

PETITION FOR REVIEW APPLICATION

TYPE OF HEARING: (MUST BE FILED WITHIN 14 CALENDAR DAYS OF DECISION): <input type="checkbox"/> ARCHITECTURAL REVIEW COMMISSION (ARC) <input type="checkbox"/> BARRIO LATINO COMMISSION (BLC) <input checked="" type="checkbox"/> VARIANCE REVIEW BOARD (VRB) <input type="checkbox"/> DECISION OF THE ZONING ADMINISTRATOR/HISTORIC PRESERVATION MANAGER <input type="checkbox"/> FORMAL DECISION OF THE ZONING ADMINISTRATOR		
Name of Petitioner: Joseph L. Fontana III and Angela Fontana, as Co-Trustees of the Joseph and Angela Family Trust under agreement dated December 24, 2004		P. Colin Rice, Older, Lundy, Koch & Martino (Agent)
Mailing Address (state, city, zip): P.O. Box 547795, Orlando, FL 32854		
Telephone Number: 813-254-8998	Day: Business Hours	Evening:
E-Mail Address (For notification purposes): crice@olderlundylaw.com		
Address of Subject Property: 541 Lucerne Ave. Tampa, FL 33606		
PETITIONER IS: <input checked="" type="checkbox"/> Applicant of the underlying decision <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Aggrieved person who participated in the decision and is the owner of property within 300 feet of the subject parcel		
<p style="color: red;">If Petitioner is not the property owner or the applicant of the original request, this form must be sent to the property owner and the applicant of the original request by Certified Mail no later than five (5) days after this Petition for Review is filed.</p>		
Date of Original Review Decision: February 10, 2026		<p style="color: red;">(Attach copy of the written decision)</p>
Attach decision letter and a statement on your basis for the Petition for Review. You must include the applicable City of Tampa Code Section that you assert was not correctly applied.		
I, the undersigned petitioner, hereby certify that all information on this petition is true and correct.		
 _____ Signature of Petitioner		
State of <u>FLORIDA</u> Physical Presence <input type="checkbox"/> or Online Notarization <input type="checkbox"/> County of <u>HILLSBOROUGH</u>		
Sworn to and subscribed before me this <u>23</u> day of <u>MARCH</u> , 20 <u>26</u> by <u>P. COLIN RICE</u> , who is/are personally known to me <input checked="" type="checkbox"/> or has produced _____, as identification.		
 _____ Notary Signature		Seal: 
Receipt Number: <u>724633</u>		Date Filed: <u>2/23/26</u>



City of Tampa

Jane Castor, Mayor

Development & Growth Management

Development Coordination

1400 North Boulevard
Tampa, Florida 33607

Office: (813) 274-3100

APPLICATION: VRB-25-83
OWNER/APPLICANT: Joseph L Fontana Lii/Colin Rice
REQUEST: Request to increase height: 35' to 53'(above ground level) or 61' (above mean sea level), reduce front yard setback from 25' to 4.9'
HEARING DATE: February 10, 2026
DATE OF SITE PLAN: August 13, 2025
BOARD ACTION: The Board **Denied** the request.
BOARD CONDITIONS: None

If you disagree with any part of this denial or determination, you may petition for review pursuant to Section 27-61. The petitioner shall file a petition for review of a decision no later than 5:00 p.m. 14 calendar days after the rendering of the decision sought to be reviewed. If the fourteenth day falls on a day the city clerk's office is closed, then the filing period shall expire at 5:00 p.m. on the next business day on which the city clerk's office is open. Please contact the City Clerk's office (274-8396) for additional information on the appeal process.

If you have any questions, please contact the Development Coordination at (813) 274-3100, option 2.

Ana Wallrapp

Ana Wallrapp, Chair
VARIANCE REVIEW BOARD

2/13/2026

Date

David B. Singer
Attorney

dsinger@olderlundylaw.com
Tampa (813) 254-8998



February 23, 2026

Tampa City Clerk
315 W. Kennedy Blvd.
Tampa, FL 33602

Re: Petition for Review Application – VRB-25-0000083

To Whom It May Concern:

Our law firm represents the petitioner and property owner, Joseph L. Fontana III and Angela Fontana, as Co-Trustees of the Joseph and Angela Family Trust under agreement dated December 24, 2004, regarding VRB 25-0000083 – 541 Lucerne Ave. Tampa, FL 33606. Pursuant to Sec. 27-61(b)(2), Petitioner requests a *de novo* review hearing before the Tampa City Council of the decision made regarding this matter during the Variance Review Board Hearing held on February 10, 2026 in which the Variance request was denied despite a request for continuance due to pending litigation in Case No. 22-CA-005638. Neither City Staff nor the City legal department offered support for this continuance request even in spite of the active litigation.

Basis for Review (Sec. 27-61(g))

The variance request for “height” is not needed. This matter had already been decided, agreed to by the City’s legal staff, specified in an enforceable settlement agreement, approved unanimously by City Council and signed into law by the Mayor of Tampa. To be clear, the City’s development staff erroneously referred this matter for review to the VRB. The Applicant informed the City’s legal staff of the error and yet they sat idle as the variance was heard despite this matter being set for judicial recourse in front of Judge Wolf in a settlement enforcement action here in Hillsborough County (Case No. 22-CA-005638). Further, while this variance request is not needed, the City, additionally and erroneously, has misapplied the definition of “height” in Sec. 27-43 as it applies to the maximum 35’ height limitation in the RS-75 Zoning District pursuant to Sec. 27-156, Tampa City Code. The structure is and will remain under 35-feet in height as measured from the lowest finished floor. That is, despite the clear language in the enforceable settlement agreement, *a variance was never needed for purposes of height*. Compulsion to the Variance Review Board, let alone denial, is improper. The City has put Petitioner in such an unreasonable position that Petitioner has provided formal notice to the City of his intent to seek

David B. Singer
Attorney

dsinger@olderlundylaw.com
Tampa (813) 254-8998



sanctions in the form of attorney's fees and costs under Florida Statute 57.105 to the City's legal counsel. It is the Applicant's request that the parties be put back into the same position they were when the settlement agreement was unanimously approved by this City Council.

Enclosed with this petition please find:

1. Settlement Agreement
2. Originally filed application
3. Originally filed site plan
4. FAA No Hazard to Air Navigation
5. Decision letter from 2/10/26 VRB Hearing
6. Affidavit Authorizing Agent
7. Complete Petition for review application
8. Application fee check
9. Sec. 57.105 Notice Letter

Respectfully,

//s// David B. Singer

David B. Singer
Older Lundy Koch & Martino



VARIANCE REVIEW BOARD (VRB)

AFFIDAVIT TO APPLY FOR A ZONING CODE RELATED APPLICATION and AUTHORIZED AGENT FOR AN APPLICATION TO THE CITY OF TAMPA

Multiple authorizations may be necessary if there is more than one property owner. APPLICATION/RECORD NUMBER:

PROPERTY (LOCATION) ADDRESS(ES): 541 Lucerne Ave. Tampa

FOLIO NUMBER(S): 169242-0000

"That I am (we are) the owner(s) and record title holder(s) of the property noted herein" Property Owner's Name(s):

Fontana Joseph L III Trustee; Fontana Angela Trustee *

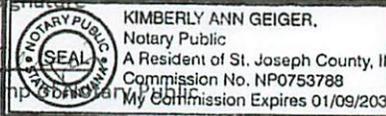
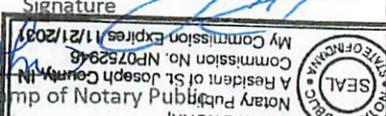
"That this property constitutes the subject of an application for the VARIANCE REVIEW BOARD (VRB)."

