas to be painted, walls, trim, garage door, front door, shutters, etc. must have a labeled color sample (including white).

~~COLOR WILL MATCH HOUSE COLOR (EXTERIOR)~~

color will be natural wood
See 1st page.

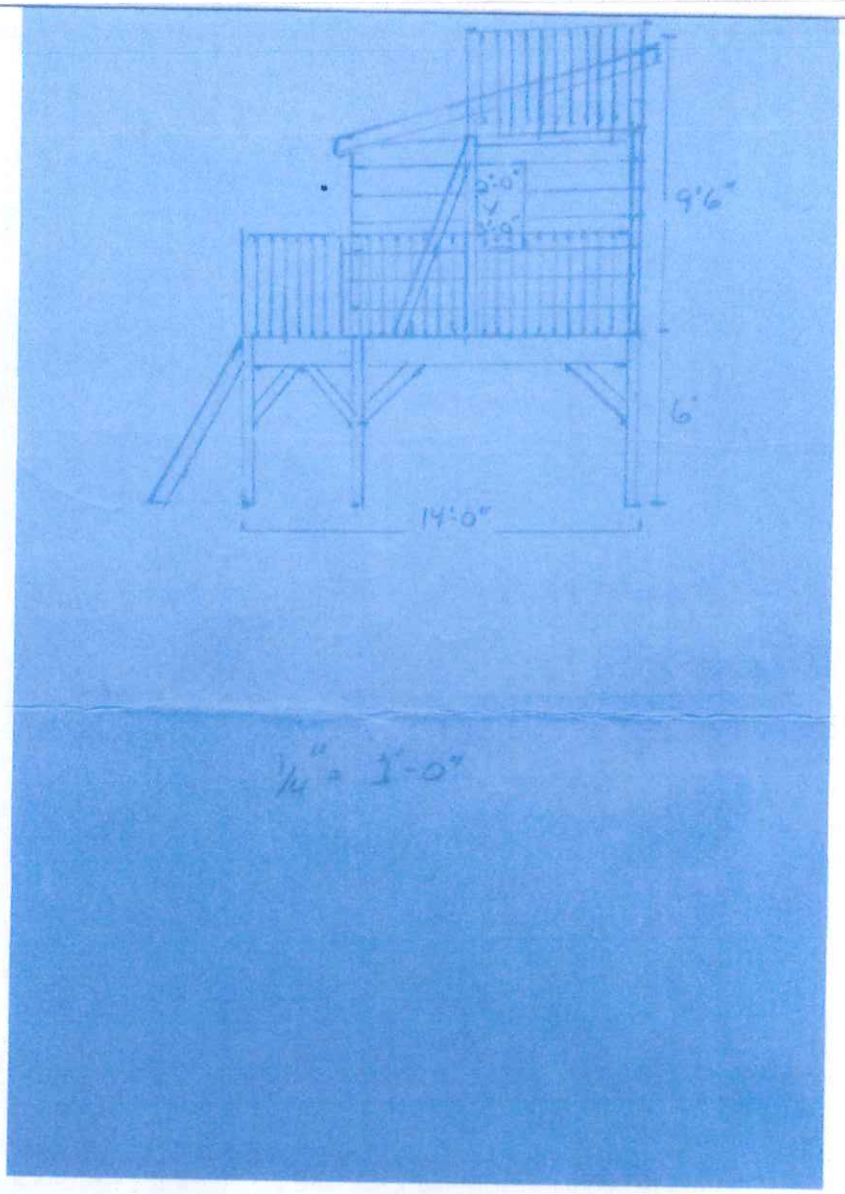
Sketches attached if applicable.

