

**STAFF REPORT**  
**Community Development Department**  
**Petition Number: VAR-12-010**

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**To:** The Charlotte County Board of Zoning Appeals  
**From:** Shaun Cullinan, Zoning Official  
**Prepared By:** Ken Quillen, AICP, Planner III  
**Report Date:** December 4, 2012                      **BZA meeting date:** December 12, 2012

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**Requested Action/General Information:**

Roger Miller, agent for Arthur Talsma, is requesting two variances described as follows: **(a)** a variance of 1.2', to reduce the required west side yard setback from 7.5' to 6.3' for the existing single-family residence; and **(b)** a variance of 9.0' to reduce the required rear yard setback along a waterway from 20.0' to 11.0' to allow the existing single-family residence to remain "as is". This property is located at 3811 Barnegat Drive, in Punta Gorda (see **Location Map**). The attached **Zoning Map** shows the zoning of this property, which is Residential Single-family-3.5 (RSF-3.5). This property has a Low Density Residential, Future Land Use Map (FLUM) designation.

This lot is part of the Riviera Lagoons Unit 2 Subdivision, which was platted in 1961. County records indicate that the existing single-family residence was constructed in 1987. The applicant has submitted the attached **Boundary Survey (Exhibit A)**, which shows the location of the existing single-family residence on this 9,967 square foot lot. It is believed that there was an error by someone during the permitting or construction of this home, which resulted in the west side yard and rear yard setbacks not being in compliance with setback requirements of the current Zoning Code.

The owner would like to correct these errors, which resulted in two non-conforming setbacks, apparently created over 25 years ago during construction of this single-family residence. The applicant has submitted the attached **Boundary Survey (Exhibit A)**, showing the dimensions, location and setbacks for the existing home on lot 18. The owner is requesting two variances to resolve the nonconforming setbacks for the west side yard setback and rear yard setback for this existing single-family residence.

The applicant has submitted the attached **Narrative (Exhibit B)** explaining why the applicant believes this request for a variance should be granted. An Environmental Specialist has performed a cursory environmental review and their comments are in the attached **Memorandum (Exhibit C)** dated November 29, 2012.

The Board of Zoning Appeals must review and make a decision on each of the two variance requests individually. Staff has reviewed the requested variances and provided preliminary findings addressing the seven standards of approval for each of the variances requested in the following findings of fact. The Board of Zoning Appeals may endorse, revise or amend these findings of fact as a result of the Public Hearing.

**Findings:** The seven standards for approval of Variance (a) requesting a variance of 1.2', to reduce the required west side yard setback from 7.5' to 6.3' to allow the existing single-family residence to remain "as is" 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 irregular, reversed pie shape and substandard size lot (9,967 square feet) are unique or peculiar conditions related to the land, which were created by the developer of this subdivision in 1961. Also, the location of the home on this lot was determined by the building contractor in 1987 who sold this property to the applicant.

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 Zoning Code would create an undue hardship because, enforcement of the required side yard setbacks would require major structural modifications and changes to the existing single-family structure.

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 a reduce west side yard setback for the existing single-family residence, which is a permitted use in the RSF-3.5 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 to reduce the west side yard setback by 1.2' would not be considered injurious or incompatible with the adjacent 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 given rise to the requested variance have not been created by the current property owner who purchased this property in 1987. Also, the conditions cannot reasonably be corrected or avoided by the applicant.

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

Finding: The requested variance 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: **Objective 1.4** of the **Future Land Use Element**, which is titled "**Protection of Private Property Rights**" proposes 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 this variance request may be considered consistent with this objective in the **Smart Charlotte 2050 Plan**.

**Findings:** The seven standards for approval of Variance (b) requesting a variance of 9.0', to reduce the required rear yard setback from 20.0' to 11.0' to allow the existing single-family residence to remain "as is" 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: The irregular reversed pie shape, substandard lot size (9,967 square feet) and its location, adjacent to a tidal water canal, has resulted in the rear lot line being located in the adjacent waterway. These are unique or peculiar conditions related to the land, which were created by the developer of this subdivision in 1961 and also by the building contractor who constructed this home in 1987.