I, THE UNDERSIGNED APPLICANT/AGENT, HEREBY CERTIFY THAT ALL INFORMATION ON THIS APPLICATION IS TRUE AND COMPLETE AND HEREBY AUTHORIZE AND ALLOW REPRESENTATIVES OF THE CITY TO ACCESS THE PROPERTY UNDERGOING REVIEW FOR THE ABOVE REFERENCED REQUEST. IF MY PROPERTY IS GATED, I WILL PROVIDE ACCESS TO THE PROPERTY UPON REQUEST FROM THE CITY. I ALSO CONSENT TO THE POSTING OF A SIGN ON MY PROPERTY IF THERE IS A THIRD-PARTY SUBMITTAL OF A PETITION FOR REVIEW.

"That this affidavit has been executed to induce the City of Tampa, Florida, to consider and act on the above described application and that the undersigned has(have) appointed and does(do) appoint the agent(s) stated herein as his/her(their) agent(s) solely to execute any application(s) or other documentation necessary to affect such application(s)" (if applicable). AGENT'S NAME: P. Colin Rice; David B. Singer; Elizabeth Kellar-Kelly, Older, Lundy, Koch & Martino

The undersigned authorizes the above agent(s) to represent me (us) and act as my (our) agent(s) at any public hearing on this matter (if applicable).

The undersigned authorizes the above agent(s) to agree to any conditions necessary to effectuate this application. Both owner and agent must sign and have their names notarized.

STATE of FLORIDA <u>Indiana</u> COUNTY of <u>St Joseph</u>	STATE of FLORIDA <u>Indiana</u> COUNTY of <u>St Joseph</u>
Sworn to (or affirmed) and subscribed before me by means of physical present or online notarization, this <u>4</u> day of <u>August</u> , 2025, by	Sworn to (or affirmed) and subscribed before me by means of physical present or online notarization, this <u>4th</u> day of <u>August</u> , 2025 by
<u>Angela Dimundo A. Dimundo</u> Printed Name (Owner)	<u>Joseph L. Fontana III</u> Printed Name (Agent)
<u>Kimberly Ann Geiger</u> Signature and Stamp of Notary Public	<u>Kristin Hoff</u> Signature and Stamp of Notary Public
	
Personally known or produced identification: <u>Florida</u> Type of identification <u>Driver License</u>	Personally known or produced identification: Select <u>Florida</u> Type of identification <u>Driver License</u>

* If the applicant/owner is a corporation, trust, LLC, Professional Association or similar type of arrangement, please provide documentation from the corporation, trust, etc., indicating that you have the ability to authorize the application.

David B. Singer, Esq.
Attorney at Law

tgarding@olderlundylaw.com
813.254.8998



February 17, 2026

[Via E-Mail - Toyin.Aina-Hargrett@tampagov.net](mailto:Toyin.Aina-Hargrett@tampagov.net)

Toyin Aina-Hargrett, Esq.
City of Tampa
315 E Kennedy Blvd 1st Floor
Tampa, FL 33602

Re: **STATUTORY NOTICE - § 57.105, FLORIDA STATUTES**
Fontana v. City of Tampa (Case No.: 22-CA-005638)

Dear Ms. Aina-Hargrett:

This firm represents the Plaintiff in the matter above. On July 2, 2025, City of Tampa Chief Building Official JC Hudgison demanded that Plaintiff obtain a variance concerning the height of his residential dwelling located on Davis Islands. The City's legal department, on multiple occasions, has made it abundantly clear that it will require such a variance. This position lies in sharp contrast to the City's obligations under the Settlement Agreement entered by and between Plaintiff and the City, which was filed in the matter above [DE 26].

The City's variance demand is not supported by the material facts nor is it supported by the application of existing law to the facts. This letter serves as notice to you and the City under section 57.105, Fla. Stat. Should the City fail to withdraw its demand for a height variance, Plaintiff will pursue sanctions against City of Tampa for the reasons detailed in the enclosed Motion for Sanctions. Pursuant to section 57.105, Fla. Stat., you have twenty-one (21) days from your receipt of this letter to take the action demanded herein.

PLEASE GOVERN YOURSELVES ACCORDINGLY.

Cordially,

David B. Singer

DBS/ab

IN THE CIRCUIT COURT FOR THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

JOSEPH L. FONTANA,

Plaintiff,

Case No.: 22-CA-005638

v.

Division: B

CITY OF TAMPA,

Defendant.

JOINT NOTICE OF SETTLEMENT

All take notice of the following:

1. The parties to this lawsuit have settled the above-captioned lawsuit. The terms of settlement are attached as **Exhibit A**.
2. In accordance with this Court's order dated December 14, 2023, the Court will retain jurisdiction to enforce the terms of the parties' negotiated settlement agreement.

JOINTLY SUBMITTED:

/s/ Matt Newton

Matt Newton
Florida Bar No. 0111679
David B. Singer
Florida Bar No. 72823
OLDER LUNDY
1000 W. Cass St.
Tampa, FL 33606
Tel: 813.254.8998
Fax: 813.839.4411
mnewton@olderlundylaw.com
dsinger@olderlundylaw.com
Attorneys for Plaintiff

/s/ Toyin Aina Hargrett

Toyin K. Aina Hargrett
Senior Assistant City Attorney II
Florida Bar No. 0178950
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Tampa, FL 33602
Tel: 813-274-8797
Fax: 813-274-8809
toyin.aina-hargrett@tampagov.net
lisa.levy@tampagov.net
Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that a copy of the above notice was filed with the State's E-Filing Portal on July 10, 2024, and a copy was electronically generated to all counsel of record.