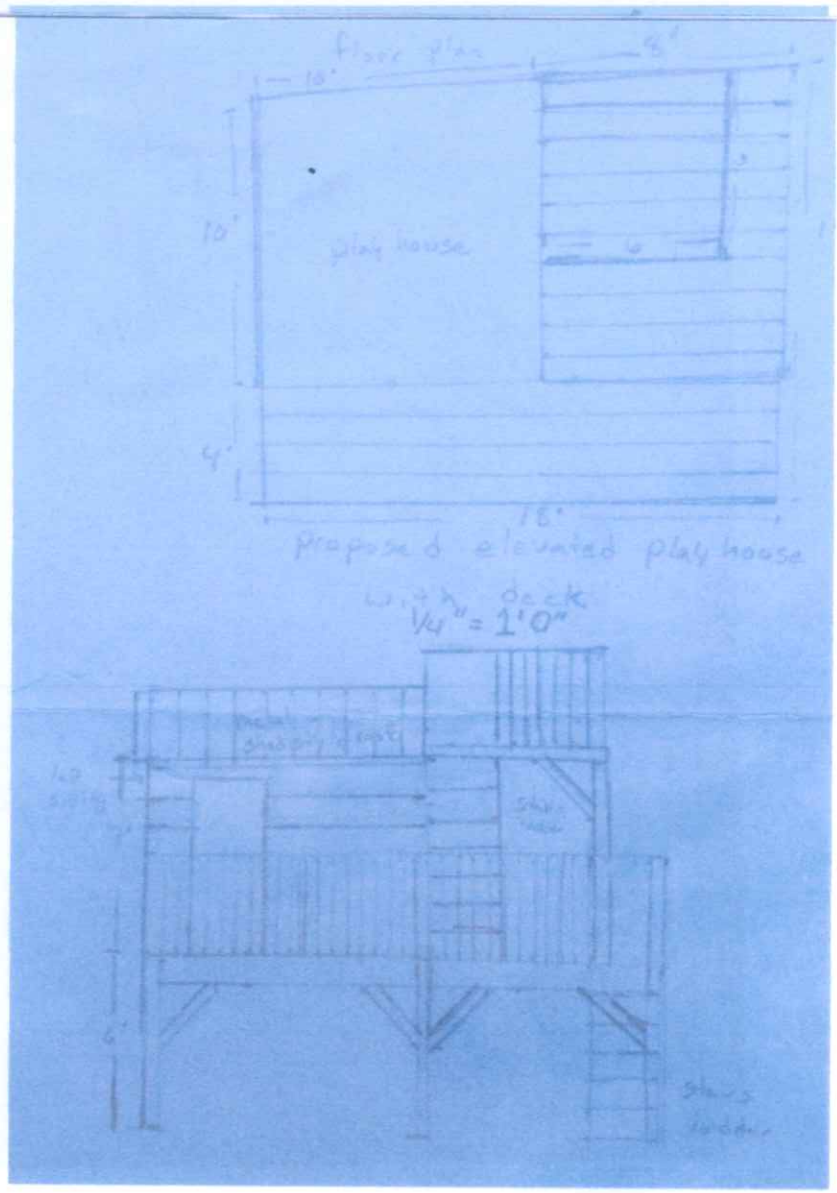
YOU MUST OBTAIN ALL NECESSARY CITY/COUNTY PERMITS, GOOD FOR 90 DAYS

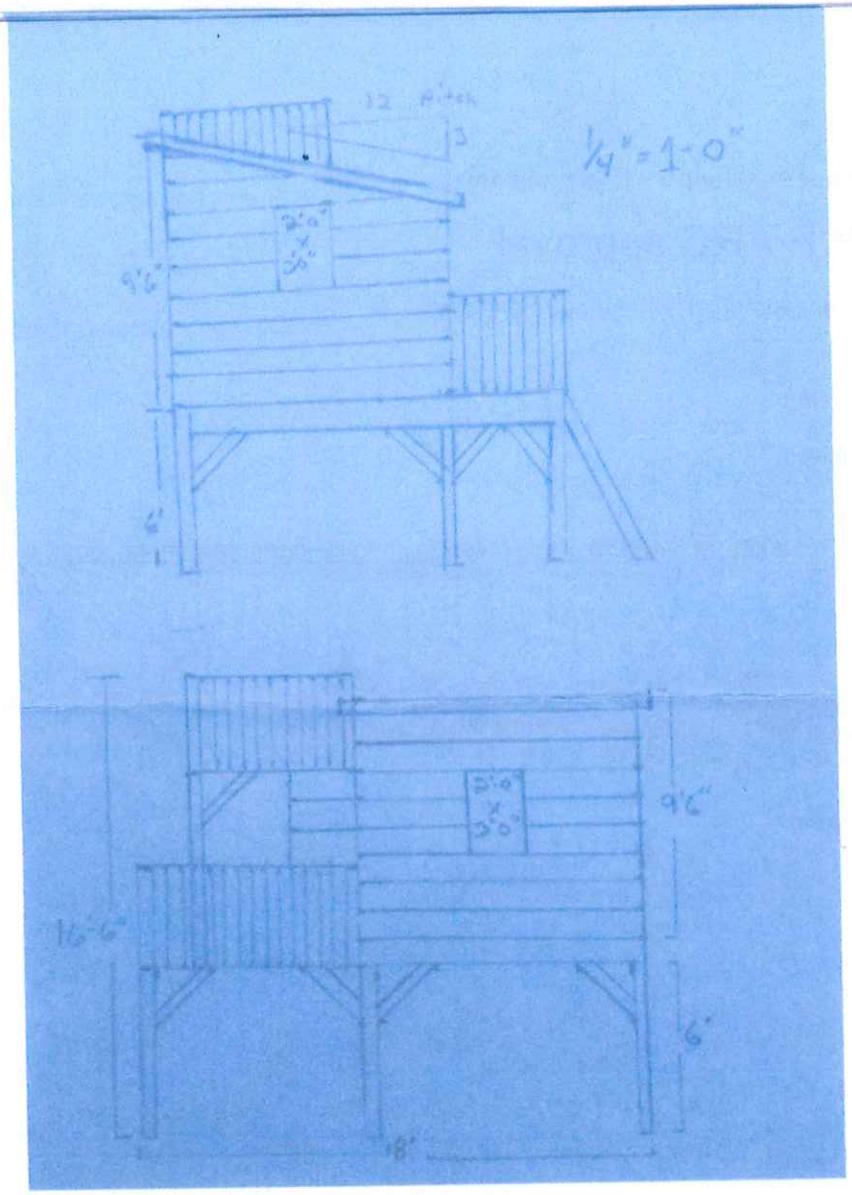
By my signature below, I agree, as owner of the above referenced property, to make only the modifications which have been approved by this document.

