


3212 WESTCHESTER AVE—TREEHOUSE



Location Map

 Subject Site

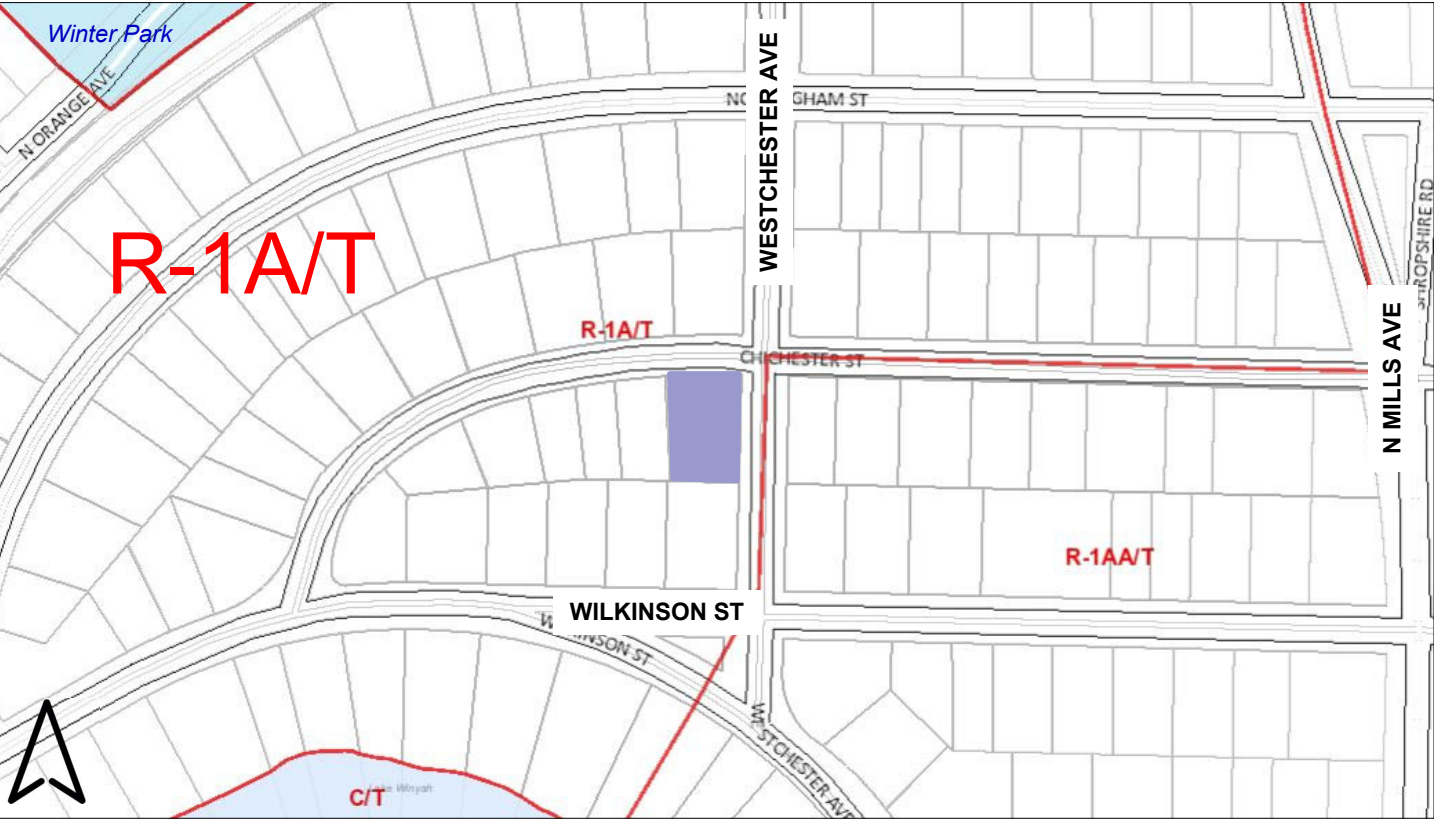
SUMMARY

<p>Owner Martin Buckley</p> <p>Applicant Madison Buckley</p> <p>Project Planner Manuel E. Ospina</p> <p>Updated: October 21, 2020</p>	<p>Property Location 3212 Westchester Ave. (Located north of Wilkinson St., west of S. Mills Ave. and south of Orange Ave.) (0.28 acres, District 3) PID# 12-22-29-6436-19-061</p> <p>Applicant's Request Applicant is requesting a variance to allow a treehouse to stay in existing location 11 ft. from rear property line where 15 ft. is required in the R-1A/T zoning district.</p>	<p>Staff's Recommendation Approval of the Variance request subject to the conditions in this report.</p> <p>Public Comment Courtesy notices were mailed to property owners within 300 ft. of the subject property the week of October 12, 2020. As of the published date of this report, staff has received one comment in opposition and multiple in support regarding the requested variance.</p>
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Future Land Use Map



