



DESOTO COUNTY DEVELOPMENT DEPARTMENT STAFF REPORT

CASE # VAR-0004-2025

REQUEST: Variance (quasi-judicial)

PROPERTY OWNER: Southwest Land Developers, Inc.
5503 Sea Edge Drive
Punta Gorda, Florida 33950

AGENT: Morris Engineering & Consulting, LLC
6901 Professional Parkway East, Suite 103
Sarasota, FL 34240

PROPERTY ADDRESS: 3511 SW Dishong Ave

PARCEL ID: 16-38-24-0000-0025-0000

TOTAL PARCEL SIZE: +/- 95.92 acres

EXISTING ZONING DISTRICT: Agricultural - 10 (A-10)

FUTURE LAND USE DESIGNATION: Rural/Agricultural

REQUESTED VARIANCE: Variance to allow an existing, non-conforming Type IV excavation to add to the excavation area with a variance for excavation setbacks, maximum size, road improvements, and entrance access improvement requirements

SUBMITTAL REVIEWED: Variance Application received May 19, 2025

PROPOSED REQUEST:

An application for a Special Exception was received in the Development Department on November 6, 2023. The applicant was cited by Code Enforcement on June 25, 2024. However, the applicant has proposed improvements that are inconsistent with the current LDRs. Southwest Land Developers, the property owner, and Morris Engineering & Consulting, LLC, the agent, have proposed variances which would allow the resumption of excavation operations at the subject property, which has an expired site plan/permit. Since the original approval on April 27, 2004 (Excavation Permit #2004-02/V.C. JR Hollingsworth, Owner/Waste Consultants, Operator), the LDRs were

amended by the County in 2007 (Ordinance Number 2007-10) and 2014 (Ordinance 2014-05) the 2007 ordinance specifically updated excavation management. The 2014 ordinance specifically states that it does not change Ord. 2007-10.

The applicant has requested a variance to allow an existing, now non-conforming, 95.92-acre Type IV excavation site to add an additional 5-foot depth to the existing excavation area. The existing excavation does not meet the required setbacks in Section 20-1007 of the LDR and has requested variances for these setbacks in addition to requesting variances from other requirements in Section 20-1007. The list of variances requested for the site is as follows:

- Sec. 20-998(d)(1)d - General provisions; Applicability/exemptions; Special exception maximum (Type IV application)
- Sec. 20-1007(b) - Excavation setbacks
- Sec. 20-1007(j) – Maximum size
- Sec. 20-1007(n) – Road improvements
- Sec. 20-1007(h) – Entrance/access improvements

The applicant provided a Narrative citing specific regulations in the LDRs and justifications for the variance request.

BACKGROUND

The Narrative provides some history of the excavation operation, which began in 2004 with all required local and State permits in place. Additional research shows that Excavation Permit 2004-02 was approved on April 27, 2004, for a 4-acre excavation on 134.2 acres. It appears portions of the 2004 parcel were later sold, as the same parcel ID with a size of 95.92 acres received Excavation Permit approval (EP 2006-16) on January 23, 2007, for a 51-acre excavation area. The staff report for EP 2006-16 indicated that a 50' setback along the perimeter of the site was required, with few homes adjacent to the project's boundaries and existing excavation pits to the north and south. The staff report recommended 23 conditions of approval, which were approved as presented and amended at the 2004 Board of County Commissioners hearing.

An 18-month time extension for EP 2006-16 was granted on October 25, 2011, extending the permit expiration date from January 23, 2012 to July 23, 2013. However, a letter dated October 5, 2011 from the DeSoto County attorney states that Section 79, Ch. 2011-139 Laws of Florida automatically extends permit EP 2006-16 for 2 years and the new expiration date is January 23, 2014.

