

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT,

IN AND FOR VOLUSIA COUNTY, FLORIDA

CIVIL DIVISION

Case No.: _____

PETER FRANCIS, VICTOR FRANCIS, and SAMIA FEZY,

Petitioners,

vs.

CITY OF PORT ORANGE, FLORIDA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

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I. INTRODUCTION

Petitioners Peter Francis, Victor Francis, and Samia Fezy respectfully petition this Court for a Writ of Certiorari pursuant to Florida Rule of Appellate Procedure 9.030(c)(2), seeking review of the June 2, 2026 decision of the City of Port Orange City Council in Variance Case No. VARC-26-0002, which upheld the Planning Commission's April 23, 2026 denial of a variance for an existing six-foot vinyl fence at 5968 Shady Creek Lane, Port Orange, Florida 32128. Victor Francis and Samia Fezy are the record title owners of the subject property. Peter Francis is the named applicant of record in Variance Case No. VARC-26-0002, listed by name as the applicant in the City's own official Planning Commission minutes (Exhibit J), who presented the application at both hearings and whose statutory rights were directly violated by the proceedings below. All three Petitioners appear pro se.

The record before this Court presents a case of compounded legal failure documented entirely in the City of Port Orange's own official records. No fact in this Petition requires inference or external evidence. Every ground for relief is established by the City's own certified transcripts, staff reports, prior approved variance decisions, signed meeting minutes, and a written confirmation from the City's public records clerk.

The foundational legal error is documented in the City's own director's words before the applicant spoke a single word. A commissioner asked Community Development Director Tim Burman whether the recommendation for denial was based solely on the fact that the code requires a four-foot fence. Burman confirmed: 'Basically, yes.' (PC Tr. p. 13.) Before the applicant's presentation, Chair Scott Steger confirmed the setbacks were met and the fence was 'pretty much where it should be,' and Burman agreed the commission was evaluating 'a six-foot fence going down to four foot in height' and 'that's all we're doing, basically subtracting two feet.' (PC Tr. pp. 13-14.) During

deliberation, Burman volunteered without being asked: 'So where it's currently located, it is simply a matter of height. It's not a matter of location. It's set back appropriately,' and added: 'That's the only issue. It is a height issue that we're dealing with here today.' (PC Tr. pp. 37-38.) These statements are not isolated remarks. They represent the Director's consistent characterization of the case at three separate points in the proceeding before and after the applicant presented, and the commission's ultimate decision to deny tracked that characterization without independent criterion analysis. A variance denial based on code non-compliance rather than on the six criteria prescribed by LDC Chapter 19 nullifies the variance process. See *City of Deerfield Beach v. Vaillant*, 419 So.2d 624, 626 (Fla. 1982).

Before the vote was taken, the commission denied the applicant's statutory right to rebut adverse public testimony on multiple separate occasions. When Peter Francis said he would like to comment on some of the things being said, he was redirected. When he identified that he had the 2015 HOA approval letter accessible, directly contradicting false testimony by HOA Vice President Pete James Torrent that the HOA had never approved the fence, a commissioner stated: 'I don't see how that affects it' and 'It has nothing to do with us.' (PC Tr. pp. 32-33.) When Peter Francis attempted again to comment, the Chair closed the comment period and the commission moved directly to deliberation. Separately, a member of the public challenged the medical necessity of the fence during public comment. Peter Francis had no opportunity to respond to that challenge, present further evidence or clarification, or make a closing statement. Neither the HOA approval letter nor the medical necessity defense entered the record through rebuttal. The commission voted four minutes after deliberation began on a false unchallenged factual claim, with a challenged medical argument unrebutted, without acknowledging the medical necessity or

discussing the ADA accommodation provision, and without applying any specific LDC Chapter 19 criterion to the facts during the deliberation that produced the vote.

At the City Council appeal, Director Burman and City Attorney Matthew Jones shifted to criterion-specific grounds never presented to the Planning Commission before its vote. Jones argued that the criterion analysis was in the staff report available to the commissioners, so it did not matter that the commissioners were told the height does not meet the code. (CC Tr. p. 30.) This argument fails because the question is not whether a document containing criterion analysis was available. The question is what the decision makers were told was the basis for the recommendation and what standard they applied in deliberation. They were told the height does not meet the code. That is precisely the premise of every variance application, the variance process exists precisely to provide relief from the strict application of the code. Telling a commission that the fence does not meet the code is not a criterion analysis. It is a restatement of the reason the applicant applied, and it cannot constitute a lawful basis for denial. Burman and Jones also shifted on the location question itself: at the Planning Commission, Burman stated during deliberation the fence was set back appropriately and not in the right-of-way; at the City Council, Burman and Jones argued the precise location was unknown because no survey existed, despite the City never having requested a survey at the Planning Commission level. Additionally, Mayor Stiltner opened the City Council hearing by acknowledging this appellate quasi-judicial role was 'a pretty unique thing' that had occurred only once, maybe twice, in his entire tenure on Council. (CC Tr. pp. 2-3.) Two council members stated 'the code is the code' during deliberation. No council member during deliberation applied any specific LDC Chapter 19 criterion to the facts of this application with a reasoned finding. The City Attorney himself acknowledged the variance process 'is in place for an adjustment for unique purposes of a code that, if applied rigidly to this circumstance, doesn't

necessarily meet what the City was attempting to do with it' (CC Tr. pp. 62-63), and then presided over an appellate body that upheld a denial based on exactly that rigid application.

Most significantly, the City's public records clerk confirmed in writing (Exhibit L) that no separate written final order exists for either proceeding. The official Planning Commission minutes (Exhibit J) record the entire substantive determination as: 'Motion failed 1-4 by roll call vote.' The City Council minutes (Exhibit K) record: 'Motion carried unanimously to uphold Planning Commission's denial by roll call vote.' No criterion was identified in either document. No finding of fact was stated in either document. There is nothing for this Court to defer to because no findings were made to which deference could attach.

The City's own prior approved cases make the arbitrary nature of this denial undeniable. Case No. VARC-24-0004, approved in 2024 (Exhibit E), contains staff findings that no special condition exists under criteria A and B and was approved anyway. Case No. VARC-25-0004, approved by this same Planning Commission six months before this denial (Exhibit F), used materially similar criterion B language, finding pre-existing subdivision conditions predated ownership, and was approved. Case No. 16-90000002, approved in 2016 (Exhibit C), found that adjacent non-city-owned open space drainage land constituted special conditions satisfying criteria A and B. The same type of criterion findings that produced approval in 2024 produced denial in 2026. The same commission approved materially similar criterion B language in October 2025 and found it unsatisfied in April 2026. Director Burman, who recommended denial here, also recommended approval in at least one of the prior comparable cases involving similar corner-lot fence variances. Petitioners respectfully submit that this record compels quashal and, under the futility doctrine, direct approval.

II. JURISDICTION

This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(2) to review by certiorari the quasi-judicial decision of the City of Port Orange City Council rendered June 2, 2026, upholding the Planning Commission's denial of Variance Case No. VARC-26-0002. Peter Francis, Victor Francis, and Samia Fezy have exhausted all available administrative remedies. The City Council's decision is the final administrative action subject to judicial review. The City's public records clerk confirmed in writing (Exhibit L) that no separate written final order exists and that the signed meeting minutes constitute the official final orders. The City Council minutes were signed and filed on June 16, 2026, constituting the date of rendition under Florida Rule of Appellate Procedure 9.020(h). This Petition is filed within thirty days of June 16, 2026, as required by Florida Rule of Appellate Procedure 9.100.

III. STANDARD OF REVIEW

Certiorari review of a quasi-judicial land use decision requires this Court to determine: (1) whether the lower tribunal afforded procedural due process; (2) whether the lower tribunal observed the essential requirements of law; and (3) whether the administrative findings and judgment are supported by competent substantial evidence. *Haines City Community Development v. Heggs*, 658 So.2d 523, 530 (Fla. 1995). The deferential any-competent-substantial-evidence standard applies only to Prong 3. It does not apply to Prongs 1 and 2, which are evaluated as pure legal and procedural questions without deference to the lower tribunal. *City of Deerfield Beach v. Vaillant*, 419 So.2d 624, 626 (Fla. 1982). A quasi-judicial tribunal that applies the wrong legal standard departs from the essential requirements of law. *Id.* Post-hoc rationalizations that are not part of the evidentiary record cannot be relied upon to sustain a quasi-judicial decision on certiorari

review, because judicial review is limited to the evidence and findings presented at the hearing. See *Jennings v. Dade County*, 589 So.2d 1337, 1341 (Fla. 3d DCA 1991). A local government body acts arbitrarily when it applies different standards to similarly situated applicants without a rational and articulable basis. A quasi-judicial body that bases its decision on a consideration not authorized by its governing ordinance departs from the essential requirements of law. *Board of County Commissioners v. Snyder*, 627 So.2d 469, 476 (Fla. 1993). A party to a quasi-judicial proceeding has a procedural due process right to present evidence, cross-examine witnesses, be informed of the facts on which the tribunal acts, and respond to adverse testimony; its denial is reversible error. *Carillon Community Residential v. Seminole County*, 45 So.3d 7 (Fla. 5th DCA 2010); *Kupke v. Orange County*, 838 So.2d 598 (Fla. 5th DCA 2003); *Jennings v. Dade County*, 589 So.2d 1337, 1341 (Fla. 3d DCA 1991); cf. Fla. Stat. § 163.3215(4)(g). A finding internally contradicted within the same document does not amount to evidence a reasonable mind would accept as adequate to support the finding. See *DeGroot v. Sheffield*, 95 So.2d 912, 916 (Fla. 1957). Where remand would be futile because the record compels a specific result as a matter of law, this Court may order that result directly. *Jennings*, 589 So.2d at 1341.

