



# MEMORANDUM

## MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT

**To:** Monroe County Planning Commission

**Through:** Mayté Santamaria, Senior Director of Planning & Environmental Resources

**From:** Kevin Bond, AICP, Planning and Development Review Manager

**Date:** January 3, 2017

**Subject:** *Request for Variance on property located at 243 Horvath Road, Big Pine Key, Real Estate Number 00245550-000000 (File # 2016-162)*

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**Meeting:** **January 25, 2017**

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I REQUEST:

The applicant requests a variance of 17 feet, seven (7) inches to the required 25-foot primary front yard non-shoreline setback, which is adjacent to the Horvath Road right-of-way. Approval would result in a primary front yard setback of seven (7) feet, five (5) inches. The variance is requested for the development of a proposed single-family detached dwelling.



*Subject Property (center) with Land Use (Zoning) Districts, 2015 Aerial*

1 **II BACKGROUND INFORMATION:**

2  
3 **Location:** Big Pine Key near U.S. 1 Mile Marker 30 ocean side

4 **Address:** 243 Horvath Road

5 **Legal Description:** Lot 13, Block 8, Cahill Pines and Palms, according to the map or plat  
6 thereof, as recorded in Plat Book 3, Page 94, of the public records of Monroe County, Florida

7 **Real Estate (RE) Number:** 00245550-000000

8 **Property Owner/Applicant:** Gregory S. Johnson and Amy J. Minkin

9 **Agent:** Christina Weinhofer

10 **Size of Site:** 7,200 square feet (per plat)

11 **Land Use District:** Improved Subdivision (IS)

12 **Future Land Use Map (FLUM) Designation:** Residential Medium (RM)

13 **Tier Designation:** III (Infill Area)

14 **Flood Zone:** AE 8

15 **Existing Uses:** Vacant

16 **Existing Vegetation / Habitat:** Undeveloped/disturbed

17 **Community Character of Immediate Vicinity:** Single-family residential uses, privately-  
18 owned vacant land and government-owned conservation land.

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20 **III RELEVANT PRIOR COUNTY ACTIONS:**

21  
22 None.

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24 **IV REVIEW OF APPLICATION:**