The Narrative submitted by the applicant states that *“unbeknownst to the applicant, the existing County Excavation Permit expired. This was learned when the applicant applied for a permit modification (USE-0153-2023 and USE-0154-2023) on November 6, 2023 to add an additional five (5) foot depth to the existing excavation area. As a result, the applicant immediately applied for Excavation Permits with DeSoto County. However, during the course of the development's operation, the Land Development Regulations for DeSoto County were modified. These modifications were inconsistent with the ongoing excavation operations as well as the requested continuation of operation for the development in conjunction with their engineering plans and existing Southwest Florida Water Management District permits.”*

Further communication with the applicant indicates the site was operating in accordance with their permits until their County permit lapsed and they were issued a stop work order by DeSoto County. County Code Enforcement states they were issued a Notice to Correct on 6/25/24 with a cease and desist (C&D).

The following table illustrates the subject property and adjacent properties land use and zoning.

Directions	Future Land Use	Zoning District	Types of Land Uses
Site (95.92 ac subject property)	Rural/Agricultural	A-10	Mining (Type IV excavation)
North	Rural/Agricultural	A-10	Orchards/Groves
South	Rural/Agricultural	A-10	Pastureland, single family residential
East	Public Land Institution	A-10	DeSoto County Landfill, pastureland
West	Rural/Agricultural	A-10	Pastureland, orchards/groves, single family residential

Specific Variance Requests

The applicant has cited 5 LDR sections for variances, some of which have been resolved through the review process and are conditions of approval. The variance requests are as follows:

Variance Request (1): for excavation of 500,000 CY in less than 60-month period. Sec. 20-998(d)(1)d - General provisions; Applicability/exemptions; Special exception maximum (Type IV application)

Sec. 20-998(d)(1)d allows for the excavation of at least 500,000 CY cumulatively in less than a 60-month period for Type IV excavation applications. The applicant is requesting for excavation yardage to be consistent with the original permitted parameters. The site proposes to excavate ±343,000 CY per year for another 5 years or approximately an additional ±1,750,000 CY. This request complies with Sec. 20-998(d)(1)d.

The applicant has indicated the excavation of 1,750,000 CY may extend beyond the 5-year / 60-month time frame. Sec. 20-1010 requires Type IV permit extensions to be approved by the Board for a maximum of 18 months. The narrative states that when an extension beyond the 60 month time frame is required, LDR Section 20-1010 shall be followed for the permit extension request.

Staff does not support this variance request as no variance is needed for the amount of material to be excavated and recommends existing LDR processes be utilized for any permit extensions as agreed upon by the applicant in the Narrative dated 7-14-25.

Variance Request (2): Sec. 20-1007(b) - Excavation setbacks (1), (3), (5), and (6). Subsections (2) and (4) are satisfied. Subsection (6) is not needed but has been requested due to a proposed Type IV excavation adjacent to the north.

The existing excavation pit is non-conforming with regards to the setback standards for excavations in Article IX, Division 3 Excavation Management Sec. 20-1007 of the Land Development Regulations. For Type III and IV excavation operations, the top of slope of any excavated area, all materials stockpiles, dewatering ponds and all facilities in connection with excavation operations, with the exception of excavation site exit roads and required buffers, shall be no closer than greater of (**bold text** has the LDR language that is required, and the italicized underlined text in the parenthetical is the variance request):

- (1) **300 feet from any property line** (variance request is to allow 276 feet);
- (2) 400 feet from any state highway or current or existing County arterial or collector road as identified in the County's Comprehensive Plan (meets requirement);
- (3) **1,000 feet from any land use other the rural/ agricultural or rural/ residential future land use boundary at the time of application (in addition for Type IV applications, 1,000 feet from any from zoning other than Agricultural 10 (A-10) or Industrial (I-L or I-H))** (variance request is to allow adjacency of Public Land Institution to east and west and 823 feet from A-5 zoned property to the southeast);
- (4) 2,500 lineal feet measured in a straight-line method from any portion of a school site to any portion of an excavation site (meets requirement);
- (5) **1,000 lineal feet measured in a straight-line method from any residence (above 30 percent on the tax rolls) to any portion of the excavation site** (variance request is to allow 450 feet); and
- (6) **For Type IV excavation permits only, one mile from any other excavation site. (This shall be measured in a straight-line distance from entrance to entrance and from excavation site boundary to excavation site boundary** (currently meets requirement; variance request to allow adjacency to proposed Type IV excavation to north, if approved).