IV. STATEMENT OF THE CASE AND FACTS

A. The Property, the Petitioners, and the Applicant of Record

Victor Francis and Samia Fezy are the record title owners of 5968 Shady Creek Lane, Port Orange, Florida 32128, having purchased the property in 2007, almost a full decade after the subdivision conditions were established by the original developer. Peter Francis served as the named applicant of record in Variance Case No. VARC-26-0002, as identified in the City's own official Planning

Commission minutes (Exhibit J, p. 1), and personally presented the variance application at both the Planning Commission and City Council hearings.

The property is a single-family residential corner lot within the Sawgrass Point Planned Unit Development, platted in 1997. The home was constructed in 2000. The property is classified as an atypical lot under Port Orange LDC Chapter 2, Section 2 (Exhibit M), which classifies lots abutting a street at one end and designated common open space at the other. The secondary front yard abuts HOA-owned common area that serves as drainage and open space, not any residential lot. No neighboring residential property exists on the secondary frontage. No neighboring homeowner's views, privacy, or enjoyment is affected by the fence.

Approximately ten years ago, a six-foot vinyl fence was installed at the property. Prior to installation, the property owners obtained written approval from the Homeowners Association. The signed 2015 HOA approval letter is Exhibit I. The contractor retained to install the fence failed to obtain the required City building permit. The property owners were unaware of this omission for many years. Throughout the code enforcement process, the property owners were cooperative and responsive to the City. They attended meetings with City staff including Community Development Director Tim Burman and code enforcement personnel, responded to all communications, and followed every instruction given by the City. As introduced by Director Burman at the start of the Planning Commission hearing, this was an after-the-fact variance case: '... basically a code enforcement action to remove the fence or to choose a variance option. They decided to go through the variance option to see if they could basically retain the fence in the current location.' (PC Tr. p. 6.) The variance process was the City's own offered remedy for the permit omission, not an independent basis to penalize the applicant. After concluding the fence satisfied the criteria prescribed by the variance code, the property owners followed the City's

prescribed process and applied for the variance, consistent with the City's own direction. The Port Orange Police Department formally confirmed zero traffic accidents or safety incidents attributable to the fence throughout its existence, as documented in the City's own staff report (Exhibit A, p. 3). The fence sits entirely outside the required 25-foot visual clearance triangle. The City's own staff report (Exhibit A) acknowledged the fence 'does not appear to create the types of impacts the code is designed to prevent,' 'does not obstruct required sight triangles,' and 'does not interfere with intersection visibility.'

B. The Staff Report for VARC-26-0002 and Its Internal Contradictions

Community Development Director Tim Burman prepared the staff report for VARC-26-0002 (Exhibit A) recommending denial. The report contains documented internal contradictions that are fatal to its criterion A finding and that the Director himself contradicted during the Planning Commission hearing.

Under criterion A, the report states there are no special conditions or circumstances peculiar to the property, using a definition requiring physical features such as 'steep slope, presence of historic trees, odd lot shape, etc.' (Exhibit A, p. 4), a definition that does not appear anywhere in LDC Chapter 19 regardless of how it is applied. Notably, even under staff's own self-invented list, the property's atypical configuration, curved road frontage and irregular lot boundaries formally recognized under LDC Chapter 2, Section 2, plausibly satisfies the 'odd lot shape' example staff used to describe what would qualify, making staff's own criterion A finding internally inconsistent with its own stated standard. Under criterion C in the same document, staff wrote: 'the subject property's configuration, with its secondary front yard adjacent to a HOA-owned common area rather than a residential lot, presents a condition that differs from the typical corner lot scenario

the standards are primarily intended to address.' (Exhibit A, p. 5.) Staff acknowledged in criterion C the atypicality it denied in criterion A, in the same document, without explanation. To constitute competent substantial evidence, the record must contain evidence that a reasonable mind would accept as adequate to support the finding; where a finding is materially inconsistent within the same document and lacks reconciliation, its reliability as evidentiary support may be undermined. See *DeGroot v. Sheffield*, 95 So.2d 912, 916 (Fla. 1957).

The staff report (Exhibit A, p. 3) also stated the fence is located 'less than five feet from the right-of-way.' Director Burman himself contradicted this during Planning Commission deliberation when he stated the fence 'is not in the right-of-way' and 'it's set back appropriately.' (PC Tr. pp. 37-38.) Councilman Goepfert acknowledged at the City Council hearing that the fence 'very well could' already be within the setback requirement but that no survey existed to confirm it. (CC Tr. p. 65.) The report's key measurement was contradicted by its own author within the same proceeding.

C. Five Prior Approved Variance Cases

Five prior Port Orange variance cases, decided under the identical LDC Chapter 19 criteria by the same or related decision making bodies, establish the legal threshold the City itself set for qualifying variance applications. All five are documented in the City's own public records and are attached as Exhibits B through F.

Case No. 16-90000001, approved March 24, 2016 (Exhibit B): Six-foot vinyl fence, corner lot, 868 Millers Way. Installed without a building permit, the same no-permit situation as VARC-26-0002. Secondary front yard abutted a city-owned lift station. Hardship: aesthetic uniformity and personal privacy preference. Criterion D: staff explicitly wrote the variance was 'not the minimum

variance necessary to make reasonable use of the applicant's property' (Exhibit B, p. 5) and recommended approval anyway. Vote: unanimous approval. Commissioner Thomas Jordan: YES. Council Lance Green: YES.

Case No. 16-90000002, approved 2016 (Exhibit C): Property abutting adjacent non-city-owned open space drainage land, a retention pond. Staff wrote under criterion A: 'Having an adjacent property that will remain as open space/drainage is unique and could be considered a special condition' and 'The platting of the lot line around the lake is a special circumstance that is typically not the case for other such developments in the same zoning district.' (Exhibit C, p. 4.) Staff wrote under criterion B: the atypical platting conditions were 'not the result of the actions of the applicant.' (Exhibit C, p. 4.) Both criteria A and B: MET. Vote: approval. This case is decisive because the adjacent land was not city-owned infrastructure. It was non-city-owned open space drainage land, functionally identical to the HOA-owned common area abutting Petitioners' secondary front yard. The City accepted adjacent non-city-owned open space as satisfying criteria A and B in 2016 and rejected the same configuration in 2026 without any articulated distinction.

Case No. 16-90000009, approved December 15, 2016 (Exhibit D): Six-foot PVC fence, corner lot, 5835 Wales Avenue. Zero setback, fence placed directly on the right-of-way line. Hardship: yard space preference and screening aesthetics. Staff acknowledged compliant alternatives existed and recommended approval anyway. Vote: unanimous approval, signed personally by Director Tim Burman. Commissioner Jordan: YES. Council Green: YES.

Case No. VARC-24-0004, approved 2024 (Exhibit E): Port Orange staff explicitly found under criterion A: 'The requested variance is a matter of design choice and is not based on a special condition or circumstance.' (Exhibit E, p. 5.) Under criterion B: 'There are no special conditions or circumstances.' (Exhibit E, p. 5.) The staff report for VARC-26-0002 contains materially similar

criterion A and B language, finding no special conditions or circumstances. (Exhibit A, p. 4.) Despite the same type of finding under both criteria in VARC-24-0004, staff recommended approval and the Planning Commission approved. The hardship accepted was commercial design convenience. The same type of staff finding that produced approval in 2024 was present in the staff report that accompanied denial in 2026. No principled basis for that different outcome appears in either record.

Case No. VARC-25-0004, approved October 23, 2025 (Exhibit F): This same Planning Commission, six months before denying VARC-26-0002, approved a variance where staff found criterion B satisfied because the lot was created and the home was constructed before the current owners purchased the property, with conditions predating their ownership. (Exhibit F, p. 4.) The staff report for VARC-26-0002 finds criterion B not satisfied on materially similar facts, the lot and subdivision conditions predating the current owners' purchase. (Exhibit A, p. 4.) Same commission. Materially similar factual foundation as documented in both staff reports. Opposite finding. No articulated distinction appears in either record.

D. The Planning Commission Hearing, April 23, 2026

The Port Orange Planning Commission conducted a quasi-judicial hearing on April 23, 2026. Assistant City Attorney Jared Trent read the six LDC Chapter 19 variance criteria at the outset. (PC Tr. pp. 4-6.)

Director Burman then presented the staff recommendation for denial. Before the applicant presented any evidence, a commissioner asked: 'So you said the recommendation of denial is based solely on the fact that the code says it should be a four foot?' (PC Tr. p. 13.) Burman confirmed: 'Basically, yes.' (PC Tr. p. 13.)

Before the applicant spoke, Chair Steger asked Director Burman whether a four-foot fence at the current location would be acceptable. Burman confirmed yes. (PC Tr. p. 13.) Steger then stated: 'The setbacks are met and it's -- it's pretty much where it should be.' Burman agreed, confirming the commission was evaluating 'a six-foot fence going down to four foot in height' and 'that's all we're doing, basically subtracting two feet.' (PC Tr. pp. 13-14.) These confirmations occurred before the applicant presented a single word of evidence.

Peter Francis then presented a comprehensive case addressing all six LDC Chapter 19 criteria, the Police-confirmed safety record, the ADA accommodation provision of LDC Chapter 19 Section 1, and the medical necessity of the enclosure for a family member. (PC Tr. pp. 15-20.) The slides presented to the commission included visual documentation of the property's unique configuration, the road curvature, the atypical lot characteristics, and the surrounding properties. These were displayed to all commissioners during the presentation. A commissioner then used the question period to raise criterion B, asking whether the permit failure was the result of the property owner. (PC Tr. pp. 20-22.) Peter Francis acknowledged the contractor's permit failure while immediately clarifying that the unique layout of the property, displayed on the slides already before the commission, was the operative circumstance, stating: 'the property also is a unique layout.' (PC Tr. p. 21.) The visual documentation of the unique property configuration was before every commissioner at the moment criterion B was raised, and the clarification was made on the record at that time.