Respectfully submitted,

/s/ Matt Newton

Matt Newton

EXHIBIT A

RESOLUTION NO. 2024 - 486

A RESOLUTION AUTHORIZING A COMPROMISE, NON-MONETARY SETTLEMENT; SETTING FORTH TERMS; REQUIRING THE DISMISSAL OF THE LAWSUIT ENTITLED *FONTANA V. CITY OF TAMPA*, CASE NO. 22-CA-005638, IN THE THIRTEENTH JUDICIAL CIRCUIT OF FLORIDA; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, a dispute arose between the City of Tampa and Joseph L. Fontana related to the City of Tampa's application of its floodplain management ordinance (formerly City Code §§ 5.111 et seq., and currently City Code §§ 5.121, et seq.) as to Fontana's property located at 541 Lucerne Avenue, Tampa, Florida;

WHEREAS, on July 1, 2022, Joseph L. Fontana filed a Complaint for Declaratory and Injunctive Relief, entitled *Joseph L. Fontana v. City of Tampa*, Case No. 22-CA-001314, in the Thirteenth Judicial Circuit, State of Florida, related to the dispute;

WHEREAS, the City of Tampa gave Fontana the option to "raze" or "raise" the property in order to comply with the City's floodplain management ordinance, and Fontana has opted and agreed to "raise" the property, thereby resolving the dispute;

WHEREAS, the agreement is non-monetary but affords Fontana a defined period of time in which to raise the subject property and comply with the City's floodplain management ordinance;

WHEREAS, the proposed settlement agreement would not include any admission of wrongdoing by the City or Fontana, but set forth terms to resolve the dispute; and

WHEREAS, in light of the uncertainties of trial and the risk of a final order that conflicts with the City's interpretation of its floodplain management ordinance, the Legal Department recommends that said offer of compromise settlement be accepted.

NOW THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TAMPA, FLORIDA:

Section 1. That the proposed settlement agreement between Plaintiff Joseph Fontana and the City of Tampa is hereby approved and authorized in its entirety or in substantially similar form.

Section 2. The Mayor of the City of Tampa is authorized and empowered to execute, and the City Clerk to attest and affix the official seal of the City of Tampa to said settlement agreement on behalf of the City of Tampa.

Section 3. That other proper officers of the City of Tampa are hereby authorized to do all things necessary and proper in order to carry out and make effective the provisions of this Resolution, which shall take effect immediately upon its adoption.

PASSED and ADOPTED by the City Council of the City of Tampa, Florida, on
JUN 06 2024.

ATTEST:


City Clerk/Deputy City Clerk


Chairman/Chairman Pro-Tem, City Council

Prepared and approved

s/ Toyin K. Aina-Hargrett

Toyin K. Aina-Hargrett
Sr. Assistant City Attorney

Settlement Agreement

Joseph Fontana ("Fontana") and the City of Tampa, collectively Parties ("Parties"), have entered this agreement ("Agreement") to resolve their dispute relating to single family residential home ("Home") at 541 Lucerne Avenue in Tampa, Florida, remodeled by Fontana, from 2011 through June of 2018 ("Property.")

Background

FEMA administers a program on behalf of the United States known as the National Flood Insurance Program (NFIP). The program results in discounted flood insurance rates for communities that adopt ordinances to promote flood resistant construction in floodplain areas. A dispute has arisen between Fontana and the City of Tampa concerning the language of a floodplain-management ordinance.

The NFIP strongly encourages the safe, professional elevation of structurally sound buildings (public and private) to mitigate flooding risk and subsequent flood insurance claims. The International Association of Structural Movers (IASM) is a national trade association whose members are in the professional specialized practice of elevating structures. IASM companies in the State of Florida are reporting unprecedented demand for structures to be raised in the aftermath of hurricanes Ian and Idalia, and an emphasis on elevating community-serving structures in vulnerable areas. Coupled with prevailing practices to elevate structures during Florida's "dry season," IASM members are reporting a long timeline to complete new projects.

The Parties' dispute is specific to and concerns only the City's floodplain-management ordinance and has been ongoing since mid-June of 2018. A petition for writ of certiorari concerning this matter was pending in Hillsborough County's Thirteenth Judicial Circuit styled *Fontana v. City of Tampa*, Case No. 21-CA-001314; however, this matter was dismissed by the Court by way of an *Order Dismissing Petition for Lack of Jurisdiction* that was entered on August 5, 2022. Subsequently, a declaratory action concerning this matter was filed in Hillsborough County's Thirteenth Judicial Circuit styled *Fontana v. City of Tampa*, Case No. 22-CA-005638 (Fla. 13th Cir. Ct., filed on July 1, 2022) and remains pending. In the event judgment is entered for Fontana in that case, uncertainty exists as to whether that judgment could impact the City of Tampa's flood insurance discount rating. Moreover, in the event judgment is entered in favor of the City of Tampa, Fontana would be required to remove a substantial amount of the unpermitted improvements he has installed.

Therefore, Fontana has offered to elevate ("Lift") the Home to resolve the case, thus making all pending matters moot. The City of Tampa gains no direct monetary advantage as a result of Fontana's desire to Lift the Home, other than the orderly and efficient application of the City's interpretation of its floodplain-management ordinance. Fontana's offer and the City of Tampa's acceptance of that offer promotes the public interest by eliminating the uncertainty of impact to the City's flood rating. Moreover, Fontana gains the ability to enjoy a traditional multi-car garage after the Lift is safely and successfully completed by his chosen contractor. Finally, the goals of both the National Flood Insurance Program and Tampa's Comprehensive Plan are further advanced by promoting flood resistant construction in the City of Tampa.

Agreement Terms

1. **Commitments by Fontana.** In exchange for the City of Tampa's commitments in this Agreement, Fontana covenants and agrees to the following:

1.1. Lift the Home. Fontana shall diligently engage all appropriately licensed professionals required to Lift the Home to at least the Property's current base flood elevation of 12', according to FEMA flood map number 12057CO362J (Oct. 7, 2021). The Lift's elevation may exceed this height, subject to approval by the Federal Aviation Authority as not to a height which would interfere with navigational airspace.

1.1.1. Engagement and permitting. Fontana shall actively engage to enter into a contract with a qualified structure lifting company for the purpose of having the Home lifted and this within the availability of that company to undertake Fontana's Home's lifting project. Once the Home's lifting contract has been signed by Fontana and the lifting company, that lifting company's agent(s) shall promptly apply for applicable structural lifting approvals.

1.1.2. Garage. Upon the Lift's completion, the Parties understand that Fontana intends to construct a garage/carport beneath the Home's finished floor and on the existing grade, with the capacity to store a minimum of three (3) passenger vehicles. The garage/carport shall be equipped with proper flood openings (i.e. flood vents) and be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters to prevailing standards.

1.1.3. Completion of Lift. The Parties understand that vendor demand and environmental variables frustrate the predictability of the Lift's completion. Nevertheless, Fontana and his agents shall diligently pursue the Lift's prompt completion. Unless extended by the Parties, the Lift shall be completed no later than 11:59 PM EST on Saturday, May 31, 2027.

1.2. Inspection. Concurrent with his commitments under Section 1.1. of this Agreement, Fontana shall have the option of engaging a private provider, as defined by Florida Statute 553.791, to inspect the Home's second level, to cross reference permit records against improvements to the Home's second level, to advise Fontana what permitting deficiencies might exist, and if any, Fontana shall submit for those permits. Further, the private provider shall prepare a report of any deficiencies found during their inspection and Fontana shall promptly and diligently cure any and all deficiencies in accordance with Florida Building Code, City of Tampa Code of Ordinances and any other applicable law. As to the areas below the lifted structure, Fontana acknowledges that this area must meet the requirements of the City of Tampa's current flood ordinance. Consistent with the Florida Building Code (FBC), Fontana further acknowledges that the plan review and inspection of the structural elements for the parking garage must be inspected by the City of Tampa, because they are below the Design Flood Elevation. *See*, Florida Building Code R322.2.1. Moreover, official guidance provided by the State of Florida, Division of Emergency Management requires local officials to review applications for compliance with the flood load and flood-resistant construction requirements of the FBC when buildings are proposed to be located in special flood hazard areas, and to inspect those aspects when permits are issued.

