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City Attorney
City of Stuart
121 SW Flagler Avenue
Stuart, FL 34994

**BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA**

Case #Z21030002

In re: The Code Variance Application of
Bournique Residence
08-38-41-007-006-00011-0

FINAL ORDER OF VARIANCE APPROVAL

THIS CAUSE came for hearing before the City Commission for the City of Stuart, Florida, at a regular set hearing at **5:30 PM on April 12, 2021**, at the City Commission Chambers, 121 S.W. Flagler Avenue, Stuart, Florida; and the Commission, having considered the sworn testimony and other evidence presented by the City staff, the Petitioner, and any Interveners, finds as follows:

1. Notice of the hearing was provided as required by the Stuart Land Development Code (LDC). Notice was not challenged by any party at the hearing, and the City Commission has jurisdiction over this case.

2. The City was represented by **Kev Freeman**, Development Director, and the applicant was represented by **Douglas C. Bournique**, Petitioner, all in attendance.

3. **Kev Freeman**, of the City Development Department, testified on behalf of the City that the Petitioner, Douglas C. Bournique, the title owner of the real property having **PCN #08-38-41-007-006-00011-0**, (hereinafter the "Subject Property"), who has provided a sketch and legal description as found within and attached as '**Exhibit 1**', in order to receive relief from the rear setback to an enclosed pool structure.

4. **Kev Freeman** indicated the Subject Property is located **on Lot 4 of Indian Groves Drive**, and is zoned **R-3 (Residential, Multi-Family/Office)**, with a Future Land Use designation of Residential/Office. The Future Land Use and Zoning categories were not challenged by any party at the hearing.

5. The existing vacant lot is currently in compliance with zoning code. The Petitioner desires to develop the Subject Property in substantial conformance with the proposed plans and attached as "**Exhibit 2**" of this document.

6. The Petitioner gave verbal testimony indicating a desire to request the minimum variance required to create a buildable lot, thereby building a proposed duplex. The Petitioner has submitted a memo from Atlantic Environmental stating that the request

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of relief from hardship shows no environmental harm, as “**Exhibit 3**”.

7. The Petitioners requested in writing the following reductions to the minimum code requirements at the hearing to allow the development of the lot as a duplex:

- The minimum front setback shall be reduced from required 25 feet to 15 feet.
- The minimum average upland buffer distance from outstanding wetland resources shall be reduced from 75 feet to 25 feet
- The minimum upland buffer distance from outstanding wetland resources shall be reduced from 50 feet to 25 feet.
- The construction setback from all upland buffers, which is 10 feet, shall be included within the 25 feet buffer.

8. **Key Freeman** gave testimony and analyzed the case, and indicated the petition is consistent with the City's Comprehensive Plan, meets the procedural requirements of the law. The testimony concluded by recommending that the City Commission consider the Final Order to allow for the variance, subject to the following conditions:

- a. The lot shall be developed in conformity to the Proposed Plan, as depicted in “**Exhibit 2**”.
- b. The Subject Property is granted a relief from the Land Development Code as demonstrated in the table below:

Land Development Regulations vs Variance Request	
R-3 Requirements	Proposed Development Standards
Front Setback – 25 feet	Front Setback – 15 feet
Minimum Average width of upland buffer = 75 feet	Minimum Average width of upland buffer = 25 feet
Upland buffer at no point less than = 50 feet	Upland buffer at no point less than = 25 feet
Construction setback = 10 feet	Construction setback = 10 feet * *to be included within the 25-foot buffer (or shall be reduced to zero)

9. Construction in substantial conformance with the Proposed Plan, attached as “**Exhibit 2**” of this document, along with all other required documents for permitting, shall be submitted for Building Permit review. The building permit documents shall ensure there is no storm water run-off on adjacent properties.

10. If the final inspection of the proposed residence is not performed by **April 1, 2023**, the variance relief granted in this **Final Order shall be void**.

11. All applicable state or federal permits must be obtained before the commencement any development activities. Issuance of this development

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order/permit/approval by the City of Stuart does not in any way create any right on the part of an applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the City of Stuart for the issuance of this order/permit/approval if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law.

12. All subsequent Lessees and Owners shall be bound to the terms of this Variance, and this Variance shall carry forward and “run with the land” unless later released by the City Development Director, or as otherwise provided by law.