PROPERTY OWNER

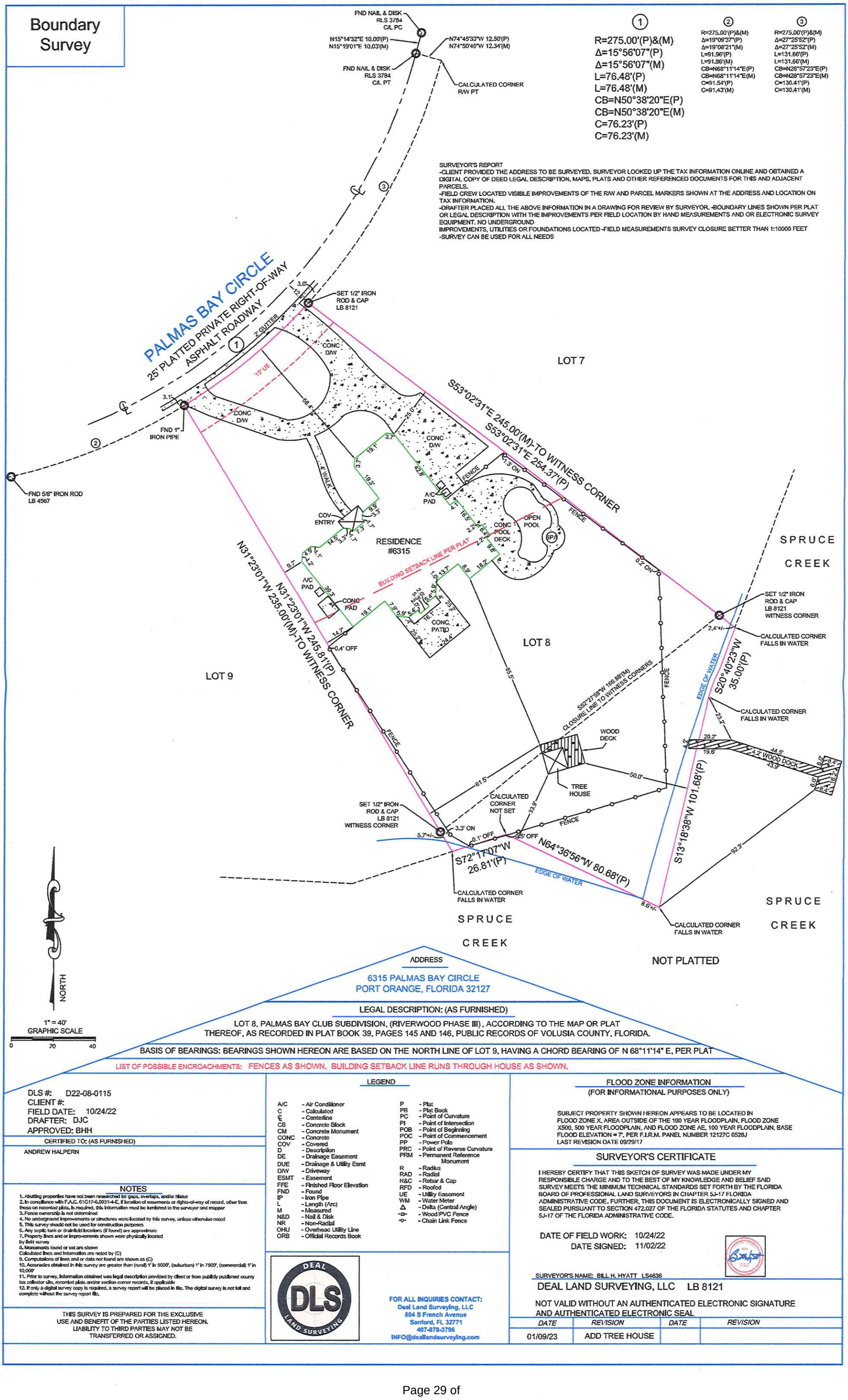
3/30/21
DATE


5'-0"
3'-9"
9'6"
6'
14'-0"
1/4" = 1'-0"


floor plan
play house
proposed elevated play house
with deck
1/4" = 1'0"


12 Pitch
3
1/4" = 1'-0"
2'-0" x 3'-0"
9'6"
6'
2'-0" x 3'-0"
9'6"
16'-6"
6'
18'

Boundary Survey



1	2	3
R=275.00'(P)&(M)	R=275.00'(P)&(M)	R=275.00'(P)&(M)
Δ=15°56'07"(P)	Δ=19°09'37"(P)	Δ=27°25'52"(P)
Δ=15°56'07"(M)	Δ=19°08'21"(M)	Δ=27°25'52"(M)
L=76.48'(P)	L=91.96'(P)	L=131.66'(P)
L=76.48'(M)	L=91.86'(M)	L=131.66'(M)
CB=N50°38'20"E(P)	CB=N68°11'14"E(P)	CB=N28°57'23"E(P)
CB=N50°38'20"E(M)	CB=N68°11'14"E(M)	CB=N28°57'23"E(M)
C=76.23'(P)	C=91.54'(P)	C=130.41'(P)
C=76.23'(M)	C=91.43'(M)	C=130.41'(M)