Following the applicant's presentation, public comment included testimony from HOA President Alcides 'Al' Rivera, homeowner Mike Anders, resident Tim Geriak, and HOA Vice President Pete James Torrent. Rivera challenged the medical necessity of the fence directly. (PC Tr. pp. 22-23.) Pete James Torrent testified that the HOA had never approved the fence. (PC Tr. p. 29.) This

testimony was false. The signed 2015 HOA approval letter (Exhibit I) directly refutes it. Torrent was serving on the HOA board at the time the approval was granted.

The rebuttal denial occurred on multiple separate occasions during the same proceeding. First, immediately after John Francis (a family member of the property owners) finished speaking, Peter Francis said: 'I would like to respond to some of the stuff.' (PC Tr. p. 32.) Chair Steger responded: 'No, it's okay. If you -- if you would re-approach because I'd like to ask a couple questions.' (PC Tr. p. 32.) This redirected the rebuttal into a commissioner question period rather than allowing proper responsive rebuttal of the adverse public testimony just received.

Second, when Chair Steger asked whether Peter Francis had evidence of the HOA's approval and Peter Francis identified the 2015 HOA approval letter accessible on his phone, a commissioner immediately stated: 'I don't see how that affects it,' and then: 'Yeah. It has nothing to do with us.' (PC Tr. pp. 32-33.) The evidence was dismissed before it could be displayed. Third, when Peter Francis attempted to continue, stating 'I would like to comment on some of the stuff being said here today,' Chair Steger cut him off: 'Yeah, we've already had comment period, but we will ask questions, if that's okay.' (PC Tr. p. 33.) The commission then moved directly to deliberation. Both the commissioner who dismissed the evidence and the chair who closed the comment period acted with apparent urgency to end the applicant's participation and proceed to a vote.

The result of these multiple rebuttal denials was that two categories of evidence never entered the record. The 2015 HOA approval letter (Exhibit I), which directly contradicted Pete James Torrent's false testimony that the HOA had never approved the fence, was excluded from the record at the moment Peter Francis identified it. The medical necessity, which Al Rivera had directly challenged during public comment, was never rebutted. Peter Francis had no opportunity to respond to anything raised in opposition, present further evidence or clarification, or make a closing

statement. The commission voted four minutes later with both false testimony and an unchallenged medical challenge standing unrebutted in the record.

During deliberation, Vice Chair Schmidt stated he believed the Planning Commission was making a recommendation to the City Council rather than a final binding decision: 'We just recommend to the City Council -- what they should do. They are the ones that actually have the binding decision.' (PC Tr. p. 36.) Assistant City Attorney Trent corrected him: 'No. This is the variance. This item gets approved or denied by the Planning Commission.' (PC Tr. p. 36.) Vice Chair Schmidt responded: 'You're a rookie. We're giving you some time.' Chair Steger added: 'Thank you. Yeah, we both are, so --' acknowledging his own unfamiliarity with the process. (PC Tr. p. 37.) The commission's presiding chair and the commissioner who denied the rebuttal both revealed during deliberation that they were unfamiliar with their own final decision-making authority at the time the rebuttal was denied and the comment period was closed, and that misunderstanding informed the deliberative posture of the proceeding that produced the vote.

During deliberation, Director Burman volunteered without being asked: 'So where it's currently located, it is simply a matter of height. It's not a matter of location. It's set back appropriately.' Chair Steger confirmed: 'Correct. Height is the issue we're here for.' Burman added: 'That's the only issue.' Chair Steger confirmed: 'It's not in the right-of-way.' Burman concluded: 'It is a height issue that we're dealing with here today.' (PC Tr. pp. 37-38.) No commissioner named a single LDC Chapter 19 criterion during the four-minute deliberation. No commissioner identified which criterion was found unmet or why. The commission voted 4-1 to deny. Commissioner Angela LeDuc was the only commissioner who personally visited the property. She found it safe from every angle and voted YES. (PC Tr. pp. 39-40.)

After the commission voted, the Chair didn't move to final public comments and was getting ready to adjourn the meeting which the attorney directed him to do so, the Chair then states "excuse my rookie as a chair." During the final public comments, homeowner Mike Anders returned to the microphone and stated: 'I was hoping it would go this way because otherwise we'd be right back in here again for two other people that are living in our neighborhood because they're both wanting that variance themselves.' (PC Tr. pp. 42-43.) Anders confirmed on the official record that his motivation was to prevent other neighbors from obtaining variances, a floodgates concern that is not among the six LDC Chapter 19 criteria.

E. The City Council Appeal Hearing, June 2, 2026

The City Council conducted an appellate hearing on June 2, 2026. Mayor Stiltner opened the hearing by acknowledging this appellate quasi-judicial role was 'a pretty unique thing' that had occurred 'only one time -- correct? -- prior to this. Maybe, maybe two' in his entire tenure on Council. (CC Tr. pp. 2-3.) He stated 'it is a change in what our responsibility normally is and the latitudes that we have to operate within' and immediately turned to the City Attorney to define what those latitudes were. (CC Tr. p. 2.) City Attorney Matthew Jones told the council they were sitting in an appellate capacity, the facts were determined at the Planning Commission hearing, no new evidence would be considered, and their role was to evaluate whether the Planning Commission's denial was supported by competent and substantial evidence. (CC Tr. pp. 3-7.)

Before Peter Francis spoke a single word, a formal motion to uphold the Planning Commission denial was placed on the floor. When the Mayor asked whether a motion was needed, Jones stated: 'the recommended motion right now is to uphold the decision of the Planning Commission' and simultaneously reminded the council that 'the staff's recommendation was for denial of the

variance' and 'the Planning Commission on a 4:1 vote, denied the variance.' (CC Tr. p. 7.) Jones announced what the recommended outcome was, simultaneously restated the procedural history supporting that outcome, and the mayor then asked for someone to put that recommended motion on the floor. Vice Mayor Tracy Grubbs made the motion with the help of wording the motion through attorney Jones. Councilman Shawn Goepfert seconded it. (Exhibit K.) The applicant was presenting his appeal to a council that had already been told what the recommended outcome was and had that recommended outcome as the live motion on the floor before Peter Francis spoke.

Peter Francis presented a comprehensive appeal. On the record at page 14 of the certified City Council transcript, Peter Francis stated: 'During the hearing, Mr. Tim Burman stated that staff's recommendation denial was based solely on code alone. He did not tell the Commission that the application failed any specific variance criteria, which he mentioned today, but he didn't mention that at the Planning Commission hearing.' (CC Tr. p. 14.) Jones did not dispute the factual claim that Burman mentioned no specific criteria to the commissioners. He offered only a semantic recharacterization. Peter Francis further stated at page 16: 'The decision was produced by a hearing where I, the applicant, was denied rebuttal. It was decided without a single finding of fact, and the ADA provision written into the City's own variance ordinance was ignored.' (CC Tr. p. 16.) These statements were not rebutted by Jones or any council member.

Peter Francis offered the medical necessity letter directly to the council: 'We do have our medical necessity letter here, which I have here in case you would like to look at it. I can either hand it to you or the city clerk at any time you would like me to.' (CC Tr. p. 22.) No council member requested the letter. No city official engaged with the offer.

Jones addressed several arguments raised during the presentation. On the solely on code alone admission, Jones argued: 'the Planning Commission was provided the same staff report with a

criteria-by-criteria analysis of staff. Whether Tim, you know, went line by line and read that to them is irrelevant. It was part of the record. They had a record before them to support a decision.' (CC Tr. p. 30.) This defense concedes the point. The question is not whether a document containing criterion analysis was available. The question is what the decision-makers were told was the basis for the recommendation and what standard they applied in deliberation. Burman told the commissioners height was the only issue. He did not direct them to the staff report's criterion analysis as the basis for the recommendation. The commissioners voted on what they were told, not on what was in a document whose criterion analysis was never connected to their deliberation.

On the ADA provision, Jones acknowledged: 'Yes, there is a code provision that talks about an ADA accommodation as part of what you can use to vary. The problem that we have here tonight is there was no evidence provided to the planning commission.' (CC Tr. p. 33.) Jones then argued he could not have the council consider the medical letter because it was not provided at the Planning Commission. (CC Tr. p. 33.) No council member requested the letter or asked to see it when Peter Francis offered it directly. This argument was made knowing that the underlying procedural failure, the rebuttal denial at the Planning Commission, is what prevented the medical necessity documentation from ever entering that record in the first place. In addition, the Planning Commission and staff were very well aware that a medical necessity accommodation was requested as part of the application.

On the HOA approval letter, Jones simultaneously argued it was irrelevant and used its contents against the applicant: 'Ironically, he brings an HOA approval in front of you to hear -- consider. The reality of that is I do believe that's irrelevant. I mean, even the HOA letter that was submitted as part of the application packet said subject to city permit, which, you know, we know wasn't pursued in this case.' (CC Tr. pp. 32-33.) The City Attorney cannot simultaneously assert the HOA

approval letter is irrelevant and use the letter's conditional language to argue against the applicant. If the letter is irrelevant, its contents cannot be used. If its contents are relevant enough to cite, the letter was relevant enough for Peter Francis to present at the Planning Commission, and the commission's exclusion of it as 'nothing to do with us' was legally erroneous. More fundamentally, the HOA approval letter demonstrates that Pete James Torrent's testimony that the HOA never approved the fence was false, regardless of any conditions in the letter. Torrent said the HOA never approved it. The letter proves the HOA did approve it. That is the fact the rebuttal was designed to establish.