Zoning Map



Project Analysis

Project Description

The subject property consists of a $\pm 1,324$ sq. ft. one-story single family home on a $\pm 12,113$ sq. ft. residential lot in the Orwin Manor neighborhood. The applicant is requesting a variance to allow an elevated deck or treehouse to stay in existing location and be located 11 ft. from rear property line where structures with multiple heights and rooftop decks must be located 15 ft. from rear property line.

Previous Actions

1925: Property platted as lot 7 as part of Orwin Manor Stratford Section.
 1948: Existing single family home constructed on the property.
 1972: Current owners purchased the property.
 2020: Code Enforcement cited the property owner for constructing the treehouse without a permit.

Project Context

The property is zoned R-1A/T and is designated as Residential Low Intensity (RES-LOW) on the City's Future Land Use map. Furthermore, the property is located on a residential block of single-family homes that is located south of N. Orange Ave. and west of N. Mills Ave. Further project context can be found in Table 1 below.

Table 1—Project Context			
	Future Land Use	Zoning	Surrounding Use
North	RES-LOW	R-1A/T	Single Family Home
East	RES-LOW	R-1AA/T	Single Family Home
South	RES-LOW	R-1A/T	Single Family Home
West	RES-LOW	R-1A/T	Single Family Home

The house was constructed in 1948 with a front yard (north) setback of ± 28 ft., a side yard (west) setback of ± 42 ft., a street-side yard (east) setback of ± 15 ft., and a rear yard (south) setback of ± 24 ft. For context, City Code requires a single family home to have a minimum front yard setback of 25 ft., a side yard setback of 7.5 ft., a street-side setback of 15 ft., and a rear yard setback of 25 ft. in the R-1A/T zoning district. Additionally, the property was originally platted in 1925 as part of the Orwin Manor Stratford Section subdivision. The R-1A/T zoning district requires a minimum lot width of 70 ft. and a minimum lot depth of 110 ft. where the subject property is a currently platted lot 87 ft. wide on the south side and 95 ft. in the north side by 135 ft. long in the west side and 131 ft. in the east side. Based on the information above the property has a home located in a conforming condition on a conforming lot as regulated by the R-1A/T zoning district.

The applicant's desire is to maintain the already built structure in the rear of the property, and proposes to maintain the existing footprint with no expansion. The existing setbacks for the structure are 11 ft. to the rear property line and 10 ft. to the side property line. The height of the structure is 8.5 ft to the elevated deck floor and 11.5 ft. to the railing. Land Development Code does not specify treehouse requirements, but we consider them to be accessory structures with multiple heights and thus subject to requirements for a structure greater than 12 ft. tall., this requires a 15 ft. rear setback where 11 ft. currently exists.

Intent of the District

As previously stated the subject property is zoned R-1A/T. The R-1A district is intended to conserve the general character of established one family neighborhoods, and to provide for new areas of low and moderate density one family development. The Traditional (T) Overlay District is intended to establish urban design standards to perpetuate the positive design elements and the residential and commercial development patterns found within the Traditional City. The traditional City shall be defined by recognizable geographic boundaries of subdivisions platted prior to World War II in which there is a concentration of the positive design elements.

Analysis

As previously mentioned, the applicant is proposing to keep the already built treehouse in the rear of the property and maintain the setbacks and footprint. Consequently, the applicant is requesting a variance of 4 ft. to allow an 11 ft. rear yard setback for a treehouse where 15 ft. is required.