SURVEYOR'S REPORT
-CLIENT PROVIDED THE ADDRESS TO BE SURVEYED. SURVEYOR LOOKED UP THE TAX INFORMATION ONLINE AND OBTAINED A DIGITAL COPY OF DEED LEGAL DESCRIPTION, MAPS, PLATS AND OTHER REFERENCED DOCUMENTS FOR THIS AND ADJACENT PARCELS.
-FIELD CREW LOCATED VISIBLE IMPROVEMENTS OF THE R/W AND PARCEL MARKERS SHOWN AT THE ADDRESS AND LOCATION ON TAX INFORMATION.
-DRAFTER PLACED ALL THE ABOVE INFORMATION IN A DRAWING FOR REVIEW BY SURVEYOR. -BOUNDARY LINES SHOWN PER PLAT OR LEGAL DESCRIPTION WITH THE IMPROVEMENTS PER FIELD LOCATION BY HAND MEASUREMENTS AND OR ELECTRONIC SURVEY EQUIPMENT. NO UNDERGROUND
IMPROVEMENTS, UTILITIES OR FOUNDATIONS LOCATED -FIELD MEASUREMENTS SURVEY CLOSURE BETTER THAN 1:10000 FEET
-SURVEY CAN BE USED FOR ALL NEEDS

ADDRESS

6315 PALMAS BAY CIRCLE
PORT ORANGE, FLORIDA 32127

LEGAL DESCRIPTION: (AS FURNISHED)

LOT 8, PALMAS BAY CLUB SUBDIVISION, (RIVERWOOD PHASE III), ACCORDING TO THE MAP OR PLAT THEREOF, AS RECORDED IN PLAT BOOK 39, PAGES 145 AND 146, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

BASIS OF BEARINGS: BEARINGS SHOWN HEREON ARE BASED ON THE NORTH LINE OF LOT 9, HAVING A CHORD BEARING OF N 68°11'14" E, PER PLAT

LIST OF POSSIBLE ENCROACHMENTS: FENCES AS SHOWN. BUILDING SETBACK LINE RUNS THROUGH HOUSE AS SHOWN.

DLS #: D22-08-0115
CLIENT #:
FIELD DATE: 10/24/22
DRAFTER: DJC
APPROVED: BHH

CERTIFIED TO: (AS FURNISHED)

ANDREW HALPERN

NOTES

1. Abutting properties have not been researched for gaps, overlaps, and/or hiatus
2. In compliance with F.A.C. 61G17-6.0031-4-E, If location of easements or rights-of-way of record, other than those on recorded plats, is required, this information must be furnished to the surveyor and mapper
3. Fence ownership is not determined
4. No underground improvements or structures were located by this survey, unless otherwise noted
5. This survey should not be used for construction purposes
6. Any septic tank or drainfield locations (if found) are approximate
7. Property lines and or improvements shown were physically located by field survey
8. Monuments found or set are shown
Calculated lines and information are noted by (C)
9. Computations of lines and or data not found are shown as (C)
10. Accuracies obtained in this survey are greater than (rural) 1' in 5000', (suburban) 1' in 7500', (commercial) 1' in 10,000'
11. Prior to survey, information obtained was legal description provided by client or from publicly published county tax collector site, recorded plats and/or section corner records, if applicable
12. If only a digital survey copy is required, a survey report will be placed in file. The digital survey is not full and complete without the survey report file.

THIS SURVEY IS PREPARED FOR THE EXCLUSIVE USE AND BENEFIT OF THE PARTIES LISTED HEREON. LIABILITY TO THIRD PARTIES MAY NOT BE TRANSFERRED OR ASSIGNED.

LEGEND

A/C	- Air Conditioner	P	- Plat
C	- Calculated	PB	- Plat Book
℄	- Centerline	PC	- Point of Curvature
CB	- Concrete Block	PI	- Point of Intersection
CM	- Concrete Monument	POB	- Point of Beginning
CONC	- Concrete	POC	- Point of Commencement
COV	- Covered	PP	- Power Pole
D	- Description	PRC	- Point of Reverse Curvature
DE	- Drainage Easement	PRM	- Permanent Reference Monument
DUE	- Drainage & Utility Esmt	R	- Radius
D/W	- Driveway	RAD	- Radial
ESMT	- Easement	R&C	- Rebar & Cap
FFE	- Finished Floor Elevation	RFD	- Roofed
FND	- Found	UE	- Utility Easement
IP	- Iron Pipe	WM	- Water Meter
L	- Length (Arc)	Δ	- Delta (Central Angle)
M	- Measured	-□-	- Wood/PVC Fence
N&D	- Nail & Disk	-o-	- Chain Link Fence
NR	- Non-Radial		
OHU	- Overhead Utility Line		
ORB	- Official Records Book		

