STAFF REPORT
Community Development Department
Petition Number: VAR-12-006

To:	**The Charlotte County Board of Zoning Appeals**	
From:	**Shaun Cullinan, Zoning Official**	
Prepared By:	**Ken Quillen, AICP, Planner III**	
Report Date:	**June 5, 2012**	**BZA meeting date: June 13, 2012**

Requested Action/General Information:
Wilfred Aderman, agent for MAP, LLC, is requesting a variance to allow development of a single-family residence on an existing non-conforming lot. This property is located at 95 Meredith Drive on Manasota Key (see ***Location Map***). The attached ***Zoning Map*** shows the zoning of this property, which is *Manasota Single-family-5* (MSF-5). This property has a *Low Density Residential*, Future Land Use Map designation.

A copy of ***Section 3-9-10*** (Exhibit A) of the Zoning Code is attached for your information. Subsection 3-9-10(c)a of the Zoning Code establishes regulations for nonconforming lots of record and states that: "*A variance shall be required prior to the issuance of a building permit for a structure proposed on a nonconforming lot of record less than fifty (50) feet in width or less than five thousand (5,000) square foot in area*." This section of the code also requires that a legally existing nonconforming lot must have existed prior to July 6, 1989 and the burden of proof shall be with the owner of the property.

The applicant has submitted the attached ***Boundary Survey*** (Exhibit B), which shows the existing dimensions (50' by 85') of this 4,250 square foot lot. This lot is substandard with regard to the minimum lot width and area requirements of the Manasota Key Zoning District Overlay Code, ***Section 3-9-53(f)(8)(A)*** (pg. 1900.36.12, Exhibit C). The Manasota Key Code requires properties in the MSF-5 zoning district to have a minimum lot width of 70' and a minimum lot size of 8,712 square feet. The applicant has also submitted a certified copy of the ***Plat*** (Exhibit D) which created this lot and was recorded in Charlotte County on May 11, 1946. These documents show that the lot in question was created prior to July 6, 1989 and is 50' in width and 4,250 square feet in area and therefore is a legal nonconforming lot. Because this lot is less than 5,000 square feet in area a variance is needed according to the Zoning Code prior to issuance of a building permit. As such the applicant is requesting a variance to allow development of a single-family residence on this lot.

The applicant has submitted the attached ***Narrative*** (Exhibit E) explaining why the applicant believes this request for a variance should be granted. The Community Development Department's Environmental Specialist has performed a cursory environmental review and their comments are in the attached ***Memorandum*** (Exhibit F) dated May 24, 2012. The Manasota/Sandpiper Key Architectural Review Committee met on June 6, 2012, and they have made a recommendation to _____ the requested variance (see attached Exhibit G).

Findings: **The seven standards for approval of a Variance according to Section 3-9-6.1(d) of the Charlotte County Zoning Code are as follows:**

1. Unique or peculiar conditions or circumstances exist which relate to the location, size and characteristics of the land or structure involved and are not generally applicable to other lands or structures.

Finding: This 4,250 square foot lot (50' by 85') is a legally existing non-conforming lot with regard to lot size, which was legally created on May 11, 1946. This is a unique or peculiar condition related to the characteristics of the land.

2. The strict and literal enforcement of the Zoning Regulations would create an undue hardship as distinguished from a mere inconvenience on the property owners. Physical handicaps or disability of the applicant may be considered where relevant to the request.

Finding: The strict and literal enforcement of the code would prevent a legally permitted use on this legal non-conforming lot, which would create an undue hardship on the property owner.

3. The variance requested does not involve any use, which is prohibited in the district where the property is located.

Finding: The variance request is to allow construction of a single-family residence, which is a permitted use in the MSF-5 zoning district.

4. The granting of a variance would not be injurious to or incompatible with contiguous uses, the surrounding neighborhood or otherwise detrimental to the public welfare.

Finding: The granting of the requested variance would merely address the existing non-conforming lot size and allow development of a single-family residence, which would not be injurious to, or incompatible with, the surrounding residential uses.

5. The condition giving rise to the requested variance has not been created by any person presently having an interest in the property and the conditions cannot reasonably be corrected or avoided by the applicant.

Finding: The conditions giving rise to the requested variance have not been created by the current owner and the conditions cannot be reasonably corrected or avoided by the applicant. Rather, this is a result of the 1946 subdivision plat and later adoption of the Charlotte County Zoning code and the Manasota Key Overlay Code.