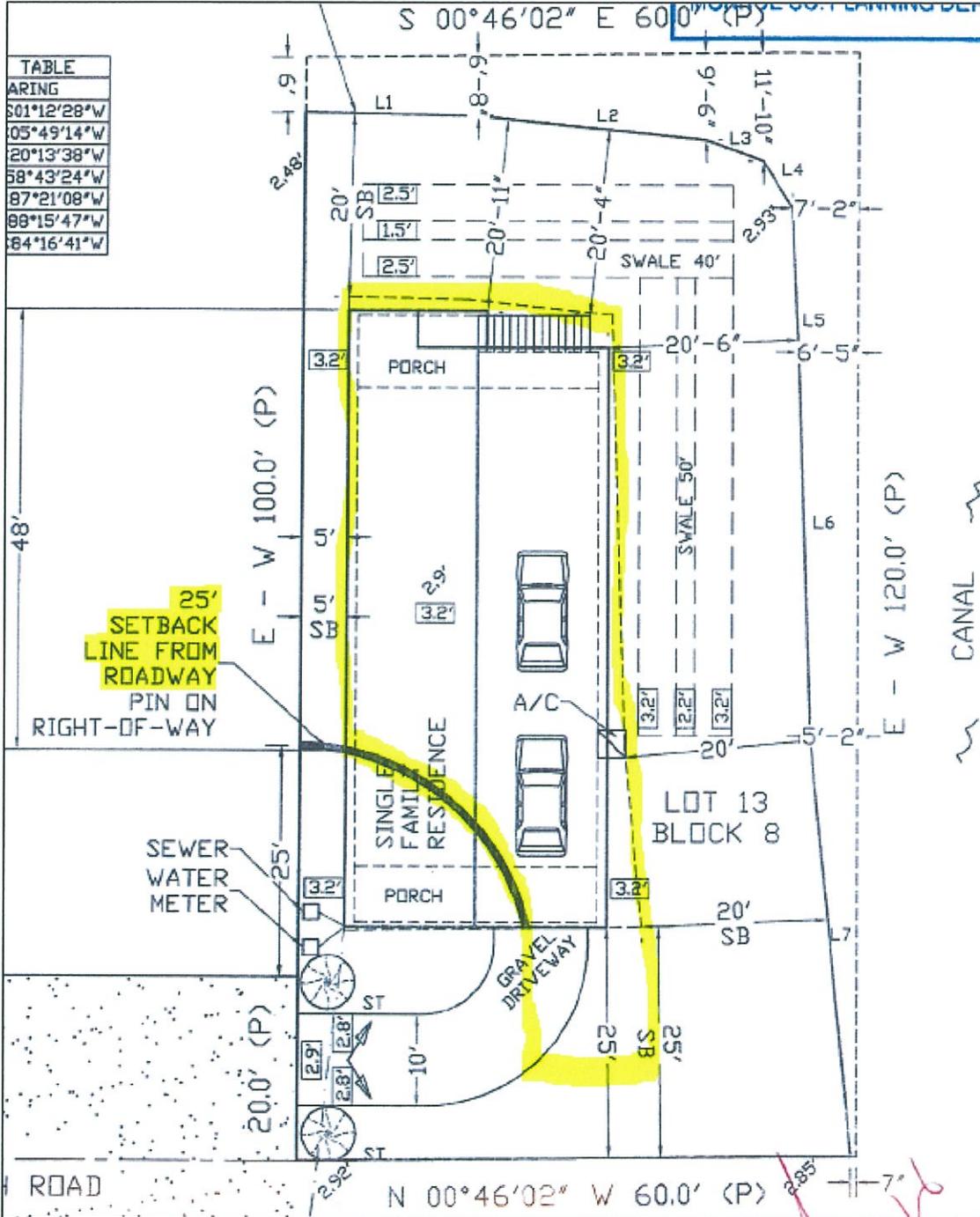
25  
26 The property is located within the IS Land Use District. Pursuant to LDC Section 130-186,  
27 the required setbacks within the IS District are as follows:  
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| Land Use District/<br>Land Use | Primary<br>Front Yard<br>(ft.) | Secondary<br>Front Yard<br>(ft.) | Primary<br>Side Yard<br>(ft.) | Secondary<br>Side Yard<br>(ft.) | Rear Yard<br>(ft.) |
|--------------------------------|--------------------------------|----------------------------------|-------------------------------|---------------------------------|--------------------|
| Improved Subdivision (IS)      | 25                             | 15                               | 10                            | 5                               | 20                 |

29  
30 The vacant, undeveloped property is located at the dead end of Horvath Road and is bordered  
31 on two sides by manmade canals. A primary front yard setback is required along the portion  
32 of the northern property line adjacent to Horvath Road, side yard setbacks are required along  
33 the two property lines adjacent to Lots 17 and 19 and a 20-foot shoreline setback is required  
34 along the mean high water lines adjacent to the canal. The site plan below depicts where the  
35 required 25-foot primary front yard setback line is located, along with the other required  
36 setbacks (highlighted yellow).  
37

38 Pursuant to LDC Section 101-1, *setback* means the area between a building or structure and  
39 the property line of the parcel of land on which the building or structure is located,

1 unoccupied and unobstructed from the ground upward, except for fences or other  
 2 development permitted in the area as provided for in the LDC. In measuring a setback,  
 3 the horizontal distance between the property line and the furthest projection of the building  
 4 or structure shall be used. Further, the setback shall be measured at a right angle (90 degrees)  
 5 from the property line.  
 6



Site plan indicating required setbacks (highlighted yellow); north is to the left

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9

1 The canal borders on what would be the rear and side property lines for typical dry lots. The  
2 road dead-ends near the northwest corner of the lot, which is a side property line, but in this  
3 case is also a primary front yard along the portion of the property line adjacent to the road.  
4 The lot is platted as 60 feet wide and 120 feet long, but according to the submitted survey, a  
5 portion of the lot is below the mean high water line, reducing the buildable upland area. The  
6 applicant requests a 17-foot, 7-inch variance to the primary front yard setback, resulting in a  
7 seven-foot, five-inch primary front yard setback.