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 Zoning Code would create an undue hardship because, enforcement of the required rear yard setback would require major structural modifications and changes to the existing structure.

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 a reduce rear yard setback for the existing single-family residence, which is a permitted use in the RSF-3.5 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 to reduce the rear yard setback would not be considered injurious 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 given rise to the requested variance have not been created by the applicant. Also, they cannot reasonably be corrected by the applicant.

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

Finding: The requested variance 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: **Objective 1.4** of the **Future Land Use Element**, which is titled "**Protection of Private Property Rights**" proposes 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 this 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 two variances staff believes that both of the requested variances do meet all seven criteria for granting a variance.

If the Board of Zoning Appeals decides to approve both of the requested variances staff recommends the following conditions be 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. The variances, as approved by the Board of Zoning Appeals, are as follows:
  - (a) a variance of 1.2' to reduce the required west side yard of 7.5' to allow a 6.3' west side yard setback for the existing single-family residence; and
  - (b) a variance of 9.0' to reduce the required rear yard setback of 20.0' to allow an 11.0' rear yard setback for the existing single-family residence.
2. These variances extend only to the existing single-family residence as it is currently located on lot 18 and shall carry with this structure only. If the home is ever removed, destroyed or replaced, all future development must be constructed according to all applicable codes in existence at that time, unless a new variance is granted specific to the development proposed at that time.

**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 (4), Location Map, Zoning Map, Aerial Photo, Boundary Survey, Narrative (2) and Environmental Specialist Memorandum