Jones acknowledged at pages 62-63 that 'the variance process is in place for an adjustment for unique purposes of a code that, if applied rigidly to this circumstance, doesn't necessarily meet what the City was attempting to do with it.' (CC Tr. pp. 62-63.) The City Attorney described the legal purpose of the variance process and then presided over an appellate body that upheld a denial based on exactly that rigid application.

Council Member Green stated during deliberation: 'the code -- the code is the code... we have rules for a reason, and when we open the door for one, we have to open the door for all. So that's what we need to consider here tonight as well.' (CC Tr. p. 60.) Peter Francis had told Green directly on the record: 'Mr. Green, you may recall those cases, as you were present and voted in favor of those approvals. I believe you were part of the Planning Commission at that time.' (CC Tr. pp. 21-22.) Green did not deny his prior votes.

Vice Mayor Grubbs stated: 'I know this code quite well. The unfortunate part is is the code is the code... I sit on a corner lot 30 years. I've had a four-foot section of my corner lot being that way.' (CC Tr. p. 66.) Grubbs based part of his deliberation on personal experience with his own corner lot property, evidence not in the record and not tested against the criteria. Grubbs acknowledged

the medical necessity by referencing 'the loved ones that you're talking about' and still voted to uphold. (CC Tr. p. 66.)

Mayor Stiltner stated: 'From what I have read from what the attorney has presented to us, I don't see that the Planning Commission did anything incorrect.' (CC Tr. p. 68.) The Mayor's basis for upholding was deference to the City Attorney's assessment rather than his own independent evaluation of whether the six LDC Chapter 19 criteria were correctly applied to the evidence. With every documented procedural failure before him, including the rebuttal denial and the wrong legal standard applied at the Planning Commission, the Mayor found nothing incorrect and was never presented with remand as an option, despite the procedural defects being apparent on the very record he stated he had reviewed. The City Council voted 4-0 to uphold the denial. No council member identified a principled factual basis for distinguishing VARC-26-0002 from prior approved cases.

F. The Final Orders and the Confirmed Absence of Written Findings

Petitioners submitted a public records request for the written final order following the June 2, 2026, decision. The City's public records clerk responded in writing (Exhibit L) confirming that no separate written final order exists for either proceeding and that the signed meeting minutes constitute the City's official final orders.

The complete text of the Planning Commission's substantive determination in Variance Case No. VARC-26-0002, as confirmed by the City's public records clerk, appears in Exhibit J as: 'Motion failed 1-4 by roll call vote with Commissioner Thomas Jordan, Commissioner Daniel Mallegol, Vice Chair Stan Schmidt, and Chair Scott Steger voting no.' The complete text of the City Council's determination on appeal appears in Exhibit K as: 'Motion carried unanimously to uphold Planning

Commission's denial by roll call vote.' These are the entirety of what both quasi-judicial bodies committed to the official written record regarding the substance of their decisions. No criterion was identified. No finding of fact was stated. No legal basis appears.

V. ARGUMENT

GROUND I — MULTIPLE DOCUMENTED DENIALS OF THE APPLICANT'S PROCEDURAL DUE PROCESS RIGHT TO REBUT ADVERSE TESTIMONY CONSTITUTE MATERIAL, OUTCOME-DETERMINATIVE VIOLATIONS REQUIRING QUASHAL

A quasi-judicial land use hearing must afford the parties procedural due process, including the right to present evidence, to cross-examine witnesses, to be informed of the facts on which the tribunal acts, and to respond to adverse testimony before the tribunal deliberates. *Carillon Community Residential v. Seminole County*, 45 So.3d 7 (Fla. 5th DCA 2010); *Kupke v. Orange County*, 838 So.2d 598 (Fla. 5th DCA 2003); see also *Jennings v. Dade County*, 589 So.2d 1337, 1341 (Fla. 3d DCA 1991); cf. Fla. Stat. § 163.3215(4)(g). The measure of due process owed turns on the person's role: a party whose application and property rights are directly at stake is entitled to the full measure of these rights, while members of the public who appear only to comment are mere participants entitled to less. *Carillon*, 45 So.3d at 9-10. Peter Francis was the named applicant, the party whose property rights were directly at issue, and was entitled to present his full evidence and to respond to adverse testimony before the vote. HOA Vice President Pete James Torrent, who falsely testified that the HOA never approved the fence, and HOA President Alcides Rivera, who challenged the medical necessity, appeared in public comment as mere participants. The commission inverted this hierarchy: it credited the participants' adverse testimony while denying

the party his right to rebut it, both with the 2015 HOA approval letter and with a response on medical necessity. That denial is reversible error requiring quashal, and it is a Prong 1 procedural due process question to which no competent-substantial-evidence deference applies.

The rebuttal denial occurred on multiple separate occasions within the same Planning Commission hearing, involving two separate commissioners, and affecting two separate categories of evidence.

First denial: Immediately after John Francis finished speaking, Peter Francis said: 'I would like to respond to some of the stuff.' (PC Tr. p. 32.) Chair Steger responded: 'No, it's okay. If you -- if you would re-approach because I'd like to ask a couple questions.' (PC Tr. p. 32.) This redirected the rebuttal into a commissioner question period rather than allowing Peter Francis to respond to the adverse public testimony he had just heard. The statutory right to rebut is the right to respond to adverse testimony, not merely to answer commissioner questions. Redirecting the applicant from rebuttal to commissioner questions denies the substance of the right while preserving its form.

Second denial: When Chair Steger asked whether Peter Francis had HOA evidence and Peter Francis identified the 2015 HOA approval letter accessible on his phone, a commissioner stated: 'I don't see how that affects it,' and then: 'Yeah. It has nothing to do with us.' (PC Tr. pp. 32-33.) This was an affirmative ruling by a commissioner excluding specific documentary evidence at the precise moment the applicant identified it. The ruling was made before the evidence could be displayed. Pete James Torrent had just testified the HOA had never approved the fence. Peter Francis had the document proving that testimony false. The commissioner's ruling that the document was irrelevant at the moment of its identification eliminated the rebuttal right at the moment of its exercise.

Third denial: When Peter Francis attempted to continue, stating 'I would like to comment on some of the stuff being said here today,' Chair Steger cut him off: 'Yeah, we've already had comment period, but we will ask questions, if that's okay.' (PC Tr. p. 33.) The Chair closed the comment period, ending any further rebuttal opportunity, and the commission moved directly to deliberation without affording Peter Francis any further opportunity to respond, present evidence, or make a closing statement.

The rebuttal denial was confirmed on the City Council's official record. Peter Francis stated: 'I even asked the Council, can I show you the HOA letter? One of the Commissioners said, no, I'm not interested. Because it's not really relevant.' (CC Tr. p. 57.) Peter Francis also stated: 'as I wasn't given the opportunity to rebuttal, correct misstatements, present further, or even have the final word that day.' (CC Tr. p. 17.) These statements appear in the City Council's official transcript without objection by Jones or any council member.

The rebuttal denial produced two specific, documented categories of excluded evidence. First, the 2015 HOA approval letter (Exhibit I) was excluded from the Planning Commission record at the moment Peter Francis identified it. Pete James Torrent's false testimony that the HOA had never approved the fence remained in the record, unchallenged and unrebutted. The commissioners who voted no heard and voted on a false claim with no rebuttal available. Second, Al Rivera's challenge to the medical necessity of the fence (PC Tr. pp. 22-23) was never rebutted. The medical necessity argument had been presented in Peter Francis's presentation and was supported by John Francis in public comment, but Rivera's challenge to it was never answered because the comment period was closed before Peter Francis could respond. The commissioners voted with that challenge standing unrebutted and without acknowledging or discussing the ADA accommodation provision at all.

The relevance rulings by Schmidt and Steger operated asymmetrically. Commission Attorney Trent told the commission during deliberation that HOA approval matters were irrelevant to the variance evaluation. (PC Tr. pp. 35-36.) Yet Pete James Torrent's HOA approval testimony remained in the record unchallenged, available to influence deliberation, while the documentary refutation was excluded. The relevance ruling excluded the rebuttal but not the testimony the rebuttal would have refuted. A relevance ruling that systematically excludes the applicant's evidence while retaining the opposition's evidence on the same subject is not neutral procedural management. It is a departure from the essential requirements of fair quasi-judicial procedure.

The conduct of the commissioner who made these rulings carries additional significance. Vice Chair Schmidt revealed during the deliberation that immediately followed these rulings that he believed he was making a recommendation to the City Council rather than a final binding decision: 'We just recommend to the City Council -- what they should do. They are the ones that actually have the binding decision.' (PC Tr. p. 36.) Assistant City Attorney Trent corrected him that the Planning Commission's decision was itself final. Vice Chair Schmidt responded: 'You're a rookie. We're giving you some time.' Chair Steger acknowledged his own unfamiliarity, responding to the correction: 'Thank you. Yeah, we both are, so --' (PC Tr. p. 37.) The commissioner who excluded the evidence and the chair who closed the comments both revealed they did not understand the finality of their own authority at the time the evidentiary rulings were made. This matters because a commissioner who believes his rulings are merely recommendatory does not apply the deliberative care appropriate to a final decision-maker, and at the City Council, City Attorney Jones separately told the council they were limited to the Planning Commission record and could not consider new evidence, meaning the excluded evidence could not in fact be supplied at a later stage as Vice Chair Schmidt apparently assumed.

This ground standing alone requires quashal and remand for a new hearing at which the statutory right to rebut adverse testimony is properly afforded before deliberation commences. Jennings, 589 So.2d at 1341.