6. The requested variance is the minimum modification of the regulation at issue that will afford relief.

Finding: The requested variance, to allow development of a single-family residence on this existing lot, is the minimum modification that will afford relief.

*7. The requested variance is consistent with the **Smart Charlotte 2050 Plan** (Charlotte County Comprehensive Plan).*

Finding: The ***Future Land Use Element, Objective 1.4 Protection of Private Property Rights*** states: "*To recognize and respect existing private property rights, ... and to consider such rights and the impact upon them when preparing recommendations for land use decisions.*" Staff believes that the variance request may be considered consistent with this objective in the ***Smart Charlotte 2050 Plan***.

ANALYSIS AND CONCLUSIONS:

After review of the site and the application requesting a variance, to allow development on a sub-standard sized lot, staff believes that the requested variance does meet all seven criteria for granting a variance.

If the Board of Zoning Appeals decides to approve the requested variance staff recommends the following conditions are adopted as conditions of approval to ensure that this development is in compliance with the purpose and intent of the Zoning Code. The recommended condition(s) are as follows:

1. This variance, as approved by the Board of Zoning Appeals, is to allow construction of a single-family residence on this existing, legal, non-conforming lot.

Please be advised that the final decision regarding the petition rests with the Board of Zoning Appeals, and will be decided upon consideration of all the evidence introduced at the hearing.

Attachments: Staff Report (3), Location Map, Zoning Map, Aerial Photo, Section 3-9-10, Boundary Survey, Page 1900.36.12, 1946 Subdivision Plat, Narrative, Environmental Specialist Memorandum and Manasota/Sandpiper Key Architectural Review Committee recommendation

Open for Business

VAR-12-006
Location Map

Map Prepared By
Charlotte County
Community Development
Department

12/41/19 West-County

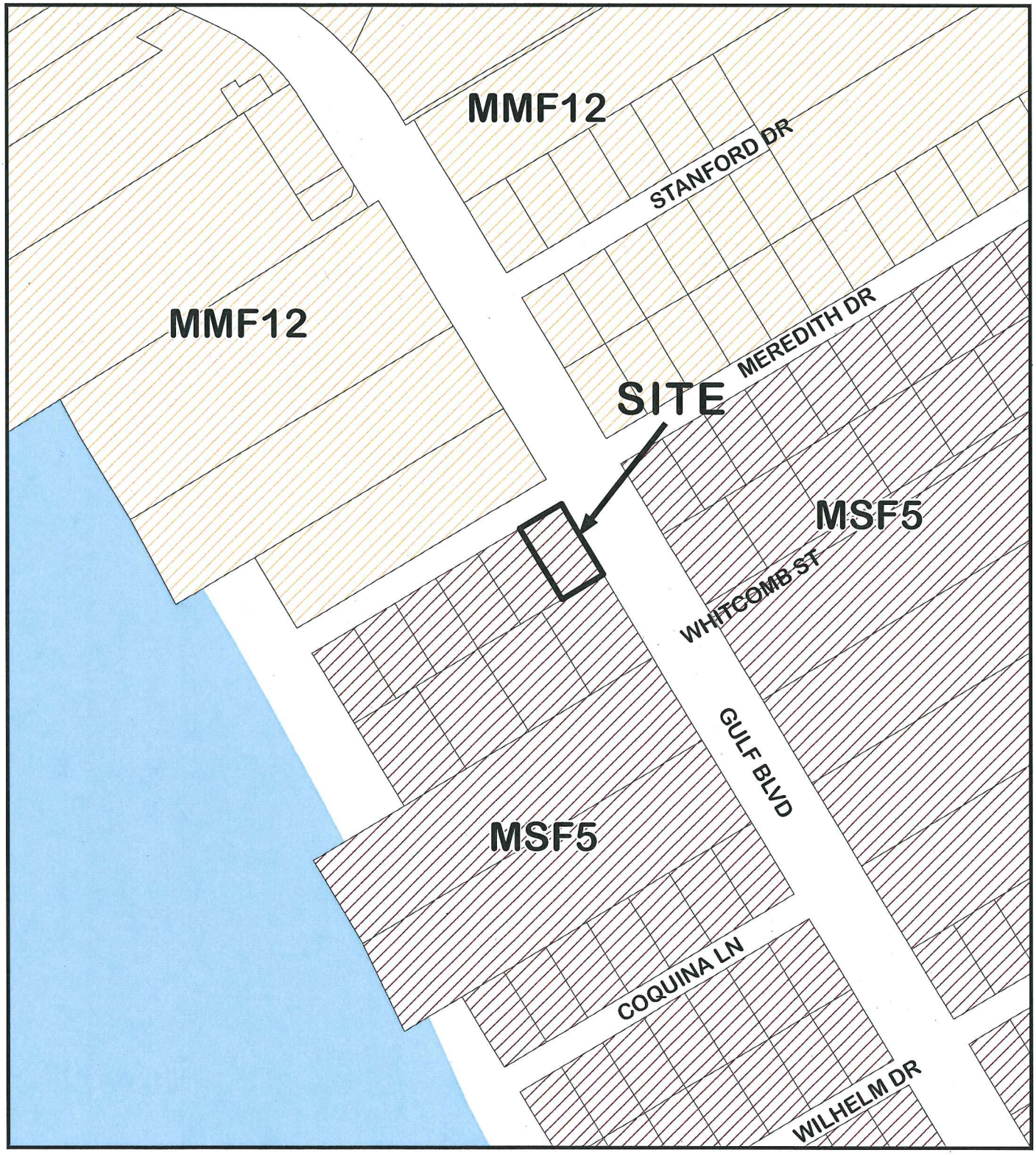
This map is a representation of compiled public information. It is believed to be an accurate and true depiction for the stated purpose, but Charlotte County and its employees make no guaranties, implied or otherwise, to the accuracy, or completeness. We therefore do not accept any responsibilities as to its use. This is not a survey or is it to be used for design. Reflected Dimensions are for Informational purposes only and may have been rounded to the nearest tenth. For precise dimensions, please refer to recorded plats and related documents. Created 05-29-2012

