

**VARIANCE NO. VA-22-04  
EVYS OTERO COMMUNITY RESIDENTIAL  
HOME VARIANCE REQUEST - PLN2206-0050**

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**FINAL ORDER OF MANATEE COUNTY HEARING OFFICER KELLY FERNANDEZ ON BEHALF OF MANATEE COUNTY GRANTING VARIANCE NO. VA-22-04 TO REDUCE THE REQUIRED DISTANCE BETWEEN RESIDENTIAL CARE FACILITIES, ESTABLISHED IN THE LAND DEVELOPMENT CODE, CHAPTER V, SECTION 531.45.B, FROM ONE THOUSAND (1,000) FEET TO ZERO (0) FEET, MEASURED FROM PROPERTY LINE TO PROPERTY LINE, SUBJECT TO THE APPROVAL OF A CONCURRENT MINOR SUBDIVISION APPLICATION, FOR A SITE GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF 36TH AVE. EAST (ELLENTON GILLETE RD.) WITH 41 STREET EAST, AND APPROXIMATELY 2,200 FEET SOUTH OF EXPERIMENTAL FARM ROAD, KNOWN AS 4211 36TH AVE. EAST (ELLENTON GILLETE RD.), PALMETTO (MANATEE COUNTY), ON APPROXIMATELY 6 ACRES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Board of County Commissioners of Manatee County adopted the Manatee County Land Development Code (LDC), Manatee County Ordinance 15-17, as amended; and

**WHEREAS**, pursuant to the LDC, Manatee County Ordinance 15-17, as amended, the Hearing Officer has the authority to grant variances; and

**WHEREAS**, Evys Otero is requesting a variance to the specific standard for residential care facilities, established in the Land Development Code, Chapter V, Section 531.45.B, to reduce the required distance between residential care facilities from one thousand (1,000) feet to zero (0) feet, measured from property line to property line, subject to the approval of a concurrent minor subdivision application; and

**WHEREAS**, on June 28, 2023, the aforementioned Hearing Officer held a public hearing to receive the staff report, applicant, and public comment, and argument regarding the proposed Variance.

**NOW, THEREFORE**, after consideration of the application for Variance 22-04 requested by Evys Otero, the Hearing Officer makes the following Findings of Fact and Conclusions of Law and issues the Final Order as follows:

**Section 1. Findings of Fact.** The aforementioned Hearing Officer, after considering comment, argument, evidence, documentation and staff report presented, as well as all other matters presented at the Public Hearing above referenced, hereby makes the following Findings of Fact:

- A. The subject property is in the RES-1 (Residential Single Family 1-Dwelling Units / Acre) Future Land Use Category.
- B. The subject property is in the Agriculture Suburban (A-1) zoning district.
- C. The subject property contains two existing single-family houses that each have been used as a community residential home at various times.
- D. Presently, the existing houses cannot both be used as community residential homes unless the property is subdivided and a variance to the facility separation requirement is approved.
- E. The request is to approve a variance to the specific standard for residential care facilities, established in the LDC, Chapter V, Section 531.45.B, to reduce the required distance between residential care facilities from one thousand feet (1,000 feet) to zero (0 feet), measured from property line to property line, subject to the approval of a concurrent minor subdivision application.
- F. The Florida Agency for Persons with Disabilities licenses community residential homes. Rule 65G-2.015(6), Florida Administrative Code, provides that the “licensure of any facility located within 1,000 feet of another facility can only occur if a variance is first granted by the appropriate local government unit in accordance with the provisions of Section 419.001, F.S.”
- G. Section 419.001, Florida Statutes, provides no criteria for use by a local government in reviewing a variance request for facility separation.

**Section 2. Conclusions of Law.** Based upon the prior Findings of Fact and considering the testimony, evidence, documentation and the staff report presented, and a review of the applicable provisions of the Manatee County Comprehensive Plan and Manatee County Land Development Code, the above referenced Hearing Officer hereby makes the following Conclusions of Law:

- A. This Hearing Officer has jurisdiction over the parties and subject matter in this proceeding pursuant to the LDC.
- B. The applicant has the burden of proving entitlement to the Variance sought. *See Gomez vs. City of St. Petersburg*, 550 So. 2d 7 (Fla. 2d DCA 1989).
- C. The variance is not the type prohibited by Section 367.2 of the LDC.
- D. To the extent applicable, the variance meets the criteria set forth in Section 367.5 of the LDC.
- E. The particular physical surroundings and physical condition of the property would result in a particular hardship upon the owner, as distinguished from

a mere inconvenience, if the strict letter of the regulations were carried out as it would prevent the operation of two community residential homes in existing houses.