8  
9 Pursuant to LDC Chapter 102, Article VI, Division 1, reductions in the front yard  
10 nonshoreline setback requirements in LDC Chapter 130, Article VI by more than 10 feet  
11 must be heard by the Planning Commission. The proposed reduction from the minimum 25-  
12 foot primary front yard setback to a seven (7)-foot, five (5)-inch primary front yard setback  
13 would be a 17-foot, 7-inch reduction. Therefore, the requested setback variance must be  
14 heard by the Planning Commission.

15  
16 *Pursuant to LDC Section 102-186, a variance may only be granted if the applicant*  
17 *demonstrates that all of the following standards are met:*

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19 (1) *The applicant demonstrates a showing of good and sufficient cause:*

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21 The applicant states, “The property was originally 60’ x 120’ located at the end of  
22 Horvath Road. There are two canals to the east and south with significant erosion along  
23 both canal edges.”

24  
25 Staff does not disagree with the applicant’s statement regarding good and sufficient  
26 cause, although no documentation of erosion was provided.

27  
28 IN COMPLIANCE

29  
30 (2) *Failure to grant the variance would result in exceptional hardship to the applicant:*

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32 The applicant states, “The house is an average 3 [bed] / 2 [bath] 1,352 sq ft and is barely  
33 large enough to house the family of 4.”

34  
35 LDC Section 101-1 defines “exceptional hardship” as “a burden on a property owner that  
36 substantially differs in kind or magnitude from the burden imposed on other similarly  
37 situated property owners in the same land use district as a result of adoption of these  
38 regulations.”

39  
40 Failure to grant the variance would mean the proposed dwelling must meet all required  
41 setbacks. The resulting buildable area would be approximately 30 feet wide and 48 feet  
42 long, or 1,440 square feet, plus an additional odd-shaped area (see diagram on page 3).  
43 Most of the lots in this subdivision are 60’ x 100’. After subtracting required setbacks,  
44 the resulting buildable area on most lots is 2,475 square feet. Therefore, the required  
45 setbacks as they apply to the subject property would result in a smaller buildable area  
46 than most lots in the subdivision.

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However, there are six other similarly situated lots in this subdivision that are located at the end of a street and on canal corners. See Lots 19 and 20 of Block 5, Lots 19 and 20 of Block 6, and Lots 18 and 19 of Block 7 (see figure below). Currently, only one of these lots—286 Lobstertail Road on Lot 20, Block 6—is developed with a residence. According to County permit records, this 2-bedroom, 2-bath, 1,852-square-foot residence was built in full compliance with required setbacks. This residence was built in a footprint of approximately 1,600 square feet.



*Aerial showing other similarly situated lots in the subdivision, outlined in yellow. Subject property is highlighted yellow at right corner.*

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Therefore, the burden imposed on the subject property owner is not substantially different in kind or magnitude from the burden imposed on other similarly situated property owners in the same subdivision.

**NOT IN COMPLIANCE**

- (3) *Granting the variance will not result in increased public expenses, create a threat to public health and safety, create a public nuisance, or cause fraud or victimization of the public:*

The applicant states, “Granting the variance will not result in creased public expense, create a threat to public health and safety, create a public nuisance or cause fraud or victimization of the public.”