NOT TO SCALE

VAR-12-006
Zoning Map

Open for Business

Map Prepared By
Charlotte County
Community Development
Department



12/41/19 West-County

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NOT TO SCALE

Open for Business

VAR-12-006
Aerial Photo

Map Prepared By
Charlotte County
Community Development
Department

12/41/19 West-County

This map is a representation of compiled public information. It is believed to be an accurate and true depiction for the stated purpose, but Charlotte County and its employees make no guaranties, implied or otherwise, to the accuracy, or completeness. We therefore do not accept any responsibilities as to its use. This is not a survey or is it to be used for design. Reflected Dimensions are for Informational purposes only and may have been rounded to the nearest tenth. For precise dimensions, please refer to recorded plats and related documents. Created 05-29-2012

NOT TO SCALE

Sec. 3-9-10. Nonconformities.

(a) *Intent.* At the time the ordinance from which this chapter derives becomes effective or is amended, there may exist lots, structures, uses of land or water or characteristics of use which were lawful prior to the adoption or amendment of the regulations herein, but are prohibited, regulated or restricted by these regulations or amendments thereto. It is the intent of these regulations that nonconformities shall not be enlarged, expanded, intensified or extended, nor shall they be used as a basis for the addition of other structures or uses otherwise prohibited in the same district.

(b) *Continuation of nonconformity.* A lot, use, building or structure lawfully in existence on the effective date of the ordinance from which this chapter derives which is made nonconforming by the regulations herein or an amendment thereto may be continued except as otherwise provided by these regulations.

(c) *Nonconforming lots of record.*

(1) "Nonconforming or substandard lot" shall mean a lot of which the area, dimension or location was lawful prior to the adoption, revision or amendment of this chapter and which fails by reason of such adoption, revision or amendment to conform to the requirements for the zoning district in which the lot is located.

(2) For the purpose of this chapter, a lot is "created" on such date that one (1) of the following conditions occur:

a. The date that a deed for said lot is lawfully first recorded in the public records of the county; or

b. The date that a subdivision plat has been lawfully recorded in the public records of the county and the lot is a part of the subdivision.

(3) Nonconforming lots of record may be developed provided:

a. A variance shall be required prior to the issuance of a building permit for a structure proposed on a nonconforming lot of record less than fifty (50) feet in width or less than five thousand (5,000) square foot in area.

b. The burden of proof to establish that the lot is legally nonconforming and legally existing on the effective date of this section [July 6, 1989] shall be with the owner.