Sec. 20-1007(b)(1) requires a setback of 300 feet from any property line. The previously approved excavation (EP 2006-16) for a 51-acre excavation area on the 95.92-acre parcel indicated that a 50' setback along the perimeter of the site was required, with few homes adjacent to the project's boundaries and existing excavation pits to the north and south in the staff report. The current LDR standards require a minimum setback of 300' from property lines in Section 20-1007(b). According to the applicant's narrative, the current excavation limits are set at approximately 276'. The Special Exception/ Preliminary Excavation plans indicate the existing scales and scale house are located within the required 300' setback. The proposed dewatering pump, settling pond, and staging area are also located within the 300' setback.

Sec. 20-1007(b)(3) requires a setback of 1,000 feet from any land use other than Rural/Agricultural and zoning other than A-10 or Industrial. The existing excavation is adjacent to designated Rural/Agricultural future land use parcels, with the exception of the DeSoto County Landfill property to the east, which has a Public Land Institution future land use and a vacant parcel owned by DOT/State of Florida approximately 650' to the west of the excavation site, also with Public Land Institution future land use. A parcel with A-5 zoning (Parcel ID 15-38-24-0278-0080-0000) is also located approximately 823' southeast of the excavation site, within the 1,000' required setback in Sec. 20-1007(b)(3).

Sec. 20-1007(b)(5) requires any portion of an excavation site to be setback 1,000 feet from any residence. The applicant's narrative notes that they believe residential homes within 1,000 feet of the existing excavation site were constructed after the onset of excavation activities in 2004. Single family residences to the south appear to have been constructed in 1999 and 2007, while a single-family residence to the west appears to have been built in 1987, according to the DeSoto County Property Appraiser. The applicant has requested a variance for Sec. 20-1007(b)(5) as the residential structures to the south were constructed with the knowledge of the ongoing, existing excavation operations or have had no objection to the excavation operation. Residences to the south range from 450'-550' from the existing excavation site, while the residence to the west is approximately 500' from the existing excavation site.

Sec. 20-1007(b)(6) requires Type IV excavations to be located one mile from any other excavation site. While the Narrative notes that there are currently no existing excavation projects within one mile of the subject property, an application for a Type IV excavation is in review for the adjacent parcel to the north. The applicant suggests that the LDR allows excavations within one mile of another if they utilize different haul routes, noting that the subject property and proposed excavation to the north will utilize different haul routes.

Staff does not support the applicant's suggestion regarding minimum distance requirements and haul routes as Sec. 20-1007(b)(6) is clear that Type IV excavations shall be one mile apart, regardless of haul route. Sec. 20-1005 provides Type IV special exception review criteria, one of which states: *(2) That there are not more than six Type IV excavation operations (including those existing excavation areas that would be classified as such today) already using the same collector or arterial roadways or segments within the County as part of their primary haul route.* DeSoto County Engineering also notes this variance will be required regardless of LDR interpretation as truck traffic from the proposed excavation to the north will likely follow the same haul route if approved.

Variance Request (3): Maximum Size of Excavation Sec. 20-1007(j)

Sec. 20-1007(j) limits Type IV excavations to 25 percent of the total excavation site square footage (less jurisdictional wetlands) or 100 acres, whichever is less. The existing excavation operation has a current surface disturbance of 52.87 acres or 69% of the overall parcel area less jurisdictional wetlands. The previously issued permit (EP 2006-16) was approved for a 51-acre excavation area. The applicant notes in the

Narrative that the excavation operation was permitted and began construction under previous DeSoto County Land Development Regulations, of which they were under full compliance. The introduction of new excavation regulations in May 2007 resulted in it being impossible for the current operation as well as further excavation of the parcel to comply with the 25% maximum allowance. The applicant requests to excavate the property with a 52.87 acre excavation area.