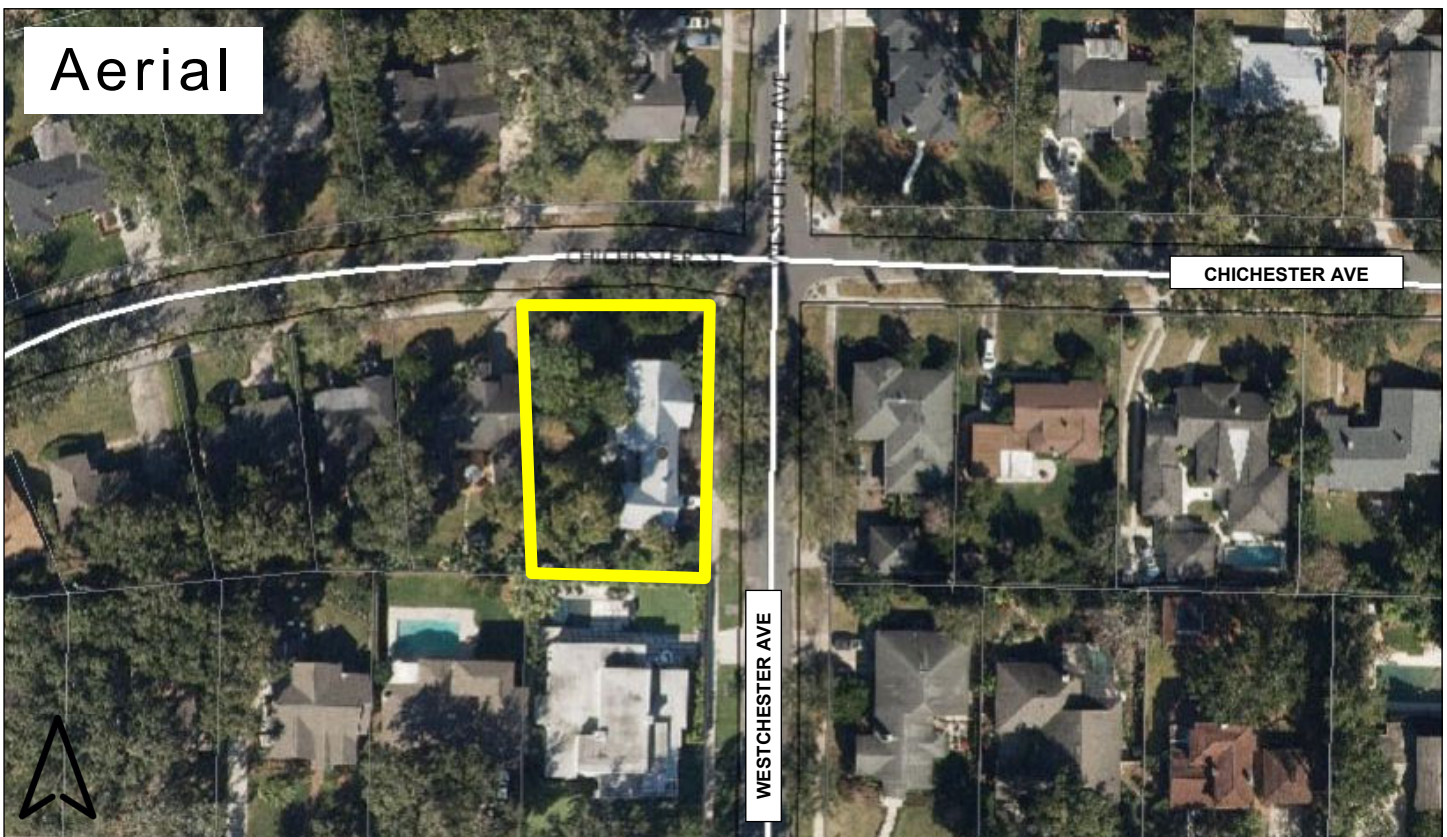
In regards to the rear yard setback request, staff feels that there is a reason for this request since the structure is located in the southwest corner of the property and constructed around the primary trunk of a mature tree. Significant existing landscaping in the rear of the property creates screening from the street and adjacent properties and with a maximum height less than 12 ft., is shorter than the overall height of the principal structure. Additionally the structure was constructed over 15 years ago and there has not been any issues with the location of the structure until recent time.

Placing the elevated deck or treehouse and following the setback requirements for such structures, would limit the placement to only be affixed at specific points on the tree that will support such structures, which will result on a taller treehouse that will negatively impact the health of the tree by not using the main trunk as support base, and will make the structure more visible from the street and adjacent properties.