1.3. Freeze of additional development. With the limited exception of maintaining, repairing, and correcting any existing improvements, Fontana shall not further improve the Property until the completion of his duties under this Agreement.

1.4. Waiver of liability and assumption of risk. Fontana waives all claims adverse to the City of Tampa relating to BID-12-0384200, the underlying litigation, and this Agreement. Fontana covenants and agrees that he has familiarized himself with the Lift process and assumes all risks relating to the Lift. Fontana covenants and agrees that the City of Tampa's execution of this Agreement, and ultimate issuance of any permits relating to the Lift, does not guarantee or warrant the safety or ultimate success

of the Lift. Fontana covenants and agrees that he alone has the duty and responsibility to investigate, identify, and engage licensed, insured, and bonded professionals capable of completing the Lift he desires in a manner consistent with all prevailing standards of care.

2. Commitments by the City of Tampa. In exchange for Fontana's commitments in this Agreement, the City of Tampa covenants and agrees to the following:

2.1. **Facilitation of applications.** To promote the intent of this Agreement, the City of Tampa shall diligently process all applications relating to this Agreement and apply its discretion in a manner absolutely and strictly consistent with the Agreement, the State of Florida's structural lifting standards, City Code and any other applicable law.

2.2. **Scope of inspections and reviews.** The City of Tampa acknowledges that Fontana may elect to utilize a private provider as set forth in Section 1.2, above.

2.3. **Full resolution of outstanding permitting issues.** Upon the completion of the items described in this Agreement, the City of Tampa shall promptly resolve open building permit BL.D-12-0384200.

2.4. **Waiver.** The City of Tampa waives any existing claims adverse to Fontana relating to BL.D-12-0384200 and the subject matter of *Fontana v. City of Tampa*, Case No. 22-CA-005638 (Fla. 13th Cir. Ct. July 1, 2022).

2.5. **Emergency-related extensions.** In the event any deadline of this Agreement conflicts with the timeline of a development order extended by Florida Statute §252.363 (2023), the later of the two deadlines shall apply.

3. Mutual Duties. In addition to the commitments above, the Parties mutually covenant and agree to the following:

3.1. **Approval by Court.** Within five business days of this Agreement's execution, the Parties shall jointly notify the Court of this settlement and ask that it maintain jurisdiction to enforce its terms. The Parties agree that the unique facts of this case merit the Court's extended jurisdiction over this matter. Upon conclusion of the terms of this Agreement, the lawsuit *Fontana v. City of Tampa*, Case No. 22-CA-005638 will be dismissed with prejudice, with the Parties each bearing their own costs.

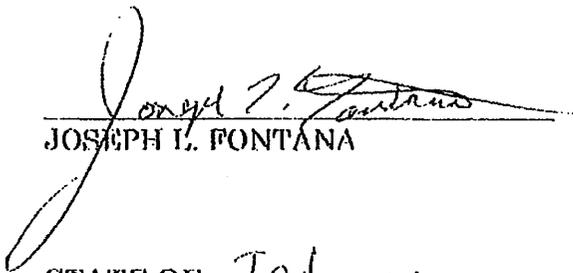
3.2. **Merger and non-reliance.** This written Agreement represents the full and complete Agreement of the Parties. Neither party has been induced to consent to these terms by merit of any commitment, factual premise, or other matter that is not contained within this Agreement. Each party has had sufficient time to review the terms of this Agreement before execution. This document is the full, final, and only agreement between the Parties. All written and verbal statements made prior to the execution of this written Agreement are merged into this written Agreement.

3.3. **Severability.** The invalidity, in whole or in part, of any component of this Agreement shall not affect the validity of the remaining portions, which shall remain in full force and effect.

3.4. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

EACH OF THE UNDERSIGNED HAS CAREFULLY READ THE FOREGOING SETTLEMENT AGREEMENT AND FULL AND FINAL GENERAL RELEASE, KNOW THE CONTENTS THEREOF, FULLY UNDERSTAND IT, AND SIGN THE SAME AS HIS, HER, OR ITS OWN FREE ACT.

CAUTION! READ BEFORE SIGNING

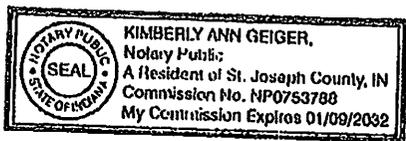


JOSEPH L. FONTANA

STATE OF Indiana
COUNTY OF St Joseph

The foregoing was acknowledged before me on this 18 day of May, 2024, by Joseph L. Fontana, who is personally known to me or who produced Driver License as identification, and who did take an oath.

(seal)



NOTARY PUBLIC
State of Florida State of Indiana
Signed: Kimberly Ann Geiger
My Commission expires: 1/9/2032

CAUTION! READ BEFORE SIGNING

ON BEHALF OF CITY OF TAMPA
per Reso. No. 2024- 486

Executed By: Jane Castor
Jane Castor, Mayor

ATTEST:
Bethany Sandoval
City Clerk / Deputy City Clerk

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

THE FOREGOING INSTRUMENT was acknowledged before me by means of physical presence or online notarization, this 12th day of June, 2024, by Jane Castor as Mayor of the City of Tampa, a municipal corporation organized and existing under the laws of the State of Florida, on behalf of the City. She is personally known to me.



Conchi I. Tilton
Signature of Notary

Conchi I. Tilton
Print or Type Name

Notary Public: State of Florida
My Commission Expires: 9/6/25

APPROVED AS TO
LEGAL SUFFICIENCY:

Toyin K. Aina-Hargrett
Toyin K. Aina-Hargrett,
Senior Assistant City Attorney



VARIANCE REVIEW BOARD (VRB)

AFFIDAVIT TO APPLY FOR A ZONING CODE RELATED APPLICATION and AUTHORIZED AGENT FOR AN APPLICATION TO THE CITY OF TAMPA

Multiple authorizations may be necessary if there is more than one property owner. APPLICATION/RECORD NUMBER:

PROPERTY (LOCATION) ADDRESS(ES): 541 Lucerne Ave. Tampa

FOLIO NUMBER(S): 169242-0000

"That I am (we are) the owner(s) and record title holder(s) of the property noted herein" Property Owner's Name(s):

Fontana Joseph L III Trustee; Fontana Angela Trustee *

"That this property constitutes the subject of an application for the VARIANCE REVIEW BOARD (VRB)"

I, THE UNDERSIGNED APPLICANT/AGENT, HEREBY CERTIFY THAT ALL INFORMATION ON THIS APPLICATION IS TRUE AND COMPLETE AND HEREBY AUTHORIZE AND ALLOW REPRESENTATIVES OF THE CITY TO ACCESS THE PROPERTY UNDERGOING REVIEW FOR THE ABOVE REFERENCED REQUEST. IF MY PROPERTY IS GATED, I WILL PROVIDE ACCESS TO THE PROPERTY UPON REQUEST FROM THE CITY. I ALSO CONSENT TO THE POSTING OF A SIGN ON MY PROPERTY IF THERE IS A THIRD-PARTY SUBMITTAL OF A PETITION FOR REVIEW.