DeSoto County Engineering notes that bonus excavation can be utilized following the provisions of LDR Sec. 20-1004 Type IV Bonus Excavation Areas. These allow up to a maximum of 50%. Staff recommends that the existing bonus area provisions in the LDRs be used before granting a variance for additional area to be excavated above 50%. These require Board of County Commissioners approval.

Variance Request (4): Road Improvements, Sec. 20-1007(n)

Sec. 20-1007(n) requires non-collector and non-arterial roadways (local roads) on the approved haul route to/from the excavation site shall be upgraded to minimum County width standards to include applicable shoulders by the applicant. Said width initially shall be constructed with the appropriate base. Said width shall be maintained by the owner or operator throughout the term of the excavation permit. Following cessation of excavation operations, said roadways shall be properly repaired and resurfaced to County standards. A surety bond shall be provided to the County by the owner or operator equal to 150 percent of the cost of said improvements prior to the issuance of an excavation permit. In lieu of surety bonds, the applicant, at their option, may pay an additional amount of \$0.10 per cubic yard of excavated material removed from the excavation site, for each road mile or fraction thereof as a fee to aid in the repair and upkeep of the local roads as a result of the excavation operations.

The applicant's Narrative indicates that the excavation site utilizes SW Dishong Avenue, a local road, to the south as a haul route. As previously noted, the DeSoto County Landfill is located to the east of the subject property across SW Dishong Ave. The Narrative states:

As you may assume, the landfill property generates a large amount of large, heavy truck traffic on SW Dishong Ave, from the north and the south. DeSoto County is also in the process of expanding the existing landfill operation, therefore no reduction in their truck traffic is anticipated. With the consistent and steady use of this roadway by the landfill, it is not feasible to attribute the entire cost of construction and/or maintenance to the applicant's property as this is a public roadway also utilized by the general public for commuting, deliveries, etc. The operator of the applicant's property has consistently performed maintenance and repairs on the roadway with no expectation of reimbursement from the County. The applicant is amiable to a fair share discussion based upon a cost sharing analysis of any future repair costs. DeSoto County has repaved Dishong Ave within the last six months.

DeSoto County Engineering notes that the fee is a "fair share" payment for impacts to the county owned roads. There is no provision in the LDR to preclude the payment of

this fee due to proximity to the landfill or the road recently being repaved. The applicant has indicated a willingness to discuss the “fair share” payment. Engineering notes that bonds shall be put into place or fees paid per Sec. 20-1007(n), unless otherwise determined by the BOCC.

Notwithstanding the above, because Section 163.3180, Florida Statutes, which governs transportation concurrency, provides that landowners be assessed a *proportionate share* of the cost addressing the transportation impacts resulting from a proposed development, the County Attorney has recommended that any granting of the variance be conditioned on the BOCC’s approval and entry of a proportionate share agreement.

Variance Request (5): Sec. 20-1007(h) – Entrance/access improvements

Sec. 20-1007 - Type II, III and IV minimum design standards and requirements, (h) requires entrance and access improvements. The applicant may submit a request for traffic information and other data that would support not installing some of the required improvements to meet current standards. The County Engineer may, through consideration of any information submitted, and/or solely on his/her own analysis, not require any of the improvements (1-5) listed. The applicant states in the Narrative that the driveway has been paved from SW Dishong Ave to the scale house, approximately 200 feet in length. Therefore, this variance request has been resolved.

DeSoto County Engineering notes that the access drive should be labeled as paved on the plans for the Special Exception and Type IV Excavation applications. Staff does not recommend this variance request to Sec. 20-1007(h) as the variance request is resolved with the condition to label the access drive as paved on the Special Exception and Type IV Excavation applications.

VARIANCE REVIEW CRITERIA

County Staff has reviewed these requests and considered and prepared the following comments on each of the required findings below consistent with the variance review criteria (Sections 20-1457 and 20-1460). The Board of Adjustment must consider these when deciding on granting a variance to the DeSoto County Land Development Regulations. In accordance with the DeSoto County Land Development Regulations, the Board of Adjustment must make a positive finding on each of these topics in order to grant this variance.

Section 20-1457 – Generally.