(4) *Nonconforming multifamily lot:* Any lot, platted and recorded on the effective date of the regulation from which this section is derived, which is located in a zoning district that permits multifamily residential dwellings and which exceeds in area the minimum lot size for the district but which does not contain the area required by the district for two (2) dwelling units nevertheless may have constructed on it two (2) dwelling units. Notwithstanding the foregoing, the density shall not exceed the maximum density permitted by the comprehensive plan.

(5) *Restrictions.*

a. No division of any buildable lot may be permitted which creates a lot with width, depth, or area below the minimum requirements stated in this section unless the lot that is below the minimum requirements is for one (1) or more of the following uses: park, open space, or utilities.

b. Contiguous lots of record may be combined and re-divided to create larger dimension lots of record as long as such recombination includes the total area of the lots.

c. Where residential lots of record are nonconforming because of width, the minimum side yard setback shall be not less than ten (10) percent of the lot width, provided that no side yard setback shall be less than five (5) feet wide.

(Exhibit A)

CERTIFICATE: I HEREBY CERTIFY THAT THIS RECORD SURVEY REPRESENTS A FIELD SURVEY OF THE PROPERTY AS SHOWN AND DESCRIBED HEREON, THAT THE SURVEY WAS RECENTLY PERFORMED UNDER MY DIRECTION, THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT IS MEETS THE MINIMUM TECHNICAL STANDARDS FOR LAND SURVEYING IN THE STATE OF FLORIDA. (CHAPTER 61 G17 6 F.A.C.). LEMONDE & COMPANY, LLC., DOES NOT CARRY PROFESSIONAL LIABILITY INSURANCE. NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER. ADDITIONS OR DELETIONS TO SURVEY MAPS OR REPORTS BY OTHER THAN THE SIGNING PARTY OR PARTIES IS PROHIBITED WITHOUT WRITTEN CONSENT OF THE SIGNING PARTY.