Community Development

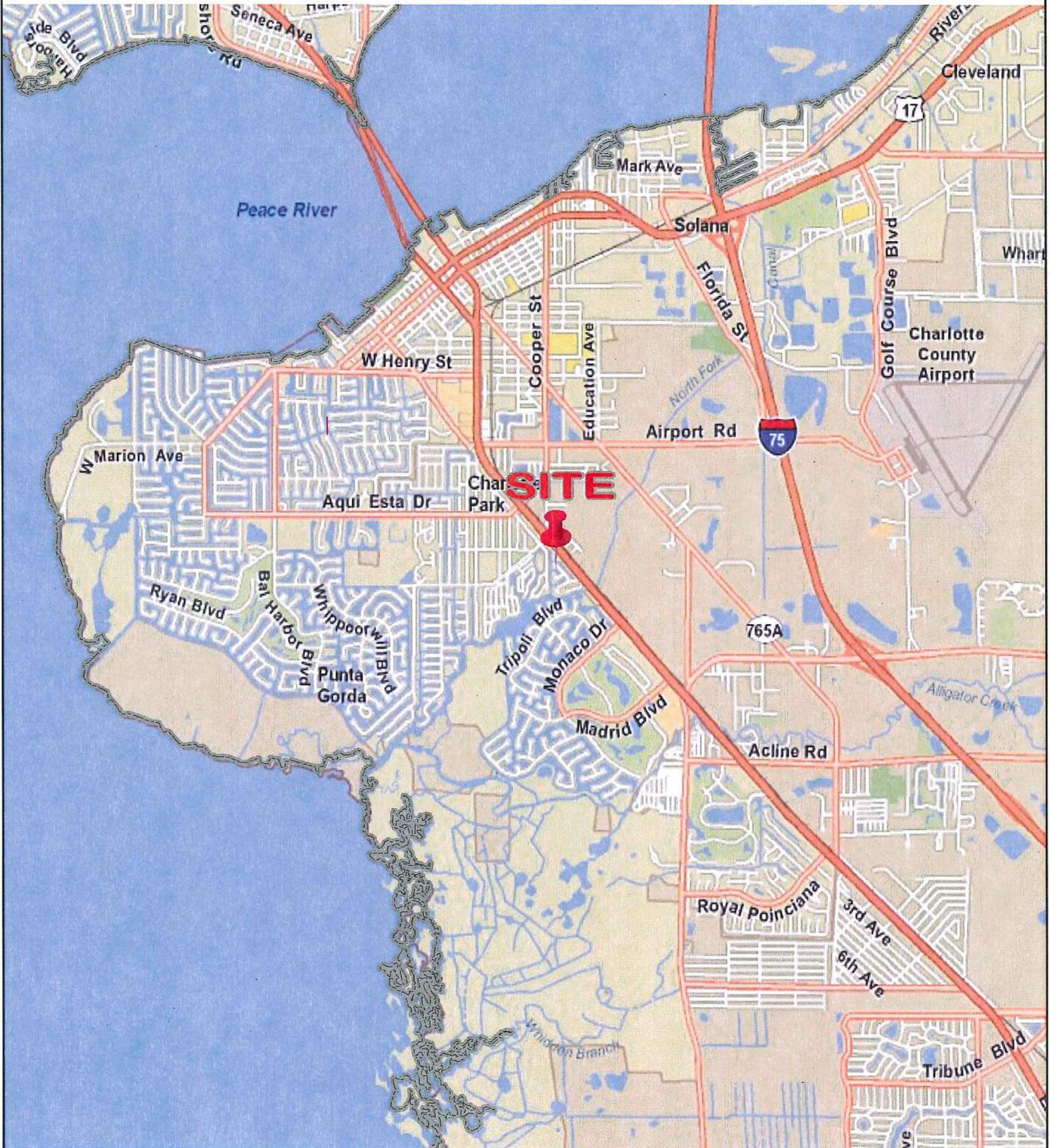
# CHARLOTTE COUNTY

## Location Map for VAR-12-010

Charlotte County Government

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### 17/41/23 East 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 By: Land Information-D. Vance Date Saved: 11/27/2012 4:30:37 PM

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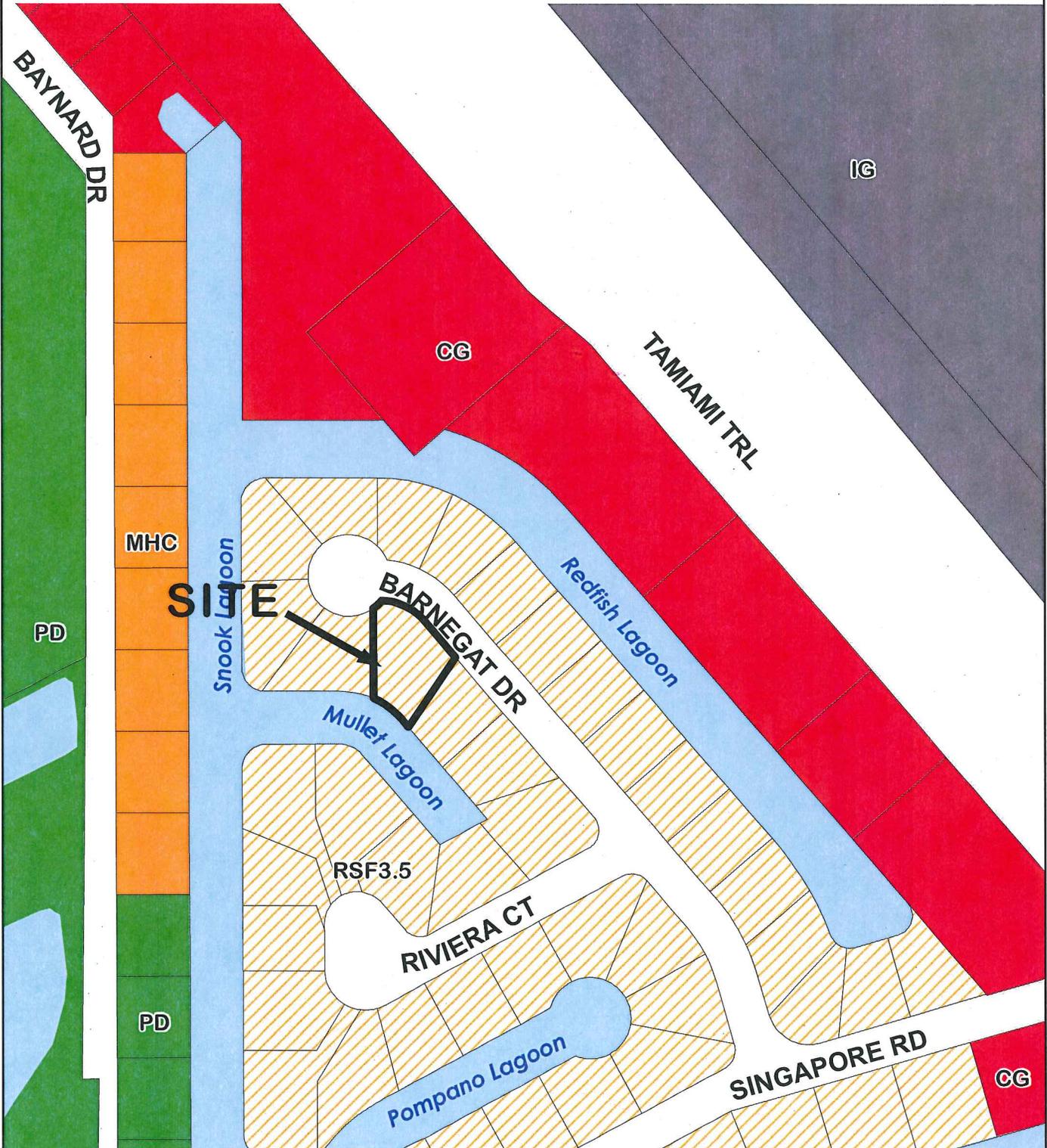
Community Development