- (a) *The Board of Adjustment may grant a variance from the terms of the LDRs as will not be contrary to the public interest where, owing to special conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the provisions of the LDR would result in unnecessary and undue hardship.*

Staff Finding of Fact

An application for a Special Exception was received in the Development Department on November 6, 2023. The applicant was cited by Code Enforcement on June 25, 2024. The applicant was cited by Code Enforcement on June 25, 2024, to include:

- *LDR Sec. 20-126 d Prohibited A-10: Prohibited uses or structures for A-10 zoning*
- *LDR Sec. 20-1346 Development Permit Requirements & Conditions (post-permit changes): it shall be unlawful to change, modify, alter or otherwise deviate from the terms or conditions of the permit without first obtaining a modification of the permit.*
- *Sec. 20-998 C Excavation Permit required: Excavation permit required. Unless otherwise exempt from the provisions of this division, no excavation or excavation operations shall be conducted unless a valid excavation permit has been issued by the County. Permits from other governmental authorities may also be required.*

The applicant has requested several variances for the existing Type IV excavation site with an expired permit, which permit expired in 2018. The Narrative submitted by the applicant states that *“unbeknownst to the applicant, the existing County Excavation Permit expired. This was learned when the applicant applied for a permit modification to add an additional five (5) foot depth to the existing excavation area. As a result, the applicant immediately applied for Excavation Permits with DeSoto County. However, during the development’s operation, the Land Development Regulations for DeSoto County were modified. These modifications were inconsistent with the ongoing excavation operations as well as the requested continuation of operation for the development in conjunction with their engineering plans and existing Southwest Florida Water Management District permits.”*

The applicant has partially excavated the site consistent with the previously issued permit. The practical difficulty in carrying out the strict letter of the regulation is the applicant would not be able to complete the excavation based on the previous (expired) excavation approval. This finding can be found to support specific requests of the application. However, the following variance requests can be addressed by other means or are not supported by staff and summarized below:

- Variance Request (1) – Time and Additional Quantity to Excavate - LDR’ Sec. 20-1004 Type IV Bonus Excavation Areas, provide an existing process to request additional excavation amounts for Type IV excavations in Section 20-1004. Additional time is addressed in Section 20-1010. Staff recommends existing LDR processes be utilized.
- Variance Request (2): - Excavation setbacks - Sec. 20-1007(b) – Applicant request to Subsections (2), (4) and (6) are satisfied and do not require variances. Subsection (6) is not needed but has been requested due to a proposed Type IV excavation adjacent to the north. Subsections for excavation setbacks (1), (3), and (5) are reasonable requests consistent with requirements.
- Variance Request (3): Maximum Size of Excavation Sec. 20-1007(j) - Staff recommends existing LDR processes be utilized.
- Variance Request (4): Road Improvements, Sec. 20-1007(n) - Staff recommends existing LDR processes be utilized.
- Variance Request (5): Sec. 20-1007(h) – Entrance/access improvements- Staff recommends existing LDR processes be utilized.

Changes in the LDRs are not the result of the actions of the applicant. It is assumed that a literal enforcement of some of the provisions of the current LDR are resulting in an unnecessary and undue hardship. No details of “hardship” have been provided by the applicant other than desiring to resume and expand excavation operations.

Section 20-1457 – Generally.

(b) Under no circumstances shall the Board of Adjustment grant a variance to permit a use not permitted under the terms of the LDRs in the zoning district involved, or any use expressly or by implication prohibited by the terms of the LDRs. Establishment or expansion of a use otherwise prohibited or not permitted shall not be allowed by variance. Nonconforming uses of neighboring lands, structures, or buildings in the same zoning district, and permitted uses of lands, structures, or buildings in any other zoning district shall not be considered grounds for the granting of a variance.

Staff Finding of Fact

The excavation use is permitted under the terms of the LDRs in the zoning district involved, A-10. Therefore, the application to request a variance is acceptable and meets this LDR section.