**GROUND II THE PLANNING COMMISSION AND CITY COUNCIL BOTH APPLIED
AN INCORRECT LEGAL STANDARD, TREATING THIS VARIANCE APPLICATION
AS A CODE COMPLIANCE QUESTION RATHER THAN A VARIANCE CRITERIA
EVALUATION, CONSTITUTING A DEPARTURE FROM THE ESSENTIAL
REQUIREMENTS OF LAW AT BOTH LEVELS**

A. The Planning Commission Applied a Code Compliance Standard

A quasi-judicial body that applies the wrong legal standard departs from the essential requirements of law. *City of Deerfield Beach v. Vaillant*, 419 So.2d 624, 626 (Fla. 1982). This is a Prong 2 ground to which no deference applies. The governing standard for a variance decision is the six criteria prescribed by LDC Chapter 19 (Exhibit M), not a code compliance test. A variance, by definition is a request for relief from the literal requirements of the Land Development Code. Every variance application involves non-compliance with the code. Denying a variance because the structure does not comply with the code nullifies the variance process. *Id.*

The certified Planning Commission transcript documents the application of the wrong standard at three separate points.

First, before the applicant presented, a commissioner asked: 'So you said the recommendation of denial is based solely on the fact that the code says it should be a four foot?' Burman confirmed: 'Basically, yes.' (PC Tr. p. 13.)

Second, before the applicant presented, Chair Steger stated: 'The setbacks are met and it's -- it's pretty much where it should be.' Burman confirmed the commission was evaluating 'a six-foot fence going down to four foot in height' and 'that's all we're doing, basically subtracting two feet.' (PC Tr. pp. 13-14.)

Third, during the deliberation that produced the vote, Burman volunteered: 'So where it's currently located, it is simply a matter of height. It's not a matter of location. It's set back appropriately.' Chair Steger confirmed: 'Correct. Height is the issue we're here for.' Burman added: 'That's the only issue.' Chair Steger confirmed: 'It's not in the right-of-way.' Burman concluded: 'It is a height issue that we're dealing with here today.' (PC Tr. pp. 37-38.)

These statements document that at three separate points in the proceeding, the presiding Chair and the Community Development Director confirmed the commission was evaluating a code compliance question, not the six variance criteria. The commission voted without naming a criterion. This is the wrong legal standard confirmed repeatedly by two officials in the same proceeding.

Burman's two-foot characterization is also a functional concession on criterion D. If the only issue is a two-foot height difference on a fence that is otherwise appropriately located with setbacks met and confirmed by the Director to not be in the right-of-way, the requested variance is by definition the minimum variance necessary. There is no lesser variance that addresses the medical necessity requiring full enclosure. The Director's own framing of the request as subtracting two feet from a fence that was basically where it should be is inconsistent with a staff report criterion D finding that compliant alternatives exist.

B. The City Council Applied the Identical Wrong Standard at the Appellate Level

The wrong legal standard infected the City Council appeal as fully as it infected the Planning Commission hearing. Mayor Stiltner acknowledged before the hearing began that sitting in this appellate quasi-judicial capacity was 'a pretty unique thing' that had occurred only once or twice in his entire tenure. (CC Tr. pp. 2-3.) He immediately asked Jones to define the council's role. Jones then announced that 'the recommended motion right now is to uphold the decision of the Planning Commission,' and simultaneously restated that staff recommended denial and the Planning Commission voted 4-1 to deny. (CC Tr. p. 7.) Jones framed the recommended outcome before the appeal was heard. The mayor immediately asked for that outcome to be placed as the live motion on the floor. The council was told uphold was the recommended answer and then heard the applicant present, rather than hearing the applicant and then independently deciding. This structural framing is inconsistent with a neutral appellate evaluation. Mayor Stiltner's stated basis for his vote confirmed the deference: 'From what I have read from what the attorney has presented to us, I don't see that the Planning Commission did anything incorrect.' (CC Tr. p. 68.) The Mayor substituted the City Attorney's description and ruling on whether the Planning Commission had done anything incorrect for his own independent criterion evaluation. Despite every documented procedural failure being apparent on the record presented to him, including the rebuttal denial and the wrong legal standard applied below, the Mayor stated he found nothing incorrect, and no council member raised remand as an available option. A quasi-judicial body member who defers entirely to counsel's framing rather than independently evaluating the criteria has not exercised the independent judgment the quasi-judicial role requires.

Council Member Green stated: 'the code -- the code is the code... we have rules for a reason, and when we open the door for one, we have to open the door for all.' (CC Tr. p. 60.) Vice Mayor Grubbs stated: 'I know this code quite well. The unfortunate part is the code is the code.' (CC Tr.

p. 66.) No council member during deliberation identified which criterion was correctly applied and why. Both bodies, at both levels of the proceeding, evaluated this application as a code compliance question. Both departed from the essential requirements of law. *Vaillant*, 419 So.2d at 626.

Grubbs also imported personal knowledge outside the official record as a basis for deliberation, stating: 'I sit on a corner lot 30 years. I've had a four-foot section of my corner lot being that way.' (CC Tr. p. 66.) His personal property experience was not in the record of this proceeding, was not presented as evidence, and was not tested against the criteria. A quasi-judicial body member who relies on personal extra-record knowledge rather than the evidence in the record departs from the essential requirements of quasi-judicial procedure. See *Jennings v. Dade County*, 589 So.2d 1337, 1341 (Fla. 3d DCA 1991).

Jones acknowledged at pages 62-63 that 'the variance process is in place for an adjustment for unique purposes of a code that, if applied rigidly to this circumstance, doesn't necessarily meet what the City was attempting to do with it.' (CC Tr. pp. 62-63.) The City Attorney described the exact legal purpose of the variance process and simultaneously presided over an appellate body that upheld a denial based on exactly that rigid application. The City's own attorney acknowledged what was wrong with the denial and then defended it.

**GROUND III THE CITY'S CRITERION-SPECIFIC DEFENSE APPEARED FOR THE
FIRST TIME AT THE CITY COUNCIL APPEAL, CONSTITUTING POST-HOC
RATIONALIZATION THAT CANNOT PROVIDE COMPETENT SUBSTANTIAL
EVIDENCE FOR THE PLANNING COMMISSION'S VOTE**

The evidentiary basis for a quasi-judicial decision must exist in the record of the proceeding where the decision was made. Post-hoc rationalizations constructed at a subsequent proceeding do not

constitute competent substantial evidence for the original decision, which must be presented at the hearing and made a part of the record. See *Jennings v. Dade County*, 589 So.2d 1337, 1341 (Fla. 3d DCA 1991).

The certified transcripts of the two official government proceedings document a narrative shift that is the textbook definition of post-hoc rationalization. At the Planning Commission on April 23, 2026: Burman confirmed the recommendation for denial was based solely on height, and during deliberation confirmed that the fence was set back appropriately and not in the right-of-way. The commission deliberated four minutes without applying any specific criterion to the facts and voted. At the City Council on June 2, 2026: Burman and Jones presented criterion-specific grounds, specifically the absence of special conditions under criterion A and applicant fault under criterion B, that were never communicated to the commissioners before their vote. (CC Tr. pp. 30-34.) Burman and Jones also reversed position on the fence's location, arguing the precise setback was unknown because no survey existed, despite the City never having requested a survey during the Planning Commission proceeding and despite Burman's own statement to the contrary. A position taken at one hearing and reversed at the next, on the same factual question, without any new evidence having been introduced, is itself evidence that the later position was constructed to support a predetermined outcome rather than derived from the record.

Jones argued that the criterion analysis was in the staff report available to the commissioners, so it did not matter that Burman told them height was the only issue. (CC Tr. p. 30.) This argument fails for a specific reason: the question is not whether criterion analysis was available in a document. The question is what the decision-makers were told was the basis for the recommendation and what standard they applied during the four-minute deliberation that produced the vote. Burman told the commissioners height was the only issue. He did not say criterion A fails

because no physical land features exist. He did not say criterion B fails because the conditions resulted from the applicant's actions. He said height is the only issue, the fence is set back appropriately, and it is not in the right-of-way. The commissioners voted on that basis, not on criterion analysis they may have seen in a document but were never told was the reason for the recommendation. Even if the written staff report is treated as part of the record before the commissioners, it cannot constitute competent substantial evidence because the document is internally contradicted: criterion A states no special conditions exist while criterion C in the same document acknowledges the property configuration differs from the typical corner lot scenario. A document that contradicts itself is not accurate evidence of anything, and what the decision-makers were orally told during deliberation, that height was the only issue and the fence was set back appropriately, is itself inconsistent with the written analysis.

Peter Francis stated on the City Council's official record: 'During the hearing, Mr. Tim Burman stated that staff's recommendation denial was based solely on code alone. He did not tell the Commission that the application failed any specific variance criteria, which he mentioned today, but he didn't mention that at the Planning Commission hearing.' (CC Tr. p. 14.) This characterization was not disputed. Jones offered only a semantic recharacterization. The recharacterization cannot survive the specific question and answer at PC Tr. p. 13 where a commissioner asked whether the recommendation for denial was based solely on the fence being six feet instead of four feet and Burman confirmed yes.

**GROUND IV THE CRITERION FINDINGS ARE NOT SUPPORTED BY COMPETENT
SUBSTANTIAL EVIDENCE APPLYING A CONSISTENT LEGAL STANDARD, AS
DEMONSTRATED BY PRIOR APPROVED CASES AND THE CITY'S OWN SELF-
CONTRADICTING STAFF REPORT**

The following analysis addresses the criterion findings contained in the written staff report (Exhibit A), the only place in the record where criterion-specific analysis appears in writing, and compares those findings to the written staff reports in prior approved cases. This analysis does not contradict Grounds I through III. As established above, the written staff report was never connected to the oral deliberation that produced the vote, the commissioners were told only that height was the only issue, and any criterion-specific grounds raised at the City Council were post-hoc rationalization. The analysis below establishes that even considered on its own terms as a written document, the staff report's criterion findings are not supported by competent substantial evidence applying a consistent standard.