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The undersigned authorizes the above agent(s) to represent me (us) and act as my (our) agent(s) at any public hearing on this matter (if applicable).

The undersigned authorizes the above agent(s) to agree to any conditions necessary to effectuate this application. Both owner and agent must sign and have their names notarized.

STATE of FLORIDA <u>Indiana</u> COUNTY of <u>St Joseph</u> Sworn to (or affirmed) and subscribed before me by means of physical present or online notarization, this <u>4</u> day of <u>August</u> , 202 <u>5</u> , by <u>Angela Dimundo A. DiMundo</u> Printed Name (Owner)	STATE of FLORIDA <u>Indiana</u> COUNTY of <u>St Joseph</u> Sworn to (or affirmed) and subscribed before me by means of physical present or online notarization, this <u>4th</u> day of <u>August</u> , 202 <u>5</u> by <u>Joseph L. Fontana III</u> Printed Name (Agent)
<u>Kimberly Ann Geiger</u> Signature and Stamp Personally known or produced identification: <u>Florida</u> Type of identification <u>Driver License</u>	<u>Kristil L Rohrer</u> Signature and Stamp Personally known or produced identification: <u>Florida</u> Type of identification <u>Driver License</u>

* If the applicant/owner is a corporation, trust, LLC, Professional Association or similar type of arrangement, please provide documentation from the corporation, trust, etc., indicating that you have the ability to authorize the application.



VARIANCE REVIEW BOARD (VRB)

AFFIDAVIT TO APPLY FOR A ZONING CODE RELATED APPLICATION and AUTHORIZED AGENT FOR AN APPLICATION TO THE CITY OF TAMPA

Multiple authorizations may be necessary if there is more than one property owner. APPLICATION/RECORD NUMBER:

PROPERTY (LOCATION) ADDRESS(ES): 541 Lucerne Ave. Tampa

FOLIO NUMBER(S): 169242-0000

"That I am (we are) the owner(s) and record title holder(s) of the property noted herein" Property Owner's Name(s):
Fontana Joseph L III Trustee; Fontana Angela Trustee *

"That this property constitutes the subject of an application for the VARIANCE REVIEW BOARD (VRB)."

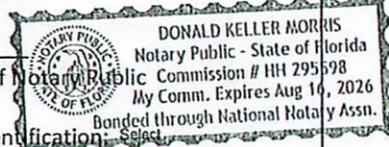
I, THE UNDERSIGNED APPLICANT/AGENT, HEREBY CERTIFY THAT ALL INFORMATION ON THIS APPLICATION IS TRUE AND COMPLETE AND HEREBY AUTHORIZE AND ALLOW REPRESENTATIVES OF THE CITY TO ACCESS THE PROPERTY UNDERGOING REVIEW FOR THE ABOVE REFERENCED REQUEST. IF MY PROPERTY IS GATED, I WILL PROVIDE ACCESS TO THE PROPERTY UPON REQUEST FROM THE CITY. I ALSO CONSENT TO THE POSTING OF A SIGN ON MY PROPERTY IF THERE IS A THIRD-PARTY SUBMITTAL OF A PETITION FOR REVIEW.

"That this affidavit has been executed to induce the City of Tampa, Florida, to consider and act on the above described application and that the undersigned has(have) appointed and does(do) appoint the agent(s) stated herein as his/her(their) agent(s) solely to execute any application(s) or other documentation necessary to affect such application(s)" (if applicable).
AGENT'S NAME: P. Colin Rice; David B. Singer; Elizabeth Kellar-Kelly, Older, Lundy, Koch & Martino

The undersigned authorizes the above agent(s) to represent me (us) and act as my (our) agent(s) at any public hearing on this matter (if applicable).

The undersigned authorizes the above agent(s) to agree to any conditions necessary to effectuate this application. Both owner and agent must sign and have their names notarized.

<p>STATE of FLORIDA COUNTY of <u>Hillsborough</u></p> <p>Sworn to (or affirmed) and subscribed before me by means of physical present or online notarization, this _____ day of _____, 202_, by _____</p> <p>Printed Name (Owner) Signature</p> <p>_____ Signature and Stamp of Notary Public</p> <p>Personally known or produced identification: <input type="checkbox"/> Select</p> <p>Type of identification</p>	<p>STATE of FLORIDA COUNTY of <u>HILLSBOROUGH</u></p> <p>Sworn to (or affirmed) and subscribed before me by means of physical present or online notarization, this <u>5</u> day of <u>August</u>, 202<u>5</u>, by <u>P. Colin Rice</u></p> <p>Printed Name (Agent) Signature</p> <p>_____ Signature and Stamp of Notary Public</p> <p>Personally known or produced identification: <input type="checkbox"/> Select</p> <p>Type of identification</p>
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* If the applicant/owner is a corporation, trust, LLC, Professional Association or similar type of arrangement, please provide documentation from the corporation, trust, etc., indicating that you have the ability to authorize the application.

P. Colin Rice
Attorney

crice@olderlundylaw.com
Tampa (813) 254-8998

August 13, 2025



Re: 541 Lucerne Ave, Tampa, FL 33606

Via City of Tampa Accela Portal

NARRATIVE IN SUPPORT OF VARIANCE REQUEST

Our law firm has the pleasure of representing the owners of the property located at 541 Lucerne, Avenue, Tampa, FL 33606 (“Subject Property”). Application is hereby made for variance relief from the following sections of the City of Tampa Land Development Code:

1. Sec. 27-156, Table 4-2 standards for the RS-75 zoning district - height: 35' to 53'(above ground level) or 61' (above mean sea level)

and

2. Sec. 27-156, Table 4-2 standards for the RS-75 zoning district – front yard setback: 25' to 4.9'

Background

The Subject Property was the focus of a yearslong dispute between the property owner and the City of Tampa concerning building permits and the City’s floodplain regulations. This dispute resulted in a settlement agreement signed by the property owner, The Tampa City Council Chari Pro-Tem, and Mayor Castor in June of 2024 in Hillsborough County Case Number 22-CA-005638 (“Settlement Agreement”).

The Subject Property had undergone structural improvements from 2011 to 2018. The dispute between parties had centered on language and interpretation of the City’s floodplain-management ordinance. The Settlement Agreement provides, in relevant part, that the entire structure is to be elevated/lifted to at least the base flood elevation at the time of its execution and that the elevation may exceed this height subject to approval by the Federal Aviation Authority (“FAA”) as not to a height which would interfere with navigational airspace. Mr. Fontana has secured a “Determination of No Hazard to Air Navigation” from the FAA for a height of 53 feet above ground level and 61 feet above mean sea level. While the structure may not ultimately reach these maximum approved FAA heights, the height variance request is intended to be consistent with FAA findings.