- F. The conditions upon which the request for a variance is based are unique to the parcel and would not be applicable, generally, to other property within the vicinity.
- G. The variance is not based on any conditions, including financial, occupational, or ability, which are personal to the applicant as applied to the property involved in the application.
- H. The alleged hardship has not been created by any person presently having an interest in the property as it is based on requirements of state law.
- I. The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the vicinity.
- J. The variance will not substantially increase the congestion in the public streets, or increase the danger of fire, or endanger public safety.
- K. The variance is the minimum variance that will make possible the reasonable use of the property.
- L. The property cannot be put to a reasonable use which complies fully with the requirements of the LDC unless the variance is granted.

**Section 3. Order.** Based upon the foregoing, a Variance is hereby approved and issued to Evys Otero reducing the required distance between residential care facilities established in the Land Development Code, Chapter V, Section 531.45.B, from one thousand (1,000) feet to zero (0) feet, measured from property line to property line, for the property located at 4211 36th Ave. East, Palmetto (Manatee County) on approximately 6 acres, subject to the following conditions:

- 1. This Variance is subject to the approval of the required minor subdivision that will allow the community residential facilities on two different adjacent parcels and place conditions on driveway access to serve the facilities.
- 2. This Variance shall not be effective until it has been recorded in the Public Records of Manatee County, Florida, by the applicant and a copy of the recorded Order is received by the Building and Development Services Department.

**Section 4. Severability.** In the event that any portion or section of this Order is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decisions shall in no manner affect the remaining portions or sections of the Variance which shall remain in full force and effect.

**Section 5. Effective Date.** The effective date of this Variance shall be upon execution of this Order and its recordation in the Official Records by the applicant with the Office of the Clerk of the Circuit Court and receipt of a copy of the recorded Order by the Building and Development Services Department.

ORDERED ON BEHALF OF MANATEE COUNTY this 20<sup>th</sup> day of July, 2023.



MANATEE COUNTY, FLORIDA

BY: [Signature], as  
Hearing Officer for Manatee County

ATTEST: ANGELINA COLONNESO,  
Clerk of the Circuit Court

BY: [Signature]  
Deputy Clerk

**EXHIBIT "A"**  
**Legal Description**

4211 36<sup>th</sup> Avenue E., Palmetto, FL 34221

PART OF LOT 16 SUB OF THE SW 1/4 OF THE NW 1/4 OF SEC 5, MORE PARTICULARLY DESC AS FOL: BEG AT A CONC MON ON THE WLY R/W LN OF THE ELLENTON-GILLETTE RD WHICH IS LOCATED 112.95FT W OF THE SE COR OF THE SW 1/4 OF THE NW 1/4 OF SD SEC 5, TH W, ALG THE S LN OF SD LOT 16 A DIST OF 593.06 FT; TH N 00 DEG 20 MIN 05 SEC E, 440.70 FT; TH E 593.06 FT; TH S 00 DEG 20 MIN 05 SEC W, ALG THE SD WLY R/W LN OF THE ELLENTON GILLETTE RD, 440.70FT TO THE POB. THE ABOVE CONTAINS 6.0 ACRES AS DESC IN OR 1165 P 2647 PRMCF PI#7477.2000/1

Angelina "Angel" Colonnese  
Clerk of the Circuit Court of Manatee County Florida  
1115 Manatee Avenue West, Bradenton, Florida 34205  
P.O. Box 25400, Bradenton, Florida 34206  
Phone (941) 749-1800 - Fax (941) 741-4082  
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**Receipt#:** 900590931 **Payee Name:** BLALOCK WALTERS HELD ET AL AR500036  
**Receipt Date:** 07/28/2023 802 11TH ST W ATTN MARTIN FORBES  
BRADENTON, FL 34205

**Instrument(s):** 202341080907-EASEMENT

<b>Receipt Total:</b>	\$44.00
<b>Amount Tendered:</b>	\$44.00
<b>Overage:</b>	\$0.00
<b>Service Fee</b>	\$0.00
<b>Total PAID</b>	<b>\$44.00</b>

Check	\$44.00	CHECK #	54975
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<b>Amount Paid</b>	<b>\$44.00</b>
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<b>Instrument:</b>	202341080907	EASEMENT	
001000000341100	RECORDING FEE \$5/\$4		\$21.00
199000000341150	PRMTF \$1/\$.50		\$3.00
001000000208911	PRMTF FACC \$.10		\$0.50
199000000341160	PRMTF CLERK \$1.90		\$9.50
001000000208912	PRMTF BCC \$2		\$10.00
<b>Instrument Total:</b>			<b>\$44.00</b>