A. Criterion A, Self-Contradicting Staff Report and Three Prior Cases Accepting Similar Conditions

Evidence internally contradicted within the same document is not evidence a reasonable mind would accept as adequate to support a finding. See *DeGroot v. Sheffield*, 95 So.2d 912, 916 (Fla. 1957). The staff report's criterion A finding (Exhibit A, p. 4) states there are no special conditions, using a restrictive definition not found in LDC Chapter 19. Under criterion C in the same document (Exhibit A, p. 5), staff acknowledged the property configuration 'differs from the typical corner lot scenario the standards are primarily intended to address.' Staff denied special conditions in criterion A and simultaneously acknowledged atypical conditions in criterion C, without explanation, in the same document.

Staff's restrictive definition of special conditions also contradicts LDC Chapter 2, Section 2, which classifies this property as an atypical lot. A formal LDC code classification of the property as

atypical is the City's own recognition of conditions distinguishing this lot from standard lots. Staff's criterion A finding ignored this classification without acknowledging or distinguishing it.

Three prior Port Orange cases accepted the same type of conditions as satisfying criterion A. Case No. 16-90000009 (Exhibit D) accepted functional adjacency to non-residential land as creating special conditions. Case No. 16-90000002 (Exhibit C) accepted adjacent non-city-owned open space drainage land as creating special conditions, writing that 'having an adjacent property that will remain as open space/drainage is unique and could be considered a special condition' and 'the platting of the lot line around the lake is a special circumstance.' (Exhibit C, p. 4.) The HOA common area abutting this property serves as open space and drainage land, functionally identical to the retention pond in Case 16-90000002. Case No. VARC-24-0004 (Exhibit E) explicitly found no special conditions under criterion A and the Planning Commission approved anyway. (Exhibit E, p. 5.) The same criterion A finding produced approval in 2024 and denial in 2026 without any articulated distinction.

B. Criterion B, Three Prior Decisions Accept Materially Similar Facts

The criterion B finding in VARC-26-0002 is directly contradicted by three prior decisions applying the same criterion to materially identical facts without any articulated distinction. An unexplained departure from prior decisions on materially identical facts is not competent substantial evidence of consistent principled application.

Case No. 16-90000001 (Exhibit B): Fence installed without a permit, the same as VARC-26-0002. Pre-existing 1987 subdivision conditions predating ownership. Criterion B: MET. Case No. 16-90000002 (Exhibit C): Staff explicitly found the atypical platting conditions were 'not the result of the actions of the applicant' because the configuration was created by the original platting before

the applicant purchased. (Exhibit C, p. 4.) The Sawgrass Point subdivision was platted in 1997, almost a full decade before Petitioners' 2007 purchase. Materially identical facts but yet application was not approved.

Case No. VARC-25-0004 (Exhibit F): This same Planning Commission, six months before VARC-26-0002, found criterion B satisfied when pre-existing subdivision conditions predated the applicant's ownership. (Exhibit F, p. 4.) The staff report for VARC-26-0002 documents materially similar facts, predating subdivision conditions, and finds criterion B not satisfied. (Exhibit A, p. 4.) Same commission. Materially similar factual foundation documented in both staff reports. Opposite finding. No articulated distinction. Case No. VARC-24-0004 (Exhibit E) found no special circumstances under criterion B and approved anyway. (Exhibit E, p. 5.) The same type of criterion B findings produced approval in 2024 and 2025 and denial in 2026 without explanation.

C. Criterion C, Lesser Hardship Accepted and Greater Hardship Rejected

Case No. 16-90000001 (Exhibit B) found criterion C satisfied based on aesthetic uniformity and personal privacy preferences. Case No. 16-90000009 (Exhibit D) found criterion C satisfied based on yard space preference, explicitly acknowledging alternatives existed and approving anyway because the applicant preferred not to use them. Case No. VARC-24-0004 (Exhibit E) found criterion C satisfied based on commercial design convenience. In VARC-26-0002, medical necessity for a family member was found insufficient. Staff used the existence of alternatives to recommend denial, the same alternatives that existed in Case 16-90000009 and did not prevent approval. Aesthetic preference, yard space loss, and commercial convenience were sufficient.

Medical necessity, privacy and security was not. No criterion-based hierarchy appears in the LDC or in any record to justify this result.

D. Criterion D, The Director's Own Words Concede It

Before the applicant's presentation, Director Burman characterized the entire variance request as 'subtracting two feet' from a fence that was 'basically where it should be' with setbacks met and the location appropriate. (PC Tr. pp. 13-14.) A two-foot height variance on an otherwise acceptable fence that the Director himself described as appropriately located is by definition the minimum variance necessary. Case No. 16-90000001 (Exhibit B, p. 5) staff report explicitly stated the variance was 'not the minimum variance necessary' and recommended approval anyway. The same type of finding. Opposite recommendations without explanation.

E. Criterion E, No Special Privilege Is Conferred

Criterion E requires that granting the variance not confer on the applicant any special privilege denied to other lands, buildings, or structures in the same zoning district. The five prior approved cases discussed above are themselves direct evidence on this criterion. The City has already granted comparable or greater relief to other applicants under materially similar or weaker facts, including zero-foot and five-foot setbacks (Exhibits B and D), criterion A and B findings of no special conditions (Exhibit E), and materially similar criterion B facts (Exhibit F). Peter Francis made this point on the City Council record: approving this variance would not grant any special privilege because Petitioners are 'asking for less relief than what the City has already granted to other applicants in the past.' (CC Tr. p. 23.) Approval here would not confer a privilege denied to others. It would merely extend to this property the same relief the City has already extended to comparable and less compelling applications.

F. Criterion F, Police-Confirmed Evidence Rejected While Zero Evidence Accepted

The 2016 approved cases (Exhibits B and D) had zero historical safety data. Criterion F was satisfied on forward-looking projections alone in other variance applications. VARC-26-0002 had an actual confirmed safety record. The City's own staff report (Exhibit A, p. 3) stated the fence 'does not appear to create the types of impacts the code is designed to prevent,' 'does not obstruct required sight triangles,' and 'does not interfere with intersection visibility.' Director Burman confirmed during deliberation that the fence is not in the right-of-way and is set back appropriately. (PC Tr. pp. 37-38.)

**GROUND V THE PLANNING COMMISSION COMPLETELY FAILED TO
EVALUATE A MANDATORY ADA/MEDICAL NECISSITY PROVISION OF ITS OWN
GOVERNING ORDINANCE.**

Port Orange LDC Chapter 19, Section 1 expressly provides that variances may be granted as ADA reasonable accommodations based on the disabilities of household members. This provision is mandatory. When directly invoked, it must be evaluated. A quasi-judicial body that fails to apply a mandatory provision of its governing ordinance when directly called upon to apply it departs from the essential requirements of law. Vaillant, 419 So.2d at 626; Snyder, 627 So.2d at 476. This is a Prong 2 ground to which no CSE deference applies.

Peter Francis explicitly invoked the ADA accommodation provision during his Planning Commission presentation. (PC Tr. p. 15.) John Francis raised it during public comment. (PC Tr. pp. 30-32.) Al Rivera directly challenged the medical necessity during public comment. (PC Tr. pp. 22-23.) Peter Francis had no opportunity to respond to Rivera's challenge. The Planning

Commission transcript demonstrates that neither LDC Chapter 19 Section 1 nor any accommodation analysis was mentioned once during the four-minute deliberation. The commission voted without engaging with a mandatory provision of its own governing ordinance that had been specifically invoked, challenged from the other side, and left unrebutted because the comment period was closed.

City Attorney Jones acknowledged at the City Council that the provision exists and applies: 'Yes, there is a code provision that talks about an ADA accommodation as part of what you can use to vary.' (CC Tr. p. 33.) This acknowledgment establishes the provision was known applicable city law, not a novel argument. The commission's failure to apply it was not confusion over a disputed provision. It was a complete failure to apply established city law.

Jones argued no evidence was provided at the Planning Commission. (CC Tr. p. 33.) This defense fails as the accommodation request was mentioned and documented under "hardship" during the Planning Commission hearing. At the City Council, Peter Francis offered the medical necessity letter directly: 'We do have our medical necessity letter here, which I have here in case you would like to look at it. I can either hand it to you or the city clerk at any time you would like me to.' (CC Tr. p. 22.) No council member requested the letter or asked to see it. Jones separately stated he could not have the council consider it because it was not provided at the Planning Commission. (CC Tr. p. 33.) This argument is made knowing that the underlying procedural failure, the rebuttal denial at the Planning Commission, is what prevented the medical necessity documentation from ever entering that record in the first place. The Planning Commission failed even to recognize or discuss the medical necessity argument despite it being raised and challenged on its own record. The Fair Housing Act does not require written documentation as a precondition to the accommodation evaluation obligation; verbal notice of a disability-related need is sufficient to

trigger it. See HUD/DOJ Joint Statement on Reasonable Accommodations Under the Fair Housing Act (May 17, 2004). The commission received verbal and written notice, the issue was raised again at the City Council where documentation was offered and not received, and the mandatory provision was never substantively engaged at either level.