The request to reduce the front yard setback is related to the settlement agreement and increased height in that the only way to access the existing front door would be via external, staircase that must naturally protrude into the front yard. Please refer to the submitted site plan for dimensional detail. The edge of the staircase would be no closer than 4.9' from the front yard property line.

As such, the need for each variance request is related to the same circumstance, and the following responses to the Sec. 27-80(a) are intended to apply to both requests.

- (1) The alleged hardships or practical difficulties are unique and singular with respect to the property, or with respect to a structure or building thereon, and are not those suffered in common with other properties, structures, or buildings similarly located.

Response: The structure at issue is the product of several renovations that took place over the course of many years. The property owner and City resolved disagreement about the applicability of certain flood plain regulations as it applied to this singular structure via settlement agreement that specifically calls for the structure to be elevated. The purpose and substance of this agreement can only be achieved by virtue of relief from the height and setback restrictions detailed herein.

- (2) The hardship or practical difficulty does not result from the actions of the applicant. A self-created hardship or practical difficulty shall not justify a variance.

Response: Again, this situation is the product of a settlement agreement intended to moot an ongoing disagreement in code interpretation between the property owner and the City. Applicant suffered certain hardships through the periodic issuance of permits leading to the present situation, and the solution requires raising the structure.

- (3) The variance, if granted, will not substantially interfere with or injure the health, safety, or welfare of others whose property would be affected by allowance of the variance.

Response: No relief is requested from side yard setbacks, and the existing structure will be no closer to any adjacent property. The Federal Aviation Administration has already confirmed the requested height presents no danger to the health, safety or welfare of others.

- (4) The variance is in harmony with, and serves the general intent and purpose of, this chapter and the adopted Tampa Comprehensive Plan.

Response: The Comprehensive Plan encouraged development that mitigates against flood hazard risks. Elevating this structure directly furthers this goal.

- (5) Allowing the variance will result in substantial justice being done, considering both the public benefits intended to be secured by this chapter and the individual hardships or practical difficulties that will be suffered due to a failure of the board to grant a variance.

Response: granting this variance will result in substantial justice being done because it is the only way the Settlement Agreement may be effectuated. The Property owner will suffer the loss of the time and resources devoted to reaching a mutually agreeable settlement with the City of Tampa that requires approval of these two reasonable requests.

Respectfully submitted,

//s// P. Colin Rice
P. Colin Rice, Esq.

SEE NOTES

1. EXISTING AND PROPOSED SITE PLANS ARE BASED UPON SURVEY INFORMATION PROVIDED TO THE PATTERSON STRUCTURAL MANNING AND SPINNEY, LLC, AND FROM BEST AVAILABLE INFORMATION. THE CONTRACTOR SHALL CONFIRM SITE CONDITIONS PRIOR TO BEGINNING WORK.
2. EXISTING STRUCTURE IS LOCATED IN A SUBURBAN RESIDENTIAL NEIGHBORHOOD. THE CONTRACTOR AND ALL SUBCONTRACTORS SHALL TAKE ALL NECESSARY PRECAUTIONS TO PROTECT AND PRESERVE NEIGHBORING STRUCTURES, FENCES, PUBLIC STREETS, AND UTILITIES.
3. THE CONTRACTOR SHALL COORDINATE WITH EXISTING UTILITY PROVIDERS REGARDING DISCONNECT FROM THE WORK, TEMPORARY SERVICE DURING THE WORK, AND RECONNECTION OF UTILITY SERVICE AFTER THE WORK IS COMPLETED.
4. THE CONTRACTOR SHALL COORDINATE WITH THE GOVERNING MUNICIPALITY'S TRAFFIC ENGINEERING DEPARTMENT, REGARDING ANY NECESSARY ROAD CLOSURES.
5. NO NEW CURB CUTS OR DRIVEWAYS ARE ANTICIPATED AS A PART OF THIS WORK.
6. EXISTING LANDSCAPING AROUND PERIMETER OF HOME TO REMAIN. DO NOT DISTURB ANY NATIVE VEGETATION IN THE COURSE OF THE WORK. RESTORE SOILS, GRADE, AND SOD UPON COMPLETION OF THE WORK.
7. THE DEVELOPMENT OF THE PROPERTY AS SHOWN WILL NOT HAVE ANY ADVERSE BIOLOGICAL EFFECTS ON ADJACENT PROPERTIES.

Increase height
35' to 53'(AGL) or
61'(AMSL)
Sec. 27-156, Table 4-2

Variance Review Board (VRB Site Plan)
1. Increase height: 35' to 53'(AGL) or 61'(AMSL)
- Sec. 27-156, RS-75
2. Decrease front yard setback: 25' to 4.9'
- Sec. 27-156, RS-75

EXIST. BUILDING HEIGHT:	34.95 FT
PROP. BUILDING HEIGHT:	45.94 FT
EXIST. LIVING AREA:	4350 SQ FT
PROP. LIVING AREA:	7220 SQ FT
EXIST. BUILDING FOOTPRINT:	5136.44 SQ FT
PROP. BUILDING FOOTPRINT:	5136.44 SQ FT
EXISTING LOT AREA:	13277.29 SQ FT
EXIST. BUILDING COVERAGE:	45.80%
PROP. BUILDING COVERAGE:	45.80%