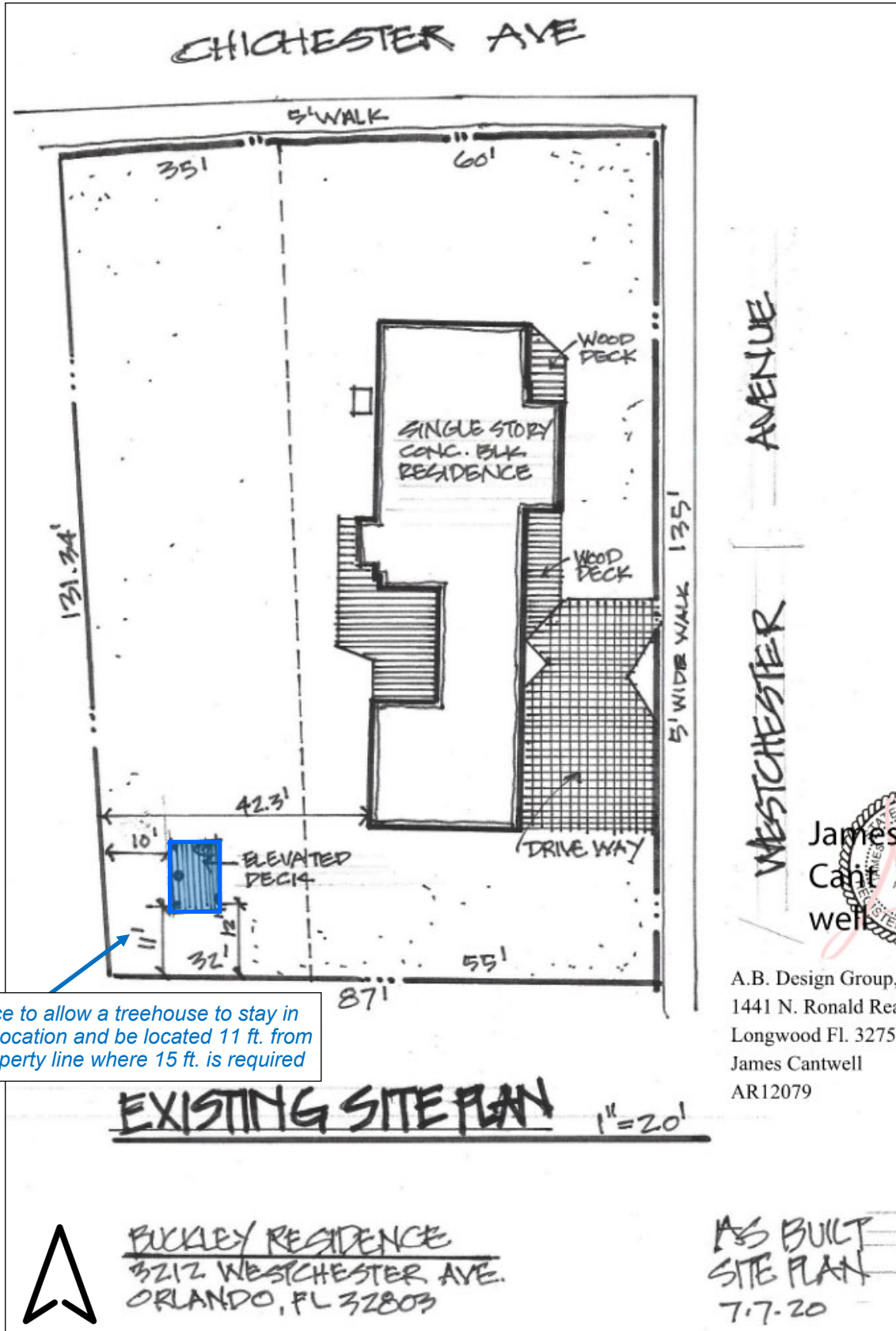
Staff feels that a variance to keep the elevated deck or treehouse in the current location does meet all six standards for a variance approval. The structure will keep the same setbacks to the street, single-family residence and property lines as it has since it was initially built over 15 years ago, and it will have no negative impact on the tree to which is affixed to. Additional screening established by landscaping materials is recommended along the south property line. Extreme care must be taken into consideration when choosing plantings since a power line runs between the two properties. Trees such as Bald Cypress or Italian Cypress can work as screening and privacy trees. The property owner to the south, 837 Wilkinson St., brought this matter to Code Enforcement due to privacy concerns, since then he has planted bamboo along the shared property line to help mitigate with view and privacy concerns. The installed bamboo has grown in size and once matures it will create a visual barrier between the two properties.

There is no building permit for the existing 9.5 ft. by 8 ft. treehouse. There is a special circumstance since the tree cannot be relocated on the property. Building a treehouse that will meet the rear setback, building separation, and height will be impractical. Staff is supportive of the variance request to encroach into the rear setback by 4 ft. and have a rear setback of 11 ft. for an elevated deck or treehouse.