15. At the conclusion of the evidence and any follow up questioning by the Board Members, brief summaries were made by the Petitioner. The City Commission then entered into deliberation, and discussed the following:

Commissioner _____ offered a motion to approve the variance(s). The motion was seconded by Commissioner _____ and upon being put to a roll call vote, the vote was as follows:

EULA R. CLARKE, MAYOR
 MERRITT MATHESON, VICE MAYOR
 BECKY BRUNER, COMMISSIONER
 TROY MCDONALD, COMMISSIONER
 MIKE MEIER, COMMISSIONER

YES	NO	ABSENT	ABSTAIN

ADOPTED on second and final reading this _____ day of _____, 2021.

ATTEST:

 MARY R. KINDEL
 CITY CLERK

 EULA R. CLARKE
 MAYOR

APPROVED AS TO FORM
 AND CORRECTNESS:

 MICHAEL J. MORTELL, ESQ.
 CITY ATTORNEY

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ACCEPTANCE AND AGREEMENT

BY SIGNING THIS ACCEPTANCE AND AGREEMENT, THE UNDERSIGNED HEREBY ACCEPTS AND AGREES TO ALL OF THE TERMS AND CONDITIONS CONTAINED IN THE FOREGOING FINAL ORDER, AND ALL EXHIBITS, ATTACHMENTS AND DEVELOPMENT DOCUMENTS, INTENDING TO BE BOUND THEREBY, AND THAT SUCH ACCEPTANCE AND AGREEMENT IS DONE FREELY, KNOWINGLY, AND WITHOUT ANY RESERVATION, AND FOR THE PURPOSES EXPRESSED WITHIN THE FOREGOING FINAL ORDER. IN WITNESS WHEREOF THE UNDERSIGNED HAS EXECUTED THIS ACCEPTANCE AND AGREEMENT:

WITNESSES:

Witness #1:

Print Name: _____

DOUGLAS C. BOURNIQUE,

Owner

Signature: _____

Signature: _____

Witness #2:

Print Name: _____

Signature: _____

OWNERS ACKNOWLEDGMENT

Sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization, this ____ day of _____, 20____ by _____

Personally Known OR Produced Identification

Type of Identification Produced _____

Signature of Notary Public: _____

Commission Expires:

Notary Seal:

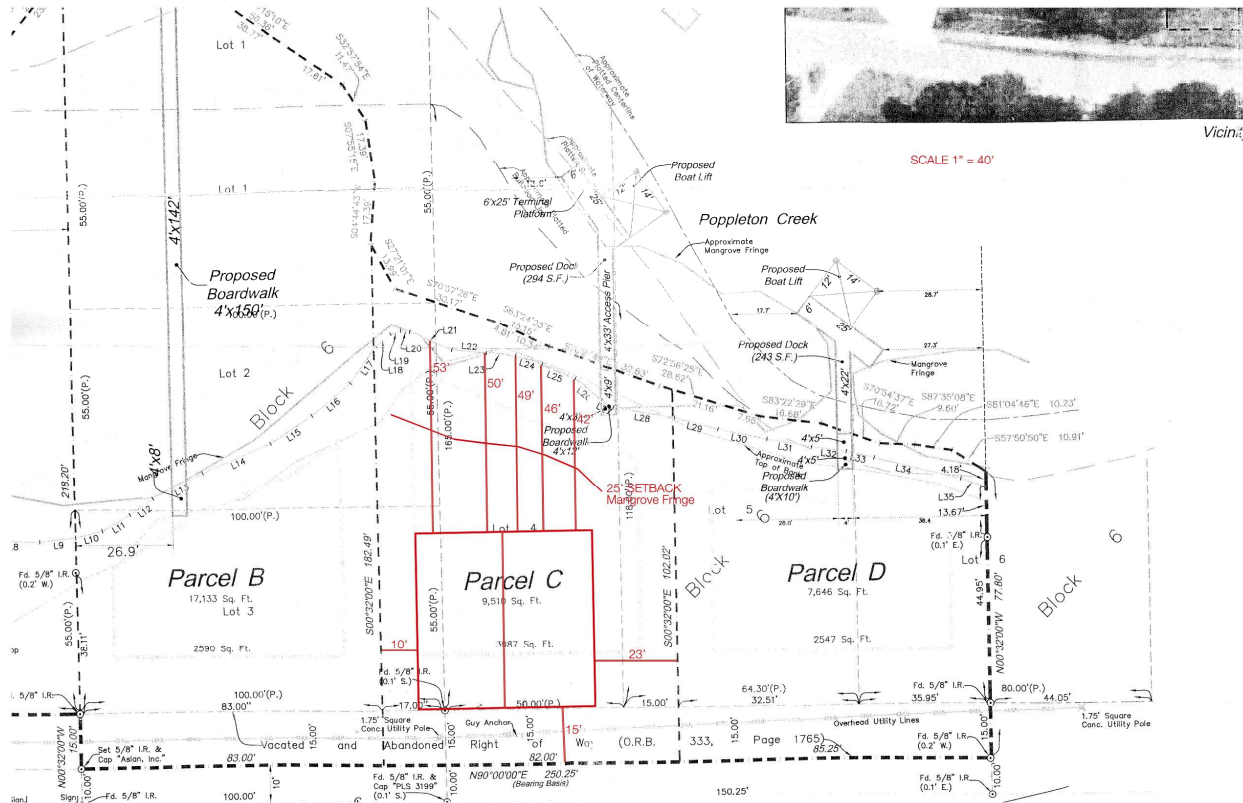
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‘Exhibit 1’ Sketch and Legal