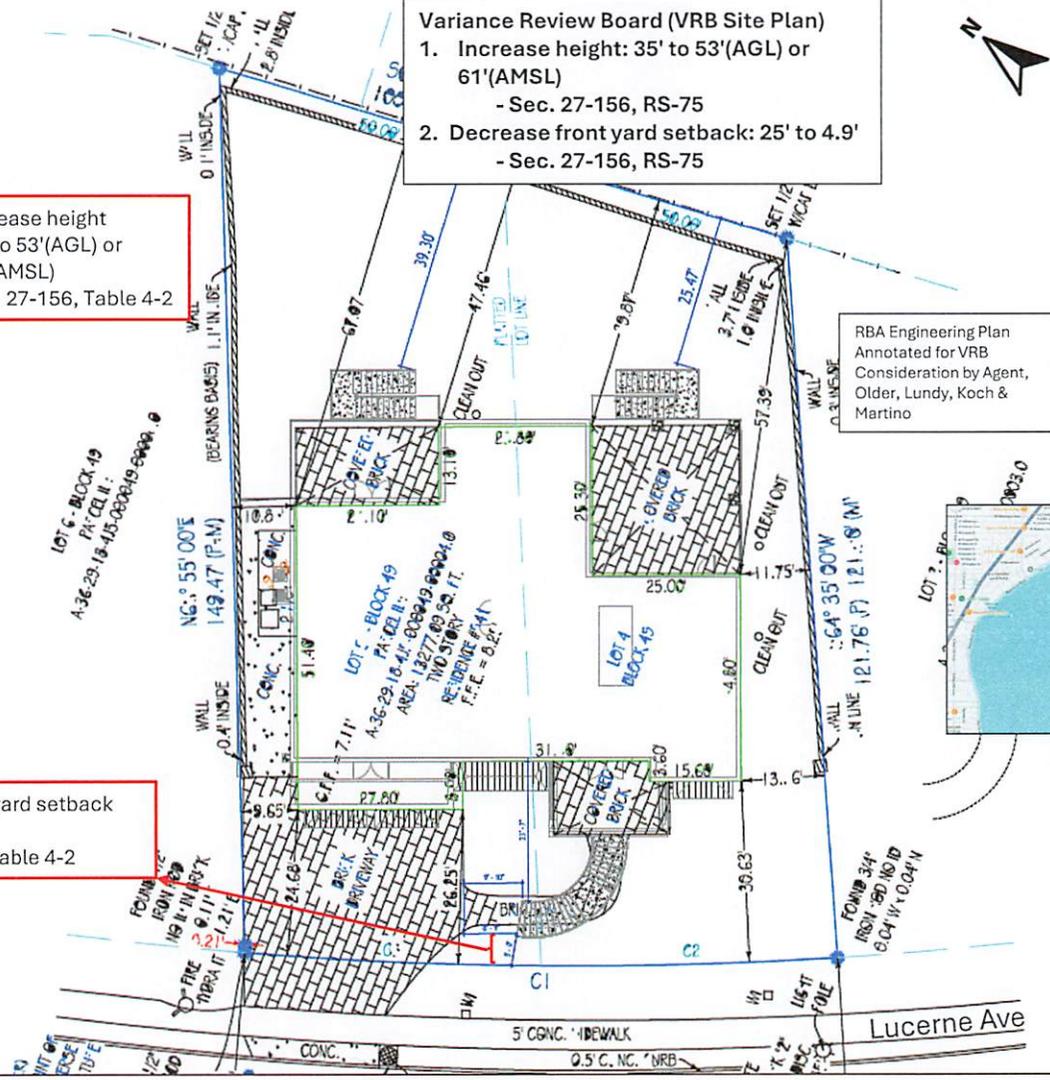
*Includes decks, porches, & stairs

Proposed Floor Area: .54
Folio: 169242-0000

EXISTING CONDITIONS	
EXISTING ELEVATIONS	NA/30
LOWEST ADJACENT GRADE:	7.20 FT
HIGHEST ADJACENT GRADE:	7.47 FT
BASE FLOOD ELEVATION:	11.0 FT
EXIST. 1ST FL. ELEVATION:	6.25 FT
EXIST. 2ND FL. ELEVATION:	20.23 FT
PROPOSED CONDITIONS	
PROPOSED ELEVATIONS	NA/30
PROP. 1ST FL. ELEVATION:	22.23 FT
PROP. 2ND FL. ELEVATION:	34.23 FT

Reduce front yard setback
25' to 4.9'
Sec. 27-156, Table 4-2

Legal: Lots 4 and 5 in Block 49 of DAVIS ISLANDS THE SOUTH WEST SHORE SECTION, according to the Plat thereof, recorded in Plat Book 17, Page 8 of the Public Records of Hillsborough County, Florida.



RBA Engineering Plan
Annotated for VRB
Consideration by Agent,
Older, Lundy, Koch &
Martino



ROBERT BARILLEAUX & ASSOCIATES, INC.
Clayton Barilleaux, P.E., P.L. LIC. NO. 97952



No.	Description	Date

Modern Movers
541 LUCERNE AVENUE
SITE PLAN

Project Number	2024.021
Date	6/3/2025
Drawn By	HMI
Checked By	RCB
C.102	
Scale	1/8" = 1'-0"

NOTES

1. EXISTING AND PROPOSED SITE PLANS ARE BASED UPON SURVEY INFORMATION PROVIDED TO THE PATTERSON STRUCTURAL WORKING AND DRAWING, LLC, AND UPON BEST AVAILABLE INFORMATION. THE CONTRACTOR SHALL CONFIRM SITE CONDITIONS PRIOR TO BEGINNING WORK.
2. EXISTING STRUCTURE IS LOCATED IN A SUBURBAN RESIDENTIAL NEIGHBORHOOD. THE CONTRACTOR AND ALL SUBCONTRACTORS SHALL TAKE ALL NECESSARY PRECAUTIONS TO PROTECT AND PROTECT NEIGHBORING STRUCTURES, FENCES, PUBLIC STREETS, AND UTILITIES.
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4. THE CONTRACTOR SHALL COORDINATE WITH THE GOVERNING MUNICIPALITY'S TRAFFIC ENGINEERING DEPARTMENT, REGARDING ANY NECESSARY ROAD CLOSURES.
5. NO NEW CURB CUTS OR DRIVEWAYS ARE ANTICIPATED AS A PART OF THIS WORK.
6. EXISTING LANDSCAPING AROUND PERIMETER OF HOME TO REMAIN. DO NOT DISTURB ANY NATIVE VEGETATION IN THE COURSE OF THE WORK. REPLACE SOILS, GRADE, AND SOO UPON COMPLETION OF THE WORK.
7. THE DEVELOPMENT OF THE PROPERTY AS SHOWN WILL NOT HAVE ADVERSE PERSONAL EFFECTS ON ADJACENT PROPERTIES.

Increase height
35' to 53'(AGL) or
61'(AMSL)
Sec. 27-156, Table 4-2

Variance Review Board (VRB Site Plan)
1. Increase height: 35' to 53'(AGL) or 61'(AMSL)
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- Sec. 27-156, RS-75

RBA Engineering Plan
Annotated for VRB
Consideration by Agent,
Older, Lundy, Koch &
Martino

EXIST. BUILDING HEIGHT:	34.98 FT
PROP. BUILDING HEIGHT:	48.98 FT
EXIST. LIVING AREA:	620.50 SQ FT
PROP. LIVING AREA:	720.50 SQ FT
EXIST. BUILDING FOOTPRINT:	316.44 SQ FT
PROP. BUILDING FOOTPRINT:	316.44 SQ FT
EXISTING LOT AREA:	1277.09 SQ FT
EXIST. BUILDING COVERAGE:	48.89%
PROP. BUILDING COVERAGE:	48.89%

*Includes decks, porches, & stairs

Proposed Floor Area: .54
Folio: 169242-0000

EXISTING CONDITIONS

EXISTING ELEVATIONS	NA/ND
LOWEST ADJACENT GRADE:	7.80 FT
HIGHEST ADJACENT GRADE:	7.47 FT
BASE FLOOD ELEVATION:	11.0 FT
EXIST. 1ST FL. ELEVATION:	8.25 FT
EXIST. 2ND FL. ELEVATION:	20.25 FT