9/20/07 SEAL

DANIEL E. LEMONDE, P.S.M.,
FLORIDA CERTIFICATE # 2909
FOR THE FIRM OF LEMONDE & COMPANY, LLC.
L.B. # 6217

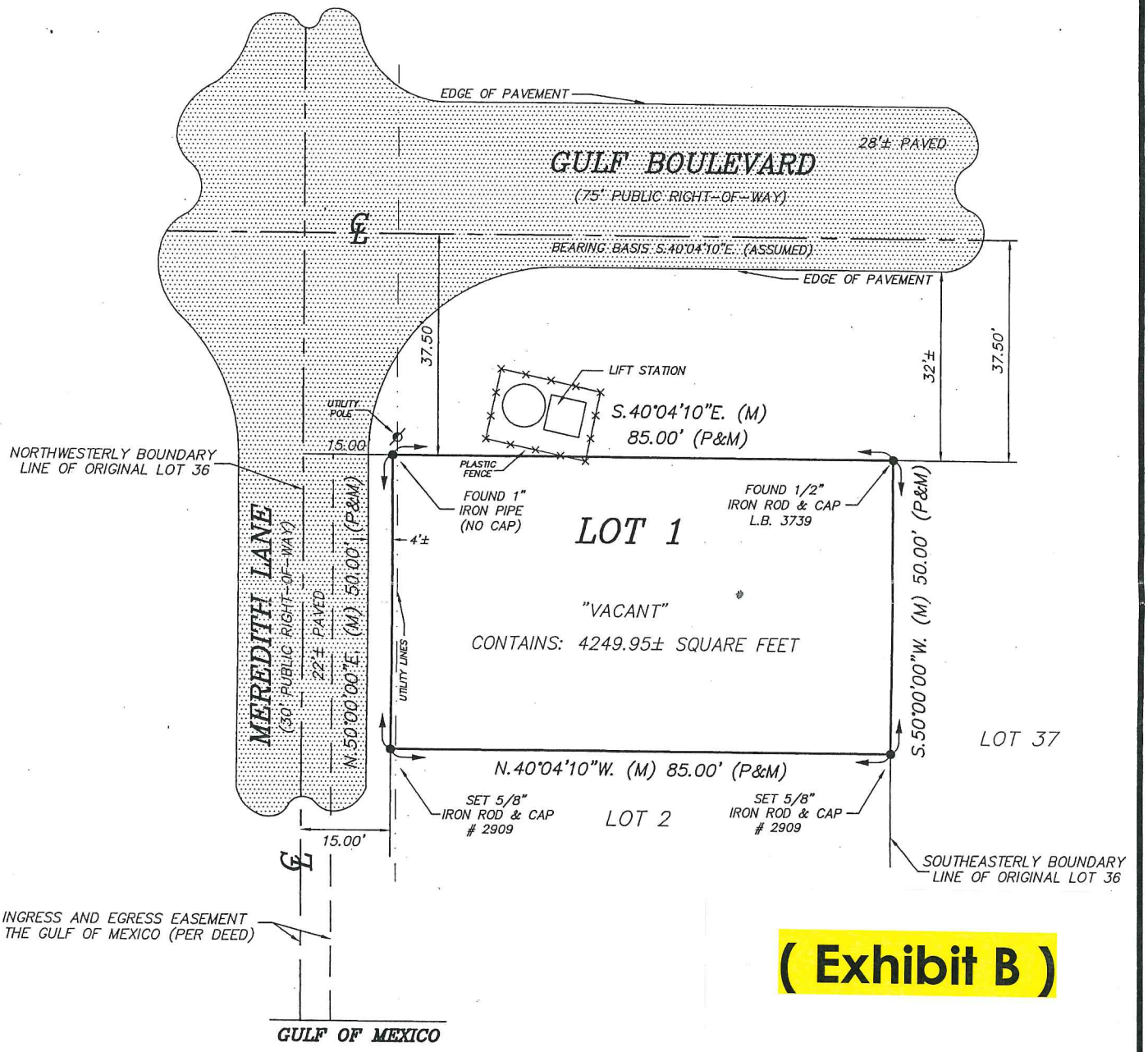
DATE OF SIGNATURE

ESTABLISHED 1975

LEMONDE & COMPANY SURVEYING LLC
SURVEYORS OF LAND
4821 BONITA ROAD
VENICE, FLORIDA 34293
TELEPHONE (941) 493-8000 FAX: (941) 497-5160

NOTE: THERE MAY BE EASEMENTS OF RECORD THAT ARE NOT SHOWN ON PLAT OF RECORD.

CERTIFIED TO: 1) MICHAEL HAYMAN.



(Exhibit B)

BOUNDARY SURVEY OF:

LOT 1, SUBDIVISON OF ORIGINAL LOT 36 OF S.J. AND LAURA E. CHADWICK'S RESUBDIVISION OF LOTS 7. 8, 10, 11, 17, 18, 19, 20, 35, 36, 40, 41, 42, 43, 44, 45, 46, AND 47, OF SUBDIVISON OF PART OF U.S. GOVERNMENT LOT 4, SECTION 12, TOWNSHIP 41 SOUTH, RANGE 19 EAST, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 2, PAGE 60, OF THE PUBLIC RECORDS OF CHARLOTTE COUNTY, FLORIDA.

TOGETHER WITH EASEMENT FOR INGRESS AND EGRESS TO AND FROM THE GULF OF MEXICO ALONG THE NORTH 5 FEET OF RE-SUBDIVISION OF ORIGINAL LOT 36 S.J. AND LAURA CHADWICK'S SUBDIVISION AS RECORDED IN PLAT BOOK 2, PAGE 60, OF CHARLOTTE COUNTY, FLORIDA.

NOTE: PROPERTY HEREON LIES WITHIN FLOOD ZONE "AE", AS SHOWN ON FEMA MAP NO. 12015C 0186 F, DATE OF FIRM = 05/05/2003, CHARLOTTE COUNTY, FLORIDA AS OF THIS DATE. (VERIFY WITH FEMA AUTHORITY)
BASE FLOOD ELEVATION = +12.00 FEET.

N

1" = 20' SCALE

(C) One (1) guest house or one (1) servant's quarters for each single-family dwelling provided the lot area shall be not less than twice the minimum lot area required for a single-family dwelling. The guest house or servant's quarters is intended for use on a temporary basis and shall not be rented for any period longer than three (3) months during any twelve-month period.

(D) Home occupations in accordance with section 3-9-79 of the zoning code.

(E) Essential services and emergency services.