DEAL LAND SURVEYING

FOR ALL INQUIRIES CONTACT:
Deal Land Surveying, LLC
804 S French Avenue
Sanford, FL 32771
407-878-3796
INFO@deallandsurveying.com

FLOOD ZONE INFORMATION
(FOR INFORMATIONAL PURPOSES ONLY)

SUBJECT PROPERTY SHOWN HEREON APPEARS TO BE LOCATED IN FLOOD ZONE X, AREA OUTSIDE OF THE 100 YEAR FLOODPLAIN, FLOOD ZONE X500, 500 YEAR FLOODPLAIN, AND FLOOD ZONE AE, 100 YEAR FLOODPLAIN, BASE FLOOD ELEVATION = 7', PER F.I.R.M. PANEL NUMBER 12127C 0528J
LAST REVISION DATE 09/29/17

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THIS SKETCH OF SURVEY WAS MADE UNDER MY RESPONSIBLE CHARGE AND TO THE BEST OF MY KNOWLEDGE AND BELIEF SAID SURVEY MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 5J-17 FLORIDA ADMINISTRATIVE CODE. FURTHER, THIS DOCUMENT IS ELECTRONICALLY SIGNED AND SEALED PURSUANT TO SECTION 472.027 OF THE FLORIDA STATUTES AND CHAPTER 5J-17 OF THE FLORIDA ADMINISTRATIVE CODE.

DATE OF FIELD WORK: 10/24/22
DATE SIGNED: 11/02/22

SURVEYOR'S NAME: BILL H. HYATT LS4636

DEAL LAND SURVEYING, LLC LB 8121

NOT VALID WITHOUT AN AUTHENTICATED ELECTRONIC SIGNATURE AND AUTHENTICATED ELECTRONIC SEAL

DATE	REVISION	DATE	REVISION
01/09/23	ADD TREE HOUSE		

EXHIBIT 3

Pictures taken of the elevated accessory structure by Code Enforcement in March 2022

03/25/2022 01:13 PM

03/25/2022 01:13 PM

EXHIBIT 4

Cruz, Penelope

From: Ken Riopel <k.riopel@live.com>
Sent: Sunday, February 12, 2023 11:24 AM
To: Cruz, Penelope
Subject: [EXT] 6315 Palmas Bay Circle PRZA-23-0001

I am writing this letter to express my objection to the proposed amendment of the Riverwood Plantation master development, plot change and possible retroactive approval of the structure built in early 2021 at 6315 Palmas Bay Circle.

I have been a resident of Riverwood Plantation since 2005 and one of the reasons my wife and I chose to relocate to this neighborhood was the mature trees, natural mangrove shorelines and natural surroundings. As an avid kayak fisherman I was very distressed last March when I ventured out on Spruce Creek and noticed the recent construction of a standalone two story structure near the shoreline as well as massive clear-cutting of several mature trees and a large mangrove stand.

I reached out to our HOA President, who also resides on Palmas Bay Circle, to inquire how this construction and clear-cutting could have possibly been approved by our association's architectural review committee, (ARC). I also informed him that I would be filing a complaint to the Florida Wildlife Department, (FWC), regarding the destruction of the mature mangrove stand. He responded that this construction was approved by our ARC and implored me not to file a complaint.