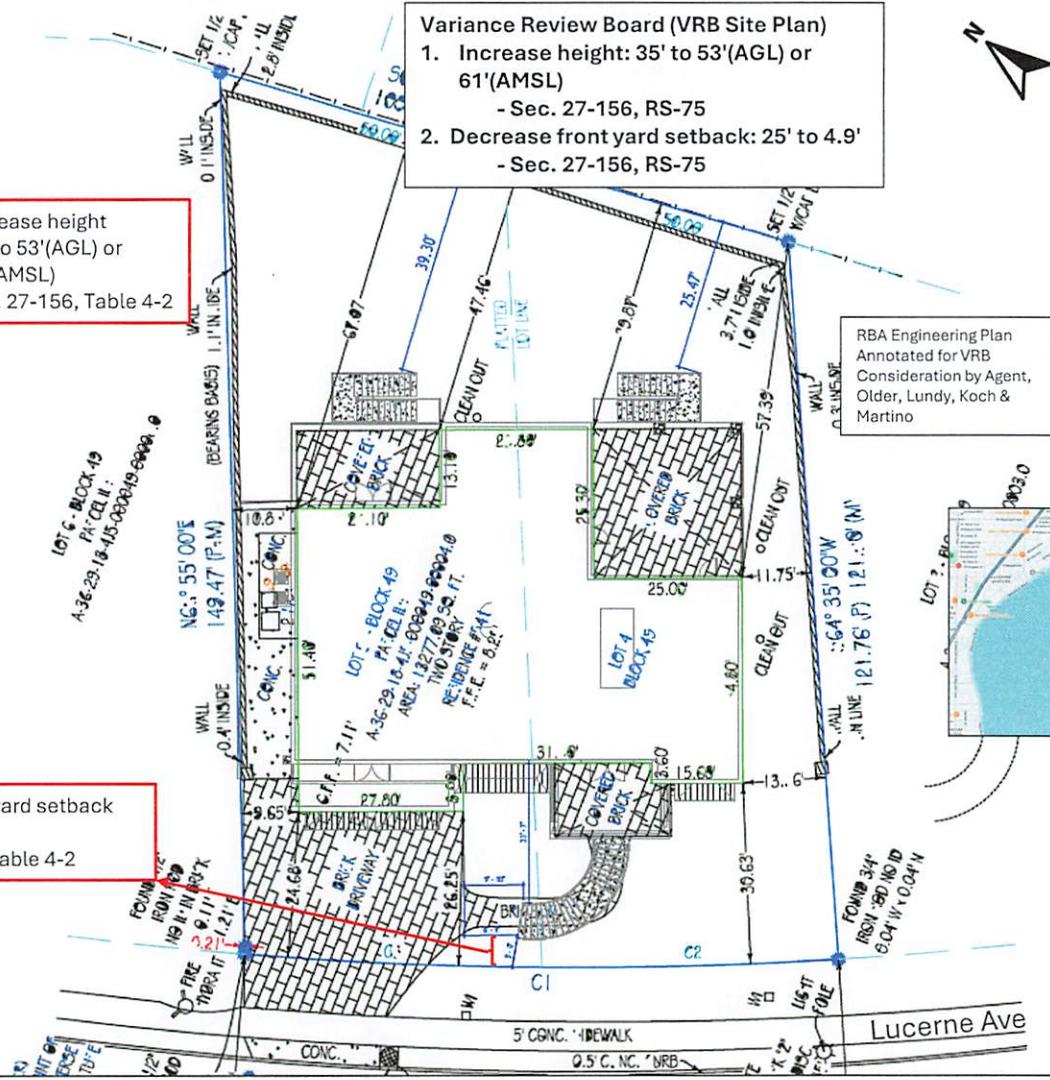
PROPOSED CONDITIONS

PROPOSED ELEVATIONS	NA/ND
PROP. 1ST FL. ELEVATION:	22.25 FT
PROP. 2ND FL. ELEVATION:	34.25 FT

Reduce front yard setback
25' to 4.9'
Sec. 27-156, Table 4-2

Legal: Lots 4 and 5 in Block 49 of DAVIS ISLANDS THE SOUTH WEST SHORE SECTION, according to the Plat thereof, recorded in Plat Book 17, Page 8 of the Public Records of Hillsborough County, Florida.

1/8" = 1'-0"



ROBERT BARTHELEMY & ASSOCIATES, INC.
Clay Barthelemy, P.E., P.L., LIC. 10366, 9/9/92



No.	Description	Date
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Modern Movers
541 LUCERNE AVENUE
SITE PLAN

Project Number	2024.021
Date	6/3/2025
Drawn By	HH
Checked By	RCB
C.102	
Scale	1/8" = 1'-0"



Mail Processing Center
 Federal Aviation Administration
 Southwest Regional Office
 Obstruction Evaluation Group
 10101 Hillwood Parkway
 Fort Worth, TX 76177

Aeronautical Study No.
 2025-ASO-14989-OE
 Prior Study No.
 2023-ASO-33017-OE

Issued Date: 08/14/2025

JOE FONTANA
 JOE FONTANA
 PO Box 775
 Notre Dame, IN 46556

**** DETERMINATION OF NO HAZARD TO AIR NAVIGATION ****

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure: House 541 Lucerene Avenue Tampa Florida 33606
 County, State: Hillsborough, Florida

Collected Point(s):

Label	Latitude	Longitude	SE	DET AGL	AMSL
541 Lucerene Avenue Tampa Florida 33606	27-54-43.00N	82-27-28.00W	8 Ft	52 Ft	60 Ft

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or:

- At least 10 days prior to start of construction (7460-2, Part 1)
- Within 5 days after the construction reaches its greatest height (7460-2, Part 2)

Based on this evaluation, marking and lighting are not necessary for aviation safety. However, if marking/lighting are accomplished on a voluntary basis, we recommend it be installed in accordance with FAA Advisory circular 70/7460-1 M Change 1.

This determination expires on 02/14/2027 unless:

- (a) the construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration, is received by this office.
- (b) extended, revised, or terminated by the issuing office.
- (c) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE E-FILED AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE. AFTER RE-EVALUATION OF CURRENT OPERATIONS IN THE AREA OF THE STRUCTURE TO DETERMINE THAT NO SIGNIFICANT AERONAUTICAL CHANGES HAVE OCCURRED, YOUR DETERMINATION MAY BE ELIGIBLE FOR ONE EXTENSION OF THE EFFECTIVE PERIOD.

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights, and frequencies or use of greater power, except those frequencies specified in the Colo Void Clause Coalition; Antenna System Co-Location; Voluntary Best Practices, will void this determination. Any future construction or alteration, including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA. This determination includes all previously filed frequencies and power for this structure.

If construction or alteration is dismantled or destroyed, you must submit notice to the FAA within 5 days after the construction or alteration is dismantled or destroyed.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

This determination cancels and supersedes prior determinations issued for this structure.

If we can be of further assistance, please contact our office at 1-817-222-4832, or Michael.J-CTR.Costanzi@faa.gov. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2025-ASO-14989-OE.

Signature Control No: 669930191-673784723
michael.j-ctr.costanzi@faa.gov
Technician

(DNE)

Attachment(s)
Map(s)