(F) Such other uses as determined by the zoning official (or the zoning official's designee) to be:

i. Appropriate by reasonable implication and intent of that district;

ii. Similar to another use either explicitly permissible in that district or allowed by special exception; and

iii. Not specifically prohibited in that district.

The recommendation of the architectural review committee shall be considered by the zoning official (or the zoning official's designee) in connection with this determination.

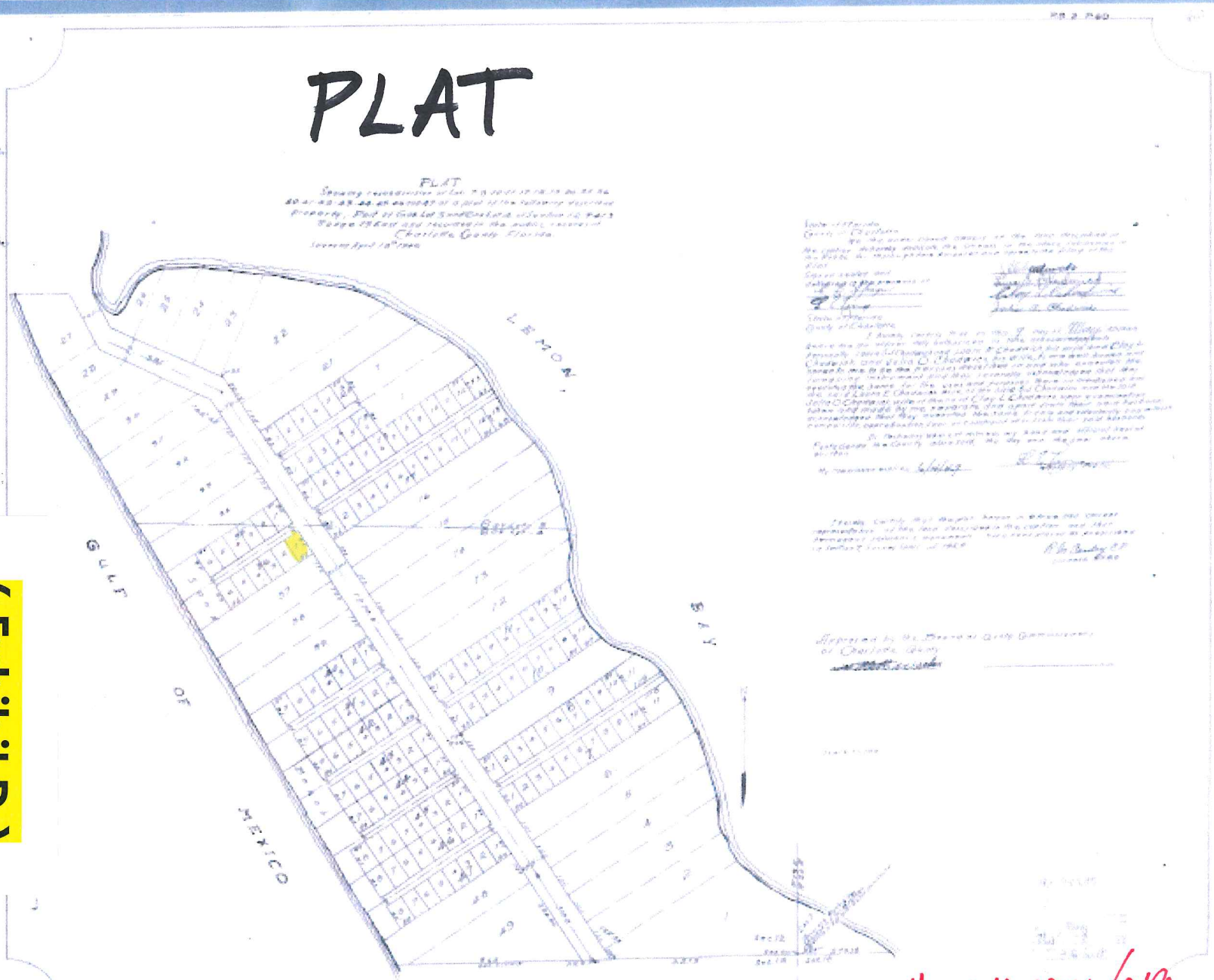
(8) *Development standards.*

(A) The following development standards apply to the MSF districts.