**GROUND VI COUNCIL MEMBER GREEN'S IMPERMISSIBLE FLOODGATES
CONSIDERATION, ORIGINATING IN HOA OPPOSITION TESTIMONY AND
INFECTING BOTH LEVELS OF THE PROCEEDING, CONSTITUTES A
DEPARTURE FROM THE ESSENTIAL REQUIREMENTS OF LAW**

A quasi-judicial body that bases its decision on a consideration not authorized by its governing ordinance departs from the essential requirements of law. *Board of County Commissioners v. Snyder*, 627 So.2d 469, 476 (Fla. 1993). This is a Prong 2 ground. The six criteria of LDC Chapter 19 are the exclusive authorized basis for a variance decision.

The impermissible floodgates consideration originated in HOA-affiliated opposition testimony at the Planning Commission. Mike Anders stated after the vote: 'I was hoping it would go this way because otherwise we'd be right back in here again for two other people that are living in our neighborhood because they're both wanting that variance themselves.' (PC Tr. pp. 42-43.) Anders confirmed his motivation was to prevent other neighbors from obtaining variances, a floodgates concern that is not among the six criteria. This impermissible consideration entered through public comment at the Planning Commission and traveled to the City Council.

At the City Council, Council Member Lance Green stated: 'we have rules for a reason, and when we open the door for one, we have to open the door for all. So that's what we need to consider here tonight as well.' (CC Tr. p. 60.) The floodgates concern does not appear among the six LDC

Chapter 19 criteria. It is not an authorized basis for a variance decision. See Snyder, 627 So.2d at 476.

Green's application of this concern is internally self-contradicting. Peter Francis told Green directly: 'Mr. Green, you may recall those cases, as you were present and voted in favor of those approvals. I believe you were part of the Planning Commission at that time.' (CC Tr. pp. 21-22.) Green did not deny his prior votes on the 2016 cases. He opened the door he now says must remain closed. He opened it twice in 2016 and closed it here without any criterion-based distinction between those applicants and these Petitioners. Selective application of an impermissible consideration that was not applied to prior applicants is precisely the type of arbitrary conduct Florida courts reject. See Snyder, 627 So.2d at 476.

GROUND VII THE SYSTEMATIC INVERSE APPLICATION OF VARIANCE
CRITERIA, COMBINED WITH INCONSISTENT STAFF RECOMMENDATIONS
ACROSS MATERIALLY SIMILAR APPLICATIONS, ESTABLISHES ARBITRARY
AND CAPRICIOUS DECISION-MAKING

A government body acts arbitrarily and capriciously when it applies different standards to similarly situated applicants without a rational and articulable basis. Every fact in the following comparison is drawn from the City of Port Orange's own official public records, Exhibits A through F.

Criterion / Feature	16-90000001 (Approved 2016) Ex. B	16-90000009 (Approved 2016) Ex. D	VARC-24-0004 (Approved 2024) Ex. E	VARC-26-0002 (DENIED 2026) Ex. A
Criterion A	City infrastructure adjacency, MET	City facility adjacency, MET	Staff: 'not based on a special condition', APPROVED ANYWAY	HOA open space adjacency (same as Ex. C retention pond), NOT MET
Criterion B	Pre-existing 1987 subdivision, MET	Pre-existing infrastructure, MET	Staff: 'no special conditions or circumstances', APPROVED ANYWAY	Pre-existing 1997 subdivision, identical to Ex. F approved Oct. 2025, NOT MET

Criterion / Feature	16-90000001 (Approved 2016) Ex. B	16-90000009 (Approved 2016) Ex. D	VARC-24-0004 (Approved 2024) Ex. E	VARC-26-0002 (DENIED 2026) Ex. A
Hardship, Criterion C	Aesthetic preference; lifestyle	Yard space preference; screening	Commercial design convenience	Medical necessity for disabled family member, REJECTED
Criterion D	Staff: 'NOT minimum necessary', APPROVED	Alternatives existed, APPROVED	Alternatives documented, APPROVED	Director said 'subtracting two feet' from fence 'where it should be', DENIED
Criterion F	Zero historical data, projection only	Zero historical data, projection only	N/A	Police-confirmed zero incidents; staff admits no harms, DENIED
No Permit	No permit, not disqualifying	Permit obtained	Proper permitting	Contractor error, used against applicant
Setback	5 feet, approved	0 feet on ROW line, approved	0 feet shared wall, approved	~7 feet confirmed appropriate by Director, DENIED
Staff Recommendation	APPROVAL	APPROVAL, T. Burman	APPROVAL	DENIAL, T. Burman
Jordan / Green Vote	Jordan YES, Green YES	Jordan YES, Green YES	N/A	Jordan NO, Green NO, no criterion distinction articulated

The pattern this table reveals is the inverse of what consistent principled criteria application would produce. The fence with the safest setback was denied while fences at zero and five feet were approved. The hardship with the greatest objective weight was rejected while hardships of lesser weight were accepted. The application with the strongest safety record failed criterion F while applications with no safety record satisfied it. Materially similar criterion A and B findings, no special conditions or circumstances, appear in both the VARC-24-0004 staff report (Exhibit E, p. 5) and the VARC-26-0002 staff report (Exhibit A, p. 4), yet produced approval in 2024 and denial in 2026. Materially similar criterion B facts appear in both the VARC-25-0004 staff report (Exhibit F, p. 4) and the VARC-26-0002 staff report (Exhibit A, p. 4), yet produced approval in October 2025 and denial in April 2026 from the same commission. Commissioner Jordan and Commissioner Green, who voted yes on both 2016 approvals, voted no in 2026 without articulating any criterion-based distinction between the prior applicants and these Petitioners.

The staff recommendation pattern is equally telling. Staff recommended approval in Case 16-90000001 (Exhibit B) despite writing the variance was not the minimum necessary, on an application that, like this one, involved a fence installed without a building permit. Staff recommended approval in Case 16-90000009 (Exhibit D) despite acknowledging alternatives existed. Port Orange staff recommended approval in Case VARC-24-0004 (Exhibit E) despite finding no special conditions under criteria A and B. Port Orange staff recommended approval in Case VARC-25-0004 (Exhibit F) on materially similar criterion B facts. In every prior comparable case found, Port Orange staff found a path to approval. The absence of an original building permit, present in both Case 16-90000001 and this case, was not treated as disqualifying in 2016. The variance process itself is the City's own prescribed cure for an after the fact permit omission, as Director Burman acknowledged when introducing this application as 'kind of an after the fact case.' (PC Tr. p. 6.) Using the absence of an original permit against this applicant, when the same circumstance did not prevent approval in 2016 and when pursuing the variance was the very remedy the City itself offered, is internally inconsistent. In VARC-26-0002, presented with a stronger application on every criterion, including a decade of Police-confirmed safety performance, medical necessity, and a formal LDC classification of the lot as atypical, Director Burman recommended denial. Staff's recommendation here is inconsistent not only with the prior approved cases but with his own deliberation statements that height was the only issue, the fence was not in the right-of-way, and it was set back appropriately. A Director who describes a fence as appropriately located and does not create the types of impacts the code was designed to prevent and recommends its removal through denial is not applying a principled consistent standard.

**GROUND VIII THE OFFICIAL FINAL ORDERS, CONFIRMED BY THE CITY'S OWN
PUBLIC RECORDS CLERK, CONTAIN NO WRITTEN FINDINGS OF FACT ON ANY**

**CRITERION, PROVIDING NO FOUNDATION FOR COMPETENT SUBSTANTIAL
EVIDENCE REVIEW AND CONFIRMING THE POST-HOC NATURE OF ALL
SUBSEQUENTLY OFFERED CRITERION GROUNDS**

On certiorari review under Prong 3, this Court examines whether the record before the tribunal contains competent substantial evidence supporting the decision. The evidence supporting a denial must appear in the record made below; it cannot be supplied after the fact. Where the official record contains no findings and identifies no criterion, nothing in that record connects the denial to the governing criteria, and there is nothing to which a reviewing court can defer.

Petitioners submitted a public records request for the written final order. The City's public records clerk responded in writing (Exhibit L) confirming that no separate written final order exists for either proceeding and that the signed meeting minutes constitute the City's official final orders.

The complete text of the Planning Commission's substantive determination in Variance Case No. VARC-26-0002 appears in Exhibit J as: 'Motion failed 1-4 by roll call vote with Commissioner Thomas Jordan, Commissioner Daniel Mallegol, Vice Chair Stan Schmidt, and Chair Scott Steger voting no.' The complete text of the City Council's determination on appeal appears in Exhibit K as: 'Motion carried unanimously to uphold Planning Commission's denial by roll call vote.' No criterion was identified in either document. No finding of fact was stated. No legal basis appears. Peter Francis stated on the City Council's official record: 'It was decided without a single finding of fact.' (CC Tr. p. 16.) The official final orders confirm this was accurate.

The absence of written findings also confirms and compounds Ground III. When no findings were made at the time of the Planning Commission vote, any criterion specific grounds offered at the

City Council are necessarily post-hoc rationalization. There are no contemporaneous findings to which those grounds could be attached because no findings were ever made.

The absence of findings from both tribunals also deprives this Court of the evidentiary foundation the any competent substantial evidence standard presupposes. That standard requires findings to exist to which the court may defer. Where no findings exist, the court must evaluate the record directly without deference. When this Court does so, it finds a staff who confirmed the fence is appropriately located and height is the only issue, a confirmed safety record, a staff report admitting the fence causes none of the harms the code was designed to prevent, and five prior approvals on materially weaker facts with no articulated distinction.

VI. RELIEF REQUESTED

Petitioners respectfully submit that the record presents eight independent grounds for quashal, each documented in the City's own official records, any one of which independently compels relief. Petitioners' primary request is for this Court to order the variance approved directly without remand under the futility doctrine. Petitioners' fallback request is for quashal and remand with specific binding instructions that close every avenue the City exploited in the original proceedings.