Section 20-1460 Initial Determination and Required Findings by the Board of Adjustment

Section 20-1460(a) Initial Determination. *The Board of Adjustment shall first determine whether the need for the proposed variance arises out of the physical surroundings, shape, topographic conditions, or other physical or environmental conditions, that are unique to the specific property involved. If so, the Board of Adjustment shall make the required findings provided in Subsection (b) of this section. If, however, the condition is common to numerous sites so that requests for similar variances are likely to be received, the Board of Adjustment shall make the required findings listed in Subsection (b) of this section based on the cumulative effect of granting the variance to all who may apply.*

Staff Finding of Fact

Based upon the information provided in the application, the need for the variance does arise out of other physical conditions, as the site was designed and approved consistent with the regulations in 2007. Its physical condition today is a result of those requirements, which have changed.

In summary, the Development Director finds the application can be found in conformance with LDR Section 20-1460(a).

Section 20-1460(b) Required Findings. *The Board of Adjustment shall not grant a variance to any provision of the LDR unless it makes a positive finding, based on substantial competent evidence, on each of the following:*

- (1) *There are practical difficulties in carrying out the strict letter of the regulation.*

- Staff Finding of Fact: The applicant has partially excavated the site consistent with the previously issued permit. The practical difficulty in carrying out the strict letter of the regulation is the applicant would not be able to complete the excavation based on the previous (expired) excavation approval. This finding can be found to support specific requests of the application to include Variance Request (2): - Excavation setbacks - Sec. 20-1007(b) – Subsections for excavation setbacks (1), (3), and (5) are reasonable requests consistent with requirements. Subsection (6) is not needed but has been requested due to a proposed Type IV excavation adjacent to the north.

However, the following variance requests can be addressed by other means or are not supported by staff:

- Variance Request (1) – Time and Additional Quantity to Excavate - LDR' Sec. 20-1004 Type IV Bonus Excavation Areas, provide an existing process to request additional excavation amounts for Type IV excavations in Section 20-1004. Additional time is addressed in Section 20-1010. Staff recommends existing LDR processes be utilized.
- Variance Request (2): - Excavation setbacks - Sec. 20-1007(b) – Applicant request to Subsections (2), (4), and (6) are satisfied and do not require variances. Subsection (6) is not needed but has been requested due to a proposed Type IV excavation adjacent to the north.
- Variance Request (3): Maximum Size of Excavation Sec. 20-1007(j) - Staff recommends existing LDR processes be utilized.
- Variance Request (4): Road Improvements, Sec. 20-1007(n)
- Variance Request (5): Sec. 20-1007(h) – Entrance/access improvements

- (2) *The variance request is not based exclusively upon a desire to reduce the cost of developing the site.*

Staff Finding of Fact:

Variance Request (2): - Excavation setbacks - Sec. 20-1007(b) – Subsections for excavation setbacks (1), (3), and (5) are reasonable requests consistent with requirements. These are not related to reducing the cost of developing the site. This finding can be found to support this specific variance request for the application.

However, the following variance requests can be addressed by other means or are not supported by staff:

- Variance Request (1) – Time and Additional Quantity to Excavate - LDR' Sec. 20-1004 Type IV Bonus Excavation Areas, provide an existing process to request additional excavation amounts for Type IV excavations in Section 20-1004. Additional time is addressed in Section 20-1010. Staff recommends existing LDR processes be utilized.
- Variance Request (2): - Excavation setbacks - Sec. 20-1007(b) – Applicant request to Subsections (2), (4), and (6) are satisfied and do not require variances. Subsection (6) is not needed but has been requested due to a proposed Type IV excavation adjacent to the north.
- Variance Request (3): Maximum Size of Excavation Sec. 20-1007(j) - Staff recommends existing LDR processes be utilized.

- Variance Request (4): Road Improvements, Sec. 20-1007(n)
- Variance Request (5): Sec. 20-1007(h) – Entrance/access improvements

Variance requests 1, 2, and 3 can be addressed by other means in the LDRs. Variance requests 4 and 5 may be considered to reduce cost of developing the site by the applicant.