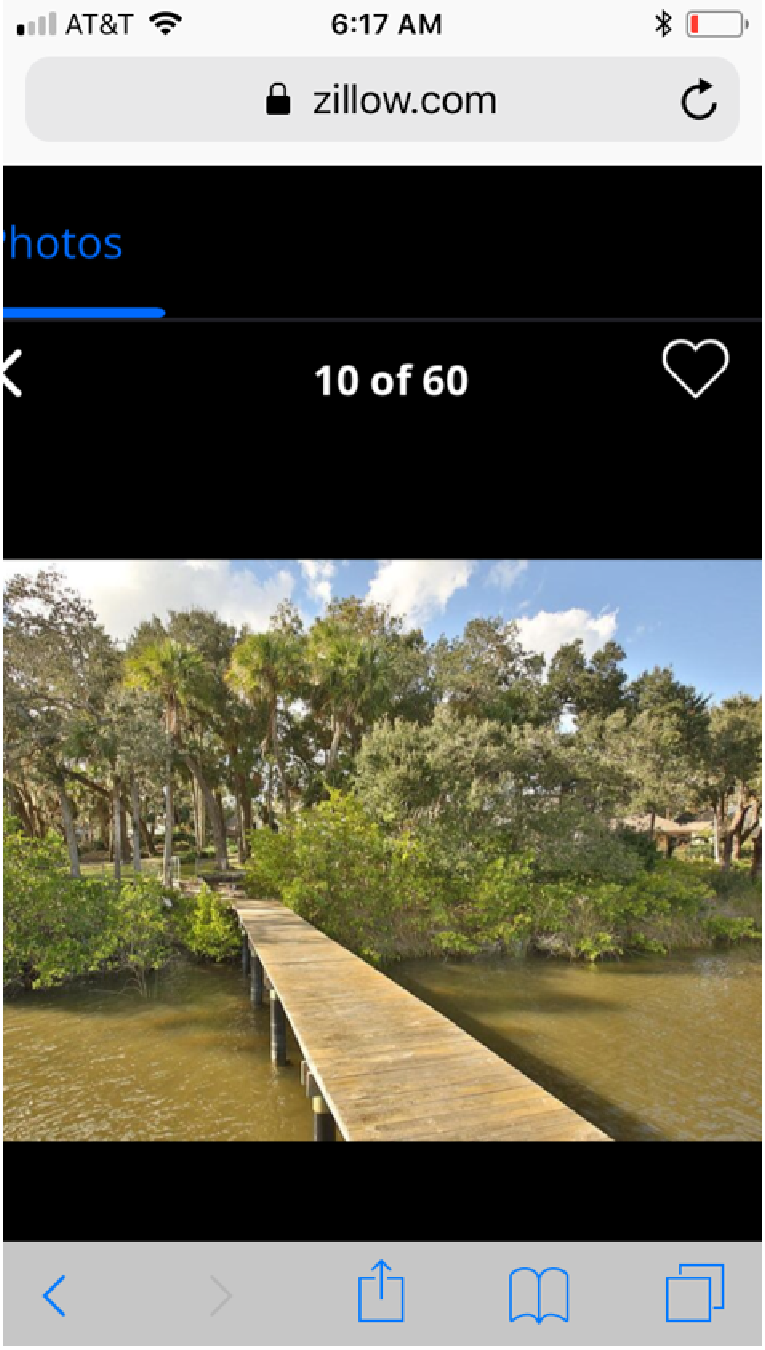
A couple days later I contacted Port Orange zoning and was told that no building permit was submitted to the city for this building or removal of the mature trees. I then filed a complaint to both Port Orange zoning and FWC.