PRIMARY RELIEF, Direct Approval Under the Futility Doctrine

This Court has authority to quash the denial and order the variance approved directly where the record compels that outcome as a matter of law and remand would be futile. See *Jennings v. Dade County*, 589 So.2d 1337, 1341 (Fla. 3d DCA 1991). Futility exists here on four documented bases.

First, no written findings of fact exist from either tribunal, confirmed by the City's own public records clerk (Exhibit L). There is nothing for this Court to defer to. The Court evaluates the record directly.

Second, the City's own documents, when applied to the correct legal standard of the six LDC Chapter 19 criteria, compel approval. The Director confirmed the fence is appropriately located, not in the right-of-way, and height is the only issue. (PC Tr. pp. 13-14, 37-38.) The City's own staff report (Exhibit A, p. 3) confirmed the fence causes none of the harms the code was designed to prevent. Burman's own characterization of the request as subtracting two feet from a fence that was basically where it should be is a functional concession that the minimum variance is satisfied.

Third, Case No. VARC-24-0004 (Exhibit E) was approved on materially similar criterion A and B findings as appear in the VARC-26-0002 staff report. Case No. VARC-25-0004 (Exhibit F) was approved on materially similar criterion B facts six months earlier by this same commission. If the commission is instructed on remand to apply consistent standards, approval is compelled by the City's own prior decisions.

Fourth, Case No. 16-90000002 (Exhibit C) established that adjacent non-city-owned open space drainage land constitutes special conditions satisfying criteria A and B. The HOA common area abutting this property is functionally identical. The criterion A and B findings cannot legally stand when the City's own precedent accepted the same conditions as satisfying both criteria.

Petitioners request this Court quash the denial of Variance Case No. VARC-26-0002 and order the variance approved directly, limited to the existing fence in its current location without expansion.

FALLBACK RELIEF, Quashal and Remand With Specific Binding Instructions

If this Court determines that direct approval is not warranted as primary relief, Petitioners request quashal and remand to the Port Orange Planning Commission for a new quasi-judicial hearing subject to the following mandatory binding instructions. Florida courts have authority to remand with specific binding instructions where general remand is insufficient to protect the petitioner's legal rights. Jennings, 589 So.2d at 1341.

(a) Rebuttal Right: Petitioners shall be afforded the full procedural due process right, as the party, to rebut all adverse public testimony before deliberation commences, including specifically the right to present the 2015 HOA approval letter (Exhibit I) in response to any testimony regarding HOA approval or disapproval of the fence, and the right to respond to any public comment challenging the medical necessity of the enclosure.

(b) Correct Legal Standard: The commission shall evaluate the application under the six LDC Chapter 19 variance criteria. The commission shall not deny the variance on the basis that the fence does not comply with the height code. Non-compliance with the height code is the reason a variance is sought and is not a basis for denial.

(c) ADA Accommodation Provision: The commission shall evaluate LDC Chapter 19 Section 1's ADA accommodation provision and make a specific written finding on whether it applies to this application and what accommodation is appropriate. This mandatory provision may not be ignored. The commission shall initiate the interactive accommodation process required under the Fair Housing Act.

(d) Written Findings of Fact: The commission shall make specific written findings of fact on each of the six LDC Chapter 19 criteria tied to specific evidence in the record. A general

statement that a criterion is or is not met without factual reference to specific evidence is insufficient. A bare vote does not satisfy this requirement.

(e) Prior Case Consistency on Criteria A and B: The commission shall apply the same standard applied in Case No. 16-90000002 (Exhibit C), which accepted adjacent non-city-owned open space drainage land as satisfying criterion A, and Case No. VARC-25-0004 (Exhibit F), approved by this same commission six months earlier, which found criterion B satisfied when pre-existing subdivision conditions predated ownership. The commission shall apply the same standard applied in Case No. VARC-24-0004 (Exhibit E), where the same criterion A and B findings produced approval. If criterion A or B is found not met, the commission shall articulate a specific factual distinction between those cases and VARC-26-0002 appearing in the record. A general assertion that cases differ is insufficient.

(f) Prior Case Consistency on Criteria D and F: On criterion D, the commission shall acknowledge the explicit written finding in Case No. 16-90000001 (Exhibit B) that the variance was 'not the minimum variance necessary' and the resulting approval, and shall articulate a specific factual distinction explaining why the same finding requires denial here. On criterion F, the commission shall specifically address the confirmed safety record and the staff report's written admissions that the fence does not create the types of impacts the code was designed to prevent. Any finding that criterion F is not met shall be supported by a specific evidentiary basis in the record.

(g) No Impermissible Considerations: The commission shall not consider the precedential effect of approval on future hypothetical applicants. That consideration does not appear among the six LDC Chapter 19 criteria and is not an authorized basis for a variance decision under *Snyder*, 627 So.2d 469.

(h) Location Established: The Planning Commission shall accept as established that the fence is set back appropriately and is not located in the right-of-way, as Director Burman confirmed on the record during deliberation. (PC Tr. pp. 37-38.) The commission shall not require a survey, engineering study, or any additional locational proof as a condition of variance approval, as no such requirement was imposed on the applicants at the original Planning Commission hearing, no such requirement appears in LDC Chapter 19, and requiring one on remand would constitute an impermissible new burden not present at the original proceeding

(i) No Prejudgment: The commission shall not place any motion on the floor or take any vote before the applicant has fully presented the case and public comment has been received and rebutted.

(j) No Importation of Extra-Record Evidence: Commission members shall base their deliberation solely on the evidence in the record of the proceeding. Personal property experience or knowledge not in the record shall not form a basis for any finding.

Fifth, because remand, if ordered, would return this matter to the same decision-making body whose conduct is the subject of this Petition, Petitioners respectfully request that this Court's retention of jurisdiction and the specific binding instructions set forth above serve to ensure that any subsequent proceeding is conducted in strict conformity with this Court's mandate, free from reliance on grounds previously rejected by this Court or from any unexplained departure from this Court's specific instructions, so that remand does not become merely the first step of a recurring cycle rather than a genuine cure of the errors identified herein.

Sixth, this Court shall retain jurisdiction for ninety days following the remand hearing. Any new denial of the variance on remand shall be filed with this Court within thirty days of the remand decision for review of compliance with this mandate. Any new denial shall be accompanied by specific written criterion-by-criterion findings that distinguish this application from Case Nos. 16-90000001, 16-90000002, 16-90000009, VARC-24-0004, and VARC-25-0004 with specific factual bases appearing in the record. An unexplained departure from those prior decisions will not satisfy the competent substantial evidence standard under this Court's mandate.

Grant such other and further relief as this Court deems just and appropriate, including direct approval of the variance if the Court finds upon full review that the criteria are satisfied as a matter of law and remand would be futile.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Petition for Writ of Certiorari and all attached Appendix Exhibits have been served upon the City Attorney for the City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32129, by certified mail, return receipt requested, and by email, on this 2nd day of July 2026.

Respectfully submitted,

/s/ Peter Francis

Peter Francis, Petitioner (Pro Se)
Named Applicant of Record, Variance Case No. VARC-26-0002
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/s/ Victor Francis

/s/ Samia Fezy

Victor Francis, Petitioner (Pro Se) | Samia Fezy, Petitioner (Pro Se)
Property Owners, 5968 Shady Creek Lane, Port Orange, Florida 32128
victorfawzil@yahoo.com

APPENDIX, EXHIBIT LIST

Exhibit A, Staff Report, VARC-26-0002, City of Port Orange, April 2026

Exhibit B, Staff Report & Meeting Minutes, Case No. 16-90000001, 868 Millers Way, March 24, 2016

Exhibit C, Staff Report & Meeting Minutes, Case No. 16-90000002, Retention Pond Open Space Case, 2016

Exhibit D, Staff Report & Meeting Minutes, Case No. 16-90000009, 5835 Wales Avenue, December 15, 2016

Exhibit E, Staff Report & Meeting Minutes, Case No. VARC-24-0004, Aldi / Shoppes at Summer Trees, 2024

Exhibit F, Staff Report & Meeting Minutes, Case No. VARC-25-0004, 801 Pheasant Run Court, October 23, 2025

Exhibit G, Certified Transcript of Official Proceeding, April 23, 2026 Planning Commission Hearing (PC Tr.)

Exhibit H, Certified Transcript of Official Proceeding, June 2, 2026 City Council Appeal Hearing (CC Tr.)

Exhibit I, 2015 HOA Approval Letter, Signed Written Authorization for Fence Installation

Exhibit J, Official Planning Commission Meeting Minutes, April 23, 2026, Signed by Chair Scott Steger, Confirmed as Final Order by City Clerk

Exhibit K, Official City Council Meeting Minutes, June 2, 2026, Signed by Mayor Scott Stiltner and City Clerk Robin Fenwick on June 16, 2026, Confirmed as Final Order by City Clerk

Exhibit L, Written Confirmation from Port Orange City Clerk That No Separate Written Final Order Exists and That Meeting Minutes Constitute the Official Final Orders

Exhibit M, Port Orange Land Development Code, Chapter 19, Section 1 (Variance Criteria) and Chapter 2, Section 2 (Atypical Lot Classification)

Exhibit N, Applicant's power point slides from the Planning Commission hearing, April 23, 2026

Exhibit O, Applicant's full appeal packet to the City Council, June 2, 2026

Exhibit P, HUD/DOJ Joint Statement on Reasonable Accommodations Under the Fair Housing Act (May 17, 2004)



LAURA E. ROTH
CLERK OF THE CIRCUIT COURT

SEVENTH JUDICIAL CIRCUIT - VOLUSIA COUNTY
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