- (3) *The proposed variance will not substantially increase congestion on surrounding public streets, the danger of fire, or other hazard to the public.*

Staff Finding of Fact: While part of the variance requests are to resume and expand excavation operations on an existing excavation site, the expansion is not expected to substantially increase congestion on surrounding public streets, the danger of fire, or other hazard to the public. This finding can be found to support the staff supported portions of the application (Variance Request (2)).

- (4) *The proposed variance will not substantially diminish property values in, nor alter the essential character of the area surrounding the site.*

Staff Finding of Fact: Some of the variance requests are to resume and expand excavation operations on an existing excavation site with an expired permit. The applicant has indicated that the existing, ongoing commercial excavation development is not anticipated to alter the essential character of the surrounding area nor diminish property values. The subject property is adjacent to the DeSoto County landfill which already has regular heavy truck traffic. Nearby parcels to the south on SW CR 760 have been sold/purchased within the last 5-12 years, during the existence of the existing excavation site. This finding can be found to support the staff supported portions of the application (Variance Request (2)).

- (5) *The effect of the proposed variance is in harmony with the general intent of the LDRs and the specific intent of the relevant subject area of the LDRs.*

Staff Finding of Fact:

Some of the variance requests are to resume excavation operations on an existing excavation site with an expired permit. While the proposed is not in harmony with the general intent of the existing LDRs the applicant received approval with the previous LDRs and should be allowed the staff supported variance (Variance Request (2)) which are generally consistent with the previous LDRs so they can complete their excavation consistent with the previous approval/permit. This finding can be found to support the staff supported portions of the application.

In summary, the Development Director finds the application for Variance Request (2) is consistent with the 5 findings and, therefore, concludes that request in the application is in conformance with LDR Section 20-1460(b) with conditions.

STAFF REVIEW

Staff review has determined that the granting of one (1) variance request, specifically Variance Request (2): - Excavation setbacks - Sec. 20-1007(b) – Subsections for excavation setbacks (1), (3), and (5) is consistent with the requirements of the Comprehensive Plan and the Land Development Regulations regarding criteria for granting a variance (Section 20-1460) for the following reasons:

1. Section 20-1457 (a) states that the Board of Adjustment may grant a variance from the terms of the LDRs as will not be contrary to the public interest where, owing to special conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the provisions of the LDR would result in unnecessary and undue hardship.

Staff analysis: The applicant has requested multiple variances for the existing Type IV excavation site with an expired permit. The Narrative submitted by the applicant states that “unbeknownst to the applicant, the existing County Excavation Permit expired. This was learned when the applicant applied for a permit modification to add an additional five (5) foot depth to the existing excavation area. As a result, the applicant immediately applied for Excavation Permits with DeSoto County. However, during the course of the development’s operation, the Land Development Regulations for DeSoto County were modified. These modifications were inconsistent with the ongoing excavation operations as well as the requested continuation of operation for the development in conjunction with their engineering plans and existing Southwest Florida Water Management District permits.”

A Type IV excavation is permitted use by Special Exception in the A-10 zoning district. Applications for a Special Exception (USE-0153-2023) and Type IV Excavation (USE-0154-2023) were received in the Development Department on November 6, 2023, for a 52.87-acre excavation on the 95.92-acre parcel.

The excavation site previously received approval in 2004 for a 4 acre excavation on a 134.2 acre site (EP 2004-02). An expansion for a 51 acre excavation on a 95.9 acre site was approved (EP 2006-16) on January 23, 2007. An application to extend the approved permit was approved with a new expiration date of January 23, 2014.

Ordinance 2007-10, an Ordinance pertaining to Excavation Management amending and replacing Sections 14700 through 14719 of the LDRs in its entirety, was adopted by the DeSoto County Board of County Commissioners on May 22, 2007.