# CHARLOTTE COUNTY Zoning Map for VAR-12-010

Charlotte County Government

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### 17141/23 East County

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Community Development

# CHARLOTTE COUNTY

Aerial View for VAR-12-010

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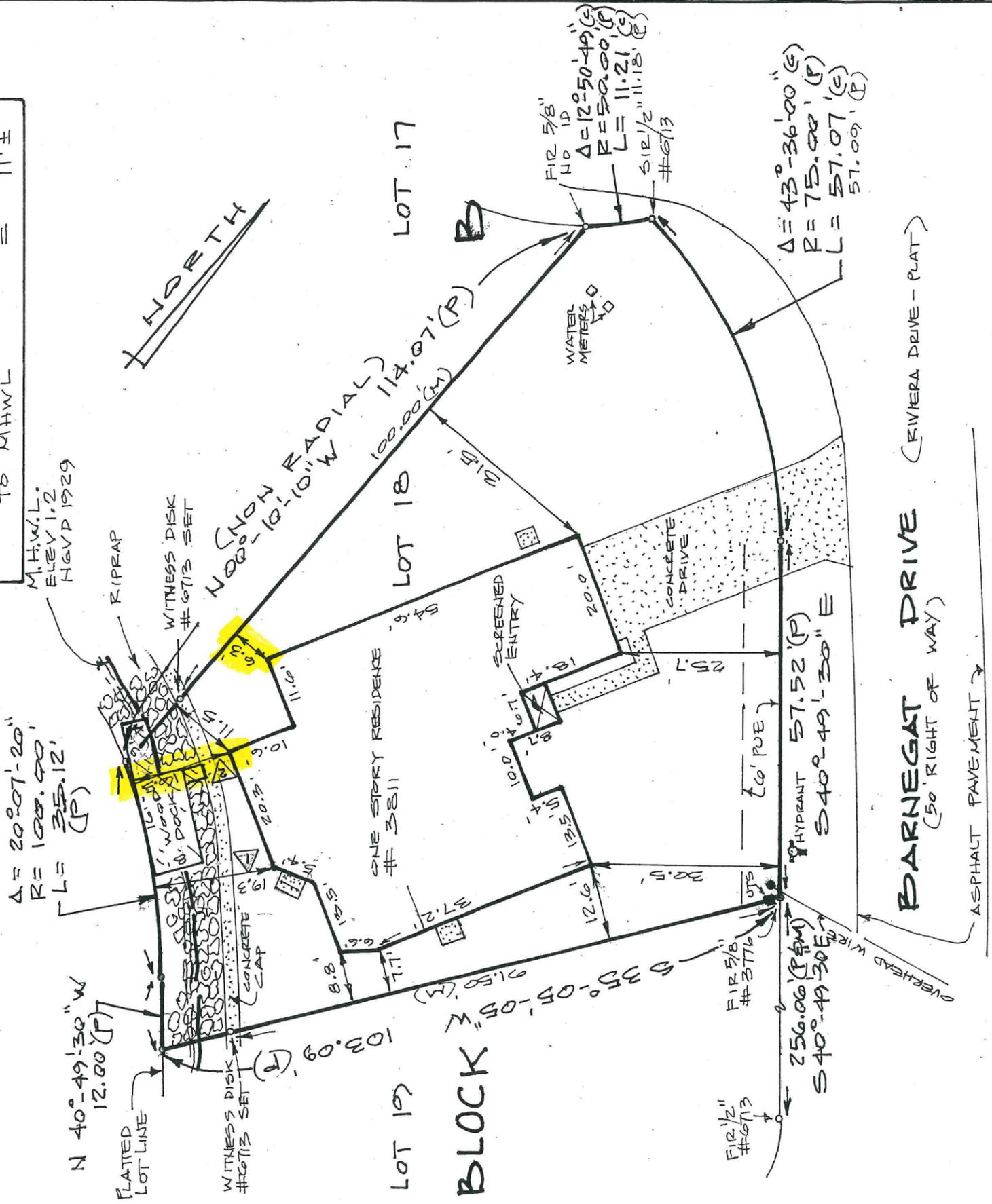