I would respectively ask that the zoning board and city council reject the proposed change to our master development plan and, eventually any building permit that may subsequently be applied for. I would ask them to consider the following:

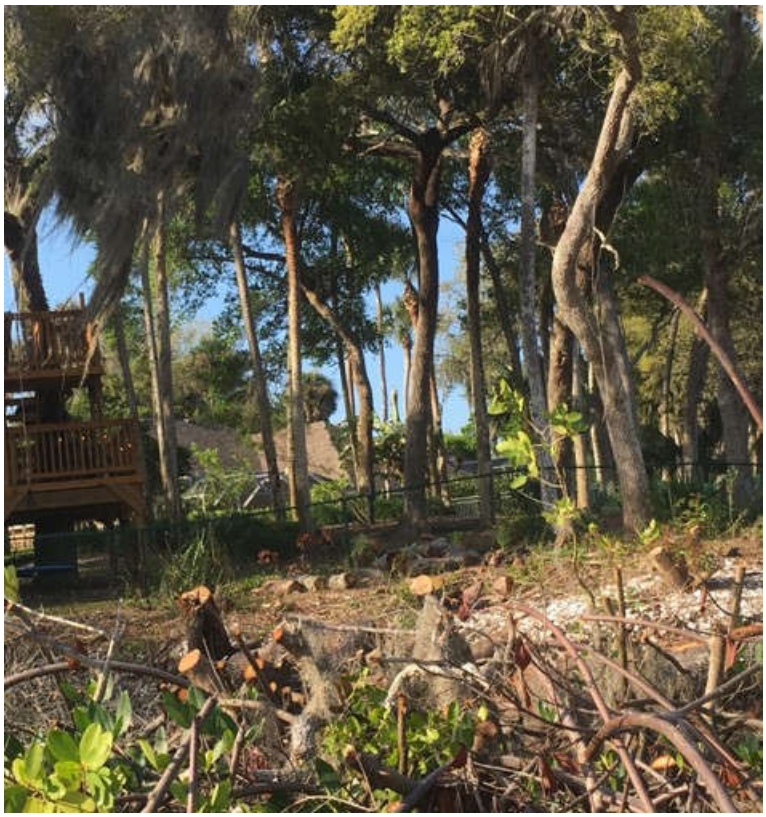
1) The description of this structure by the homeowner as a 'treehouse' is a misnomer and implies a much smaller structure than what was built. This structure was built on a standalone wood stilt foundation and appears to be the equivalent height of a two story structure. Please reference picture 1

2) The owner has shown a complete disregard for local zoning regulations, Riverwood building restrictions, Riverwood ARC process and FWC and federal regulations regarding the shoreline. Not only did the homeowner not apply for the required local and state permits but they apparently even violated the approval process of our ARC. According to our ARC manager's
statements in our January 2023 HOA meeting the homeowner applied for a permit to build a small structure in the trees near his house and wound up building a structure that had little resemblance to what was approved and in a completely different location on their lot.

3) The owner has permanently altered the shoreline of our beautiful neighborhood. In picture 2 I have included a view of what this shoreline looked like a few years ago from a real estate listing.



In pictures 3 and 4 I show what the shoreline looked like after the construction and shoreline destruction had taken place.



Also in picture 5 I show this property next to the adjacent parcel and the board can clearly see what a dramatic change in shoreline has taken place relative to the adjacent property on the left which has remained in its natural state.

4) The owner has recently added very bright lights to this structure which creates disturbing light pollution across our shoreline at night and interferes with our enjoyment of the night skies from our waterfront park.

5) I understand that our Riverwood board may be amenable to a change in our master plan to accommodate the homeowners request. I ask that the zoning board consider the following when deciding how much weight to give this recommendation when reaching a decision:
    a. Palmas Bay Circle is a small gated portion of our overall Riverwood Plantation development yet has multiple members on our board, including our board president
    b. Under the bylaws for Riverwood the board has no authority to modify our founding declarations and bylaws. Such a change requires a 90% approval of all association members, so therefore, such a recommendation by just our board should not be viewed as a recommendation by our association as a whole.

In closing I believe it would be a mistake for our zoning board and city council to reward this owner's behavior by allowing them to keep this structure in place. I do not believe the board and city council would have approved this construction prior to it being built so I think it would set an unfortunate precedent to approve it retroactively. I believe the owners should be required to dismantle this construction.

Thank you for allowing me to express my objection to this request.

Ken Riopel
6240 Poplar Grove Drive
Port Orange Florida
386-314-3523

Sent from Mail for Windows