The East 45 feet of Lots 11, 26, and 27, Block 3 and Lots 1 through 5, Block 6 and the Westerly 35.95 feet of Lot 6, Block 6, INDIAN GROVES SUBDIVISION, Plat Book 1, page 37, Public Records of Martin County, Florida.

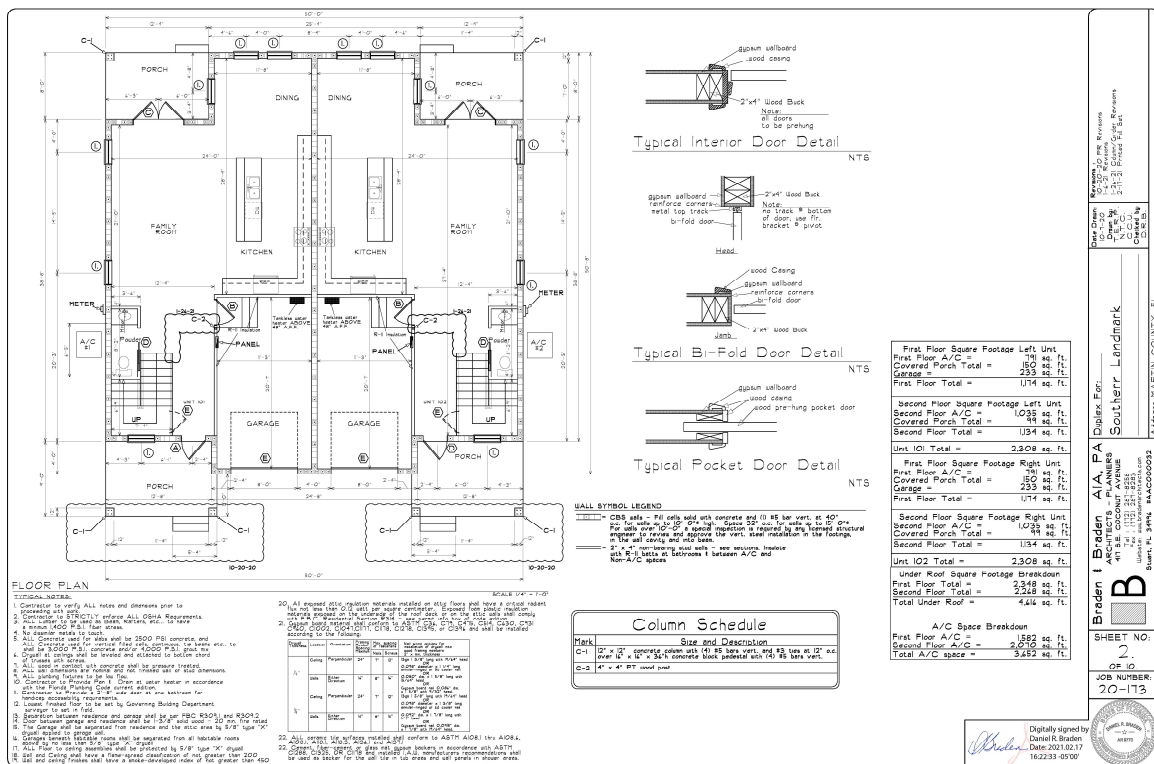
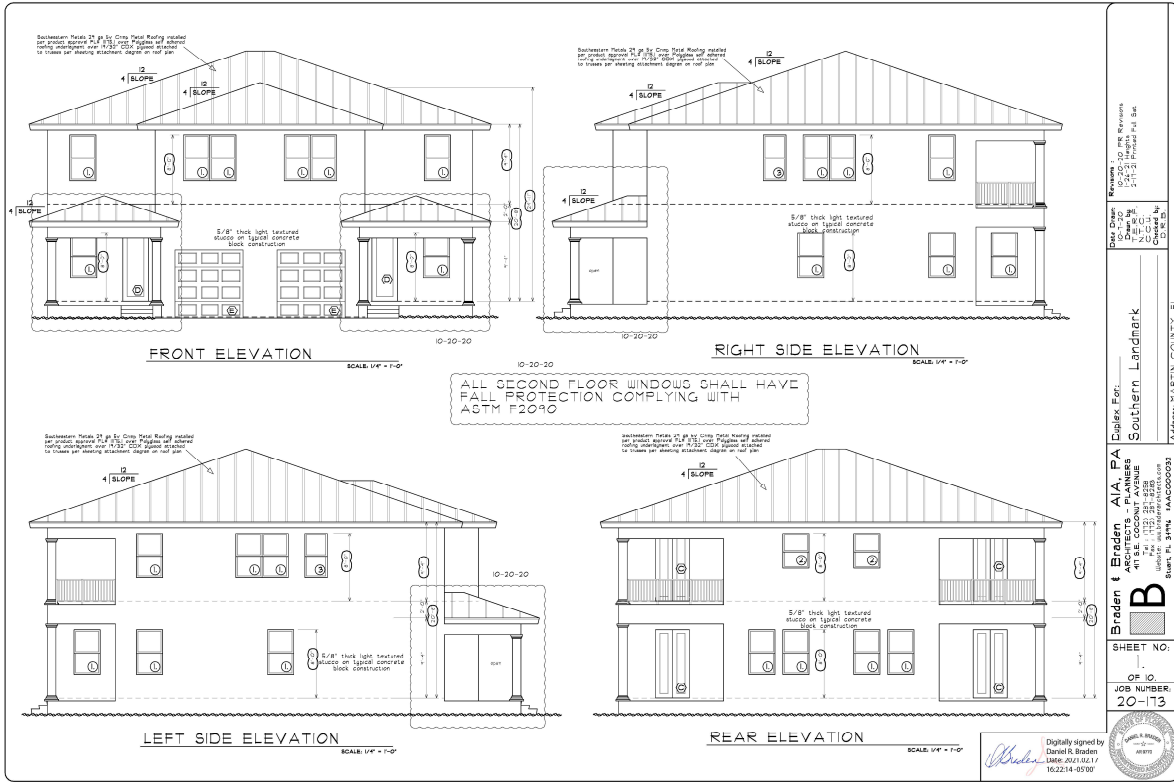
TOGETHER WITH that vacated and abandoned right-of-way as described in City of Stuart Ordinance No. 497, Official Records Book 333, page 1735, Public Records of Martin County, Florida, said right-of-way being 15.00 feet in width and lying South of and abutting the South line of Lots 3, 4, 5 and the Westerly 35.95 feet of Lot 6, Block 6, INDIAN GROVES SUBDIVISION, Plat Book 1, page 37, Public Records of Martin County, Florida.