	MSF-1	*MSF-2*	*MSF-2.5*	*MSF-3.5*	*MSF-5*
Minimum lot requirements, in square feet (except as otherwise permissible)	43,560	21,780	17,424	12,445	8,712
Width, feet	125	100	100	80	70
Front yard, feet	25	25	25	25	25
Side yard, feet:					
Interior	Half the building height (as measured by section 3-9-2), but no less than 10 feet				
Abutting a road	20	20	20	15	15
Maximum lot coverage by all buildings, percent	35	35	35	35	35
Maximum building height, feet	43	43	43	43	43
Minimum rear yard, feet					
Abutting a lot	Half the building height (as measured by section 3-9-2), but no less than 20 feet				
Abutting a road	25	25	25	25	25
Abutting a greenbelt	15	15	15	15	15
Setbacks from accessory buildings from:					
Rear lot line, feet	10	10	10	10	10
Side yard	Same a				

(Exhibit C)

PLAT



May 11, 1946/[illegible]

(Exhibit D)

ATTACHMENT

VARIANCE APPLICATION

Property Address: 95 Meredith Drive, Englewood, FL 34223

Legal Description: S J CHADWICKS LT 1 SUBD OF ORIG LOT 36 160/122 983/391 1799/677 1887/534 2544/248 CND3467/996

Narrative:

1. Lot 1 is a non-conforming lot of record with less than 5,000 sq ft of area. The Plat (Book 2 Page 60), predates all of Charlotte County zoning codes.

2. By allowing a variance for this non-conforming lot (Lot 1) of record, the parcel will be buildable. Otherwise, the lot is not buildable.

3. The use is to be residential, which is not prohibited in this district.

4. Allowing residential construction on this parcel is not detrimental with contiguous uses and will not be injurious or incompatible.

5. The condition necessitating this variance arose as result of platting and subsequent changes in zoning definitions.

6. This variance is the minimum modification that will afford relief.

7. There are no goals, objectives or policies of the County's Comprehensive Plan that are negatively impacted by this variance.

(Exhibit E)

MEMORANDUM

Date: May 24, 2012

To: Ken Quillen, Planner III

From: Jamie Scudera, Environmental Specialist

Subject: VAR-12-006
95 Meredith Drive

The Zoning Environmental Review Section has conducted a cursory review (additional wildlife or environmental reviews may be required by state and/or federal agencies) of the above referenced petition for compliance with Environmental, Tree and Landscaping codes/ordinances and offers the following comments:

- A GIS aerial and preliminary environmental review was conducted by staff. The property consists of an undeveloped single family residence on a highly sensitive coastal island community. The property is located several hundred feet from the Gulf of Mexico, is seaward of the Florida Department of Environmental Protection Coastal Construction Control Line and is located in the Charlotte County Sea Turtle Lighting review area. A complete environmental assessment has not been completed by staff therefore listed species may be present on site. A listed species assessment will be completed during the permit review process.

If this petition is approved, the following conditions will be reviewed for compliance upon Site Plan Review (if required) and the issuance of any county permit or land improvement activities:

- All applicable county, state and federal authorization/permits, and mitigation (if necessary) will be required.

(Exhibit F-1)

COMMUNITY DEVELOPMENT DEPARTMENT- -Zoning Division
18400 Murdock Circle | Port Charlotte, FL 33948
Phone: 941.743.1290 | Fax: 941.743.1598

- If this proposal moves forward, it will be reviewed for compliance with:

  Chapter 3-5:
  Article IV *CLEARING, FILLING AND SOIL CONSERVATION*,*
  Article XII *SEA TURTLE PROTECTION*,*
  Article XIII *SHORELINE PROTECTION*,*

  Chapter 3-2:
  Article IX. *TREE REQUIREMENTS**
  **All heritage trees (per Section 3-2-190) must remain preserved.

- The project must also comply with the Charlotte County Smart Charlotte 2050 Comprehensive Plan.

If there are any questions pertaining to this review please feel free to contact me at (941) 743-1290.

JS

(Exhibit F-2)

COMMUNITY DEVELOPMENT DEPARTMENT- -Zoning Division
18400 Murdock Circle | Port Charlotte, FL 33948
Phone: 941.743.1290 | Fax: 941.743.1598

BZA - Variance VAR-11-06

Exhibit "G" will be brought to the BZA hearing on June 13th.

(Exhibit G)