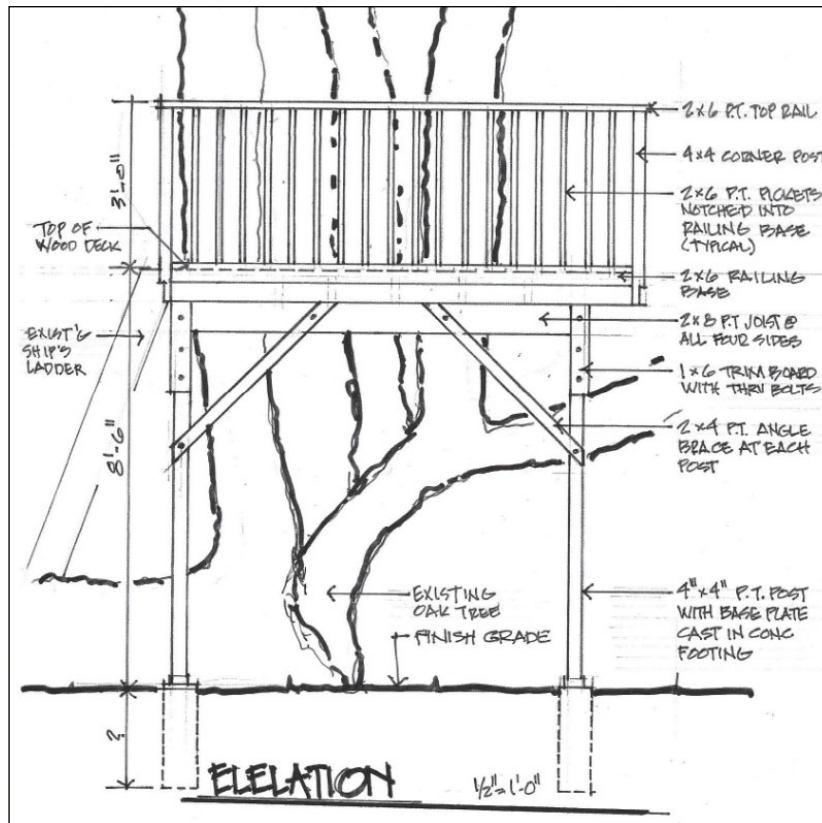
Staff recommends approval of the Variance based on the findings that it does meet all six standards for variance approval, subject to the conditions found in this report.



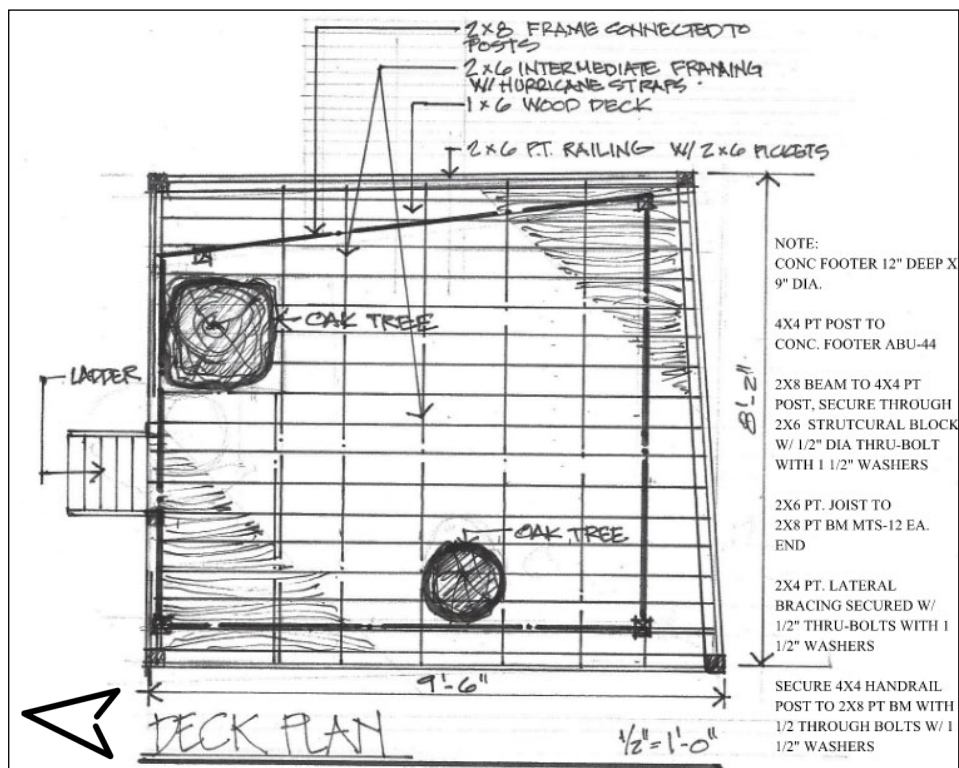
Site Plan



Existing Elevation



Deck Plan



Site Photos



Site Photos



Findings

Requested Variance

The applicant is requesting a variance to allow an elevated deck or treehouse to stay in existing location and is requesting:

Variance of 4.0 ft. to allow an 11 ft. rear setback where structures with multiple heights and rooftop decks must be located 15 ft. from rear property line. (Chapter 58, Table of Zoning district Regulations).