Staff found that Variance Request (2): - Excavation setbacks - Sec. 20-1007(b) – Subsections for excavation setbacks (1), (3), and (5) are reasonable requests consistent with requirements. However, the following variance requests can be addressed by other means in the LDRs and are not supported by staff:

- *Variance Request (1) – Time and Additional Quantity to Excavate - LDR’ Sec. 20-1004 Type IV Bonus Excavation Areas, provide an existing process to request additional excavation amounts for Type IV excavations in Section 20-1004. Additional time is addressed in Section 20-1010. Staff recommends existing LDR processes be utilized.*

- *Variance Request (2): - Excavation setbacks - Sec. 20-1007(b) – Applicant request to Subsections (2), (4), and (6) are satisfied and do not require variances. Subsection (6) is not needed but has been requested due to a proposed Type IV excavation adjacent to the north.*
- *Variance Request (3): Maximum Size of Excavation Sec. 20-1007(j) - Staff recommends existing LDR processes be utilized.*
- *Variance Request (4): Road Improvements, Sec. 20-1007(n)*
- *Variance Request (5): Sec. 20-1007(h) – Entrance/access improvements*

Given the existing non-conforming setbacks for the Type IV excavation site in Sec. 20-1007(b) – Subsections for excavation setbacks (1), (3), and (5), the literal enforcement of the LDR for these requirements would result in the applicant unable to perform any further mining of the site, an unnecessary and undue hardship.

2. Section 20-1457 (b) states that “Under no circumstances shall the Board of Adjustment grant a variance to permit a use not permitted under the terms of the LDRs in the zoning district involved, or any use expressly or by implication prohibited by the terms of the LDRs. Establishment or expansion of a use otherwise prohibited or not permitted shall not be allowed by variance. Nonconforming uses of neighboring lands, structures, or buildings in the same zoning district, and permitted uses of lands, structures, or buildings in any other zoning district shall not be considered grounds for the granting of a variance.”

Staff analysis: A Type IV excavation is permitted use by Special Exception in the A-10 zoning district. Applications for a Special Exception (USE-0153-2023) and Type IV Excavation (USE-0154-2023) were received in the Development Department on November 6, 2023, for a 52.87-acre excavation on the 95.92-acre parcel. This is an existing and unfinished project that was permitted under previous regulations. It is a permitted use in this zoning district by special exception.

Staff recommends approval of the following requested variances as they are consistent with the review criteria.

- *Variance Request (2) – Excavation Setbacks, Sec. 20-1007(b) (1), (3), and (5)*
- *Variance Request (4) – Road Improvement Bond or Fee, Sec. 20-1007(n), provided and conditioned upon BOCC approval of a proportionate share agreement.*

CONDITIONS AND SAFEGUARDS

The following conditions are recommended by staff:

1. Bonus excavation in excess of the 25% maximum can be sought following the provisions and application process set forth in LDR Sec. 20-1004 up to a maximum of 50% subject to BOCC approval.

2. Extensions of time for permits can be requested from the BOCC in accordance with LDR Sec. 20-1010, subject to BOCC approval.
3. Because the Board of Adjustment has no authority to mandate to the BOCC that the County enter into a proportionate share agreement, the required bond shall be put into place or fees paid per Sec. 20-1007(n), unless the BOCC agrees to a proportionate share agreement.

If approved by the Board of Adjustment, the applicant's applications for a Special Exception and Type IV Excavation will move forward in the public hearing process.

REQUIRED NOTIFICATIONS

Per Section 20-1465 Public Hearings, notification postcards were sent to property owners within 1,000 feet of the subject property and the property was posted with a sign indicating time, date, and location of the public hearing. A newspaper ad is not required.

CORRESPONDENCE

There has been no correspondence received either in support or in opposition to the requested Variance at the time of this staff report writing.

PUBLIC HEARING SCHEDULE

This is a quasi-judicial public hearing.

DeSoto County Board of Adjustment

Board of Adjustment Findings

Tuesday, June 2, 2026 5:30pm

APPEALS FROM DECISIONS OF BOARD OF ADJUSTMENT:

Any person or persons, jointly or severally, including any officer, department, or appointed board, commission of the County, aggrieved by any decision of the Board of Adjustment regarding a variance may appeal such decision to the Board of County Commissioners pursuant to LDR Section 20-1525.