Staff does not anticipate that granting the requested variance would result in increased public expenses, create a threat to public health and safety, create a public nuisance, or cause fraud or victimization of the public.

**IN COMPLIANCE**

1 (4) *The property has unique or peculiar circumstances, which apply to this property, but*  
2 *which do not apply to other properties in the same zoning district:*  
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4 The applicant states, “The unique or peculiar circumstance which applies to this property  
5 that doesn’t apply to others in the same zone is the significant erosion on both canal  
6 edges. Owner is maintaining both canal setbacks of 20’ with from 11’ to 3’ erosion on  
7 two sides. The front yard setback doesn’t allow an average home to fit on lot”  
8

9 As mentioned above, the property is not unique. There are other similarly situated  
10 properties in the same subdivision and throughout the County in the same zoning district.  
11 No documentation or proof of erosion was provided by the applicant. It is possible that  
12 the original dredging of the canals and/or the filling of the land did not precisely follow  
13 the property lines, which is another explanation for why the upland area does not extend  
14 fully to the lot lines. This is not unique either. Mean high water lines, from which the  
15 shoreline setback is measured, can meander several feet along manmade canals.  
16

17 NOT IN COMPLIANCE  
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19 (5) *Granting the variance will not give the applicant any special privilege denied other*  
20 *properties in the immediate neighborhood in terms of the provisions of this chapter or*  
21 *established development patterns:*  
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23 The applicant states, “Granting the variance will not give applicant any special privilege  
24 denied other properties in immediate neighborhood.”  
25

26 Staff found no record of a prior setback variance application in this subdivision. Granting  
27 the variance would give the applicant a larger buildable area than allowed by the required  
28 setbacks as they apply to this property. The applicant states “the [proposed] house is an  
29 average 3b/2b 1,352 sq ft.” According to County Property Appraiser’s Office record, the  
30 average size of a residence in this subdivision is 1,274 square feet. Therefore, the  
31 granting of the variance would not give the applicant any special privilege denied other  
32 properties in the immediate neighborhood.  
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34 IN COMPLIANCE  
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36 (6) *Granting the variance is not based on disabilities, handicaps or health of the applicant or*  
37 *members of his family:*  
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39 The applicant states, “Granting is not based on disabilities, handicaps or health of the  
40 applicant or family members.”  
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42 Concerning the proposed development, granting the requested variance would not be  
43 based on disabilities, handicaps or health of the applicant or their family members.  
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45 IN COMPLIANCE  
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1 (7) *Granting the variance is not based on the domestic difficulties of the applicant or his*  
2 *family:*

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4 The applicant states, “Granting the variance is not based on the domestic difficulties of  
5 the applicant or his family.”

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7 Concerning the proposed development, granting the requested variance would not be  
8 based on the domestic difficulties of the applicant or their family.

9  
10 IN COMPLIANCE

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12 (8) *The variance is the minimum necessary to provide relief to the applicant:*

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14 The applicant states, “Yes, the house was reduced to maximum living space for family  
15 and still maintain shoreline setback.”

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17 The variance is the minimum necessary to permit the proposed residence to be built.

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19 IN COMPLIANCE

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21 V RECOMMENDATION:

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23 As a result of failing to meet two of the required eight standards for variances pursuant to  
24 LDC Section 102-186, staff recommends **DENIAL** of the requested variance of 17 feet,  
25 seven (7) inches to the required 25-foot primary front yard non-shoreline setback, which is  
26 adjacent to the Horvath Road right-of-way, resulting in a primary front yard setback of seven  
27 (7) feet, five (5) inches.

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29 VI PLANS REVIEWED:

- 30  
31 A. Site Plan by Carl H. Schror, P.E., signed and sealed 9/20/2016.  
32 B. Map of Boundary & Mean High Water Line Survey by Robert E. Reece, Professional  
33 Surveyor and Mapper, of Reece & Associates, dated 9/10/2015.  
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1 *Aerials of the subject property:*



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