Staff Recommendation: Approval of the requested Variance, based on the findings that the Variance does meet all six standards for approval. Approval of the variance is subject to the following conditions of approval:

Land Development

1. Treehouse is approved as is. The structure cannot be enlarged, expanded, enclosed, or roofed.
2. Applicant must explore ways to enhance landscaping along the south property line in order to increase a visual barrier of the treehouse from adjacent properties and the street.
3. Development shall be in strict conformance with all conditions and the site plans and elevations found in this report, subject to any modification by the Board of Zoning Adjustment (BZA) and/or City Council. Minor modifications to the approved variance may be approved by the Zoning Official. Major modifications, as determined by the Zoning Official, shall require additional review by the BZA.
4. All City, County, State or Federal permits must be obtained before commencing development.
5. As provided by subsection 166.033(5), Florida Statutes, issuance of a development permit by a municipality does not in any way create any right on the part of an applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the municipality for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. In accordance with subsection 166.033(5), Florida Statutes, it is hereby made a condition of this permit that all other applicable state or federal permits be obtained before commencement of the development.
6. Expiration of the Zoning Variance. A building permit for the work requiring the zoning variance must be received within one year of the zoning variance approval. If the building permit is not received within the year, then the zoning variance is no longer valid and a new variance must be requested (applied for).
7. Administrative Extension of the Zoning Variance. The Zoning Official may extend a zoning variance by up to six months. The holder of the zoning variance must request such an extension by application for a Zoning Official determination at least 30 days, but not more than 90 days, before the expiration of the zoning variance.

Note to Applicant: *The proposed variance only addresses the Land Development Code standards expressly represented in this staff report and any relief to such standards as approved. The relief granted through the variance is restricted to the subject property as noted in the staff report and is not transferable to any other parcels of land.*

The next step in this variance request is City Council consideration of the Board of Zoning Adjustment's recommended action (provided it is not appealed) at an upcoming City Council meeting. Possible City Council approval of this variance does not constitute final approval to carry out the development proposed in this application. The applicant shall comply with all other applicable requirements of the Land Development Code, including any additional review requirements, and shall receive all necessary permits before initiating development. Please contact the Permitting Services Division of the City of Orlando to inquire about your next steps toward receiving a building permit.

<h2>Standards for Variance Approval</h2>	<p>Variance of 4.0 ft. to allow an 11 ft. rear setback where 15 ft. setback is required.</p>
<p><i>Special Conditions and Circumstances</i> Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same zoning district. Zoning violations or nonconformities on neighboring properties shall not constitute grounds for approval of any proposed Zoning Variance.</p>	<p>Meets Standard Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>Special conditions and circumstances exists as the tree location and shape of the tree is not dictated by the property owner. Placement of the treehouse was based on tree conditions.</p>
<p><i>Not Self-Created</i> The special conditions and circumstances do not result from actions of the applicant. A self-created hardship shall not justify a Zoning Variance; i.e., when the applicant himself by his own conduct creates the hardship which he alleges to exist, he is not entitled to relief.</p>	<p>Meets Standard Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>Owner has owned property since 1972. Special condition existed when property was purchased by homeowner since tree already existed.</p>
<p><i>No Special Privilege Conferred</i> Approval of the Zoning Variance requested shall not confer on the applicant any special privilege that is denied by this Chapter to other lands, buildings, or structures in the same zoning district.</p>	<p>Meets Standard Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>Special privilege (precedent) would not be conferred as the owner cannot replicate or build a practical and similar structure that would meet land development code, since the location of the structure is based of the main trunk of the existing tree.</p>
<p><i>Deprivation of Rights</i> Literal interpretation of the provisions contained in this Chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Chapter and would work unnecessary and undue hardship on the applicant. Financial loss or business competition shall not constitute grounds for approval of any variance. Purchase of property with intent to develop in violation of the restrictions of this Chapter shall also not constitute grounds for approval.</p>	<p>Meets Standard Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>Literal interpretation of the code would deprive the applicant of having a similar structure as other residents in the City that have comparable conditions and would not continue to allow protection and use of the tree for shade and recreational purposes.</p>
<p><i>Minimum Possible Variance</i> The Zoning Variance requested is the minimum variance that will make possible the reasonable use of the land, building or structure.</p>	<p>Meets Standard Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>The requested variance is the minimum possible variance to achieve continued use of tree while providing privacy to adjacent neighbors. A lesser variance would impact the size and location of the structure and could make a new structure greater in overall height, less functional, and practical, and would in turn be more visible to the street and adjacent properties.</p>
<p><i>Purpose and Intent</i> Approval of the Zoning Variance will be in harmony with the purpose and intent of this Chapter and such Zoning Variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.</p>	<p>Meets Standard Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>Approval of the requested variance would be in harmony with the purpose and intent of the zoning district Chapter and granting of the variance would not be injurious to the neighborhood or otherwise detrimental to the public welfare. With existing and recommended landscape improvements, the treehouse will have minimal impact to adjacent property.</p>