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MULLET LAGOON

**REAR SETBACKS**  
 Δ TO PLATTED LOT LINE = 19.3'  
 TO MHWL = 14'±  
 Δ TO PLATTED LOT LINE = 19.5'  
 TO MHWL = 11'±



10-26-2012 REAR SETBACK TABLE ADDED JM

CERTIFIED TO:  
 DC & R SOLO AOKI TRUST  
 TRUSTEE: JAMES R DESIMONE  
 FARR, FARR, EMERICH, HACKETT AND CARR, PA  
 OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

**BOUNDARY SURVEY**  
**LOT 18 BLOCK B**  
 UNIT No 2  
**RIVIERA LAGOONS**  
 CHARLOTTE COUNTY FLORIDA  
 PLAT BOOK 7, PAGE 10

10-02-2012

1. INFORMATIONAL FEATURES ARE SHOWN FOR INFORMATIONAL PURPOSES ONLY. ED BY OTHERS.		FIELD: JM/EP	COMPS: JM/EP	DRAFTING: JM
B	EASTERLY LOT LINE - PLAT	SCALE: 0	DATE: 10-02-2012	
CC	PANEL NUMBER 0243	SUFFIX F	EFFECTIVE DATE 5-5-03	FIRM ZONE A/E
NI			BASE FLOOD ELEVATION 9.0	
P: DEED D: UNITED TELEPHONE SERVICE UTS: FLORIDA POWER & LIGHT FPL: CABLE TELEVISION CTY: NATIONAL GEODETIC NGVD: EXISTING ELEVATION X8.5: POWER POLE ●: CHAIN LINK FENCE XX: WOOD FENCE ##: UTILITY RISER ■: CONCRETE * : TO BE SET		THIS SURVEY IS HEREBY CERTIFIED AS MEETING THE MINIMUM TECHNICAL STANDARDS AS SET FORTH BY THE FLORIDA BOARD OF LAND SURVEYORS PURSUANT TO CHAPTER 177, FLORIDA STATUTES, CHAPTER 472 FLORIDA STATUTES AND CHAPTER 61G17, FLORIDA ADMINISTRATIVE CODE AND IS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. THIS SURVEY WAS PREPARED WITHOUT CERTIFICATION OF TITLE REPORT AND IS NOT A CERTIFICATION OF TITLE, ZONING OR FREEDOM FROM ENCUMBRANCES.		
J and PLATT SURVEYING, INC. 2511 VASCO STREET PUNTA GORDA, FLORIDA 33950		Jean