TOGETHER WITH all of "Avenue E", a 60.00 foot right-of-way lying between Block 3 and 6, as vacated and abandoned in City of Stuart Ordinance No. 487, Official Records Book 512, page 434, Public Records of Martin County, Florida. INDIAN GROVES SUBDIVISION, Plat Book 1, page 37, Public Records of Martin County, Florida.



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‘Exhibit 2’ Proposed Conceptual Plans



‘Exhibit 3’ Environmental Memo



657 Montreal Avenue • Melbourne, FL 32935
ph 321.676.1505 • fax 321.676.1730

Memorandum

To: Mr. Andy Kirbach, PE
Morgan & Associates, Inc.

From: Jon Shepherd

Date: February 3, 2021

Re: Parcel 083841007006000110
Douglas Bournique
Indian Grove Variance Request

Per Mr. Bournique’s request to obtain a variance on the above-referenced parcel from the City of Stuart’s Land Development Regulations (LDR) – Resource Protection Standards and Hardship Relief, as well as the Comp Plan, we offer the following:

Section 10.02.00, Variance Setback Requirement Variances, defined in Section 6.01.03 (Building Setback Requirements) default to Section 5.04.04 for all waterfront properties.

Pursuant to the City of Stuart LDR Section 5.04.02.C, an on-average 75-foot upland buffer, minimum 50 feet, shall be provided and preserved around the on-site wetland connected to Poppleton Creek, an Outstanding Resource Wetland, and the upland buffer shall be provided a 10-foot construction setback. The provision for reduced upland buffer and compensation has been eliminated by Ordinance 2165-08.

Despite the fact that FDEP does not require an upland buffer between proposed development and a wetland such as the one located on the subject property, the City of Stuart is within its rights to require upland buffers and construction set-backs.

Our preliminary review of this project and discussions held with City of Stuart staff suggests that the above-referenced site should qualify for a setback variance. Should this setback variance be issued, Atlantic Environmental sees no environmental harm associated with this action.