Answers to Variance Questions

VARIANCE APPLICATION

INTRODUCTION

The owners request a variance for an elevated deck or treehouse which is affixed to a tree in the backyard with additional independent support. It was built more than 15 years ago. Although originally built for use by the owners' grandchildren, it is a place the owners use for rest and relaxation. Because it is an elevated deck/treehouse it is a shaded spot which the owners use to read newspapers and enjoy coffee as well as enjoy an occasional beer. The deck is approximately 8' above the ground floor with vegetation below and is less than 12' tall at its maximum height which is a railing. The treehouse is of tremendous sentimental importance to the owners. While it has been used by all of the owners' grandchildren in the past and is used regularly by the owners currently, it was a particularly special place to the owners' granddaughter, Elizabeth Buckley. She spent countless hours in the treehouse reading, playing with her sisters and cousins and enjoying the outdoor environment in general. On December 31, 2012, Elizabeth Buckley died at age 13 after losing a battle with brain cancer. The treehouse is a tangible link to the memory of the Buckleys' granddaughter.

SECTION I

Special conditions and circumstances unique to the property:

The treehouse is constructed around the primary trunk of the tree. When constructed, great care was taken to place the treehouse in a location so as not only to avoid damage to the tree but also to avoid cutting any mature branches. In fact, trimming or pruning of the tree based on the location of the deck was minimized or eliminated to any degree so as to preserve the natural beauty of the tree which also allows to the greatest extent possible, in light of all surrounding circumstances, natural screening between the two yards thereby maximizing privacy for each of the owners. Maintaining the tree in its natural condition was and remains very important to the homeowner who was well known to the city's Parks Department after arranging for the planting of approximately 200 trees in the Orwin Manor, Lake Oaks and Beverly Shores neighborhoods.

SECTION II

How were special conditions noted above created?

The special conditions which required the specific placement of the elevated deck/treehouse in its current position were based primarily upon the placement of tree branches within the tree which was allowed to grow naturally to the greatest extent possible.

SECTION III

Can an objective be accomplished in another way?

The elevated deck/treehouse is located primarily on the south side of the main tree trunk. It is positioned above a mature branch that runs near the eastern side of the support structure. Due

Answers to Variance Questions

to the presence of mature branches along the western, northern and eastern sides of the tree, rebuilding the treehouse in a different location could be achieved only by making the treehouse much higher in elevation adversely affecting privacy. In so doing, the treehouse would not be attached to the main trunk but would be forced to rely on peripheral mature branches with sufficient supporting strength coming from the tree trunk which would result in a much higher treehouse.

NO SPECIAL PRIVILEGE CONFERRED

Would approval of this variance allow you to do something that other property owners in the same situation would not be allowed to do?

No. While it is not known whether others in the City of Orlando have applied for a variance associated with a treehouse, it appears that other owners similarly situated would be permitted to proceed in a manner consistent with the relief sought in this instance particularly in the event that the elevated deck/treehouse is determined to be an accessory structure. If considered a rooftop deck, other owners may be able to integrate such a structure into their own tree depending on the configuration of mature tree branches.

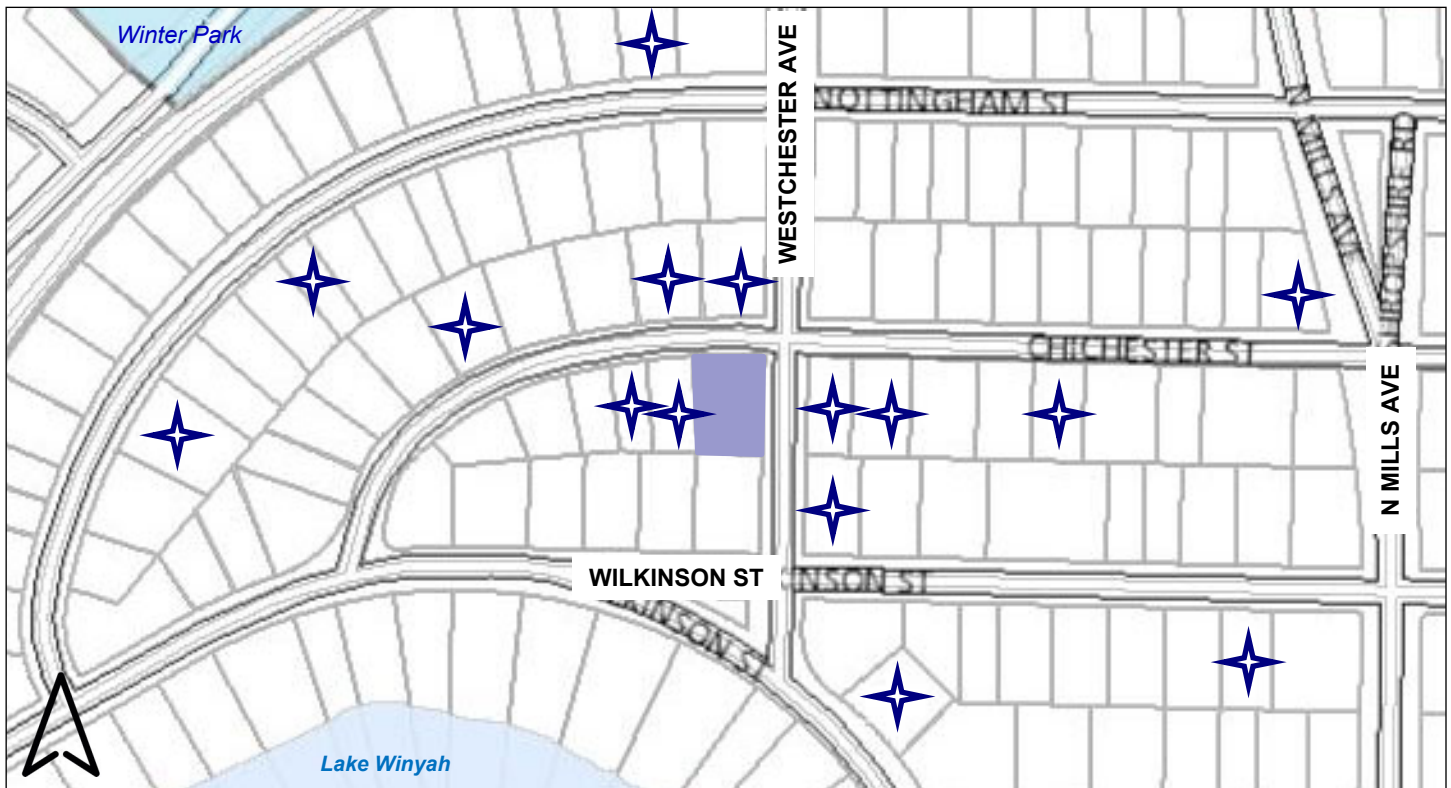
Would denial of this variance deprive you of rights commonly enjoyed by other owners in similar situations?

Yes. Many other residents within the City of Orlando have elevated deck structures within 10' and 11' of the respective property lines/boundaries and are permitted to use the same. The owners are being denied their right to do so in this case if this variance is not approved.

PURPOSE AND INTENT

The subject treehouse has been in place for more than 15 years without complaint until recently. The complaining party reported his complaint only after being denied access to the owners' property located at 3212 Westchester. The complaining party wanted to install additional fencing on the applicants' side of the property. Because prior access granted by the owners to the complaining neighbors at 3212 Westchester resulted in authorized tree trimming on the part of the complaining party, access was denied by the Buckleys. After the complaining party was denied access to the owners' property, only then was a complaint made about the elevated deck. Approval of this variance will have no detrimental effect on the neighborhood. Use of the adjacent property, including parties hosted by the complaining party, are frequent and it is clear that such entertaining by the complaining party is not in any way impacted by the presence of the treehouse. Moreover, the owners of the property are willing to plant additional trees in between the complaint's property and the treehouse in order to mitigate any privacy concerns. Please refer to letters of support from neighbors.

Support from Neighbors



RE: BLD2020-15547

I support the Buckleys in their efforts to obtain A VARIANCE for their treehouse.

SIGNATURE: Valerie Novak

NAME : Valerie Novak

Address : 816 Nottingham St, Orlando
FL
32803

22 letters of support have been received, similar as above.
Note: Three (3) are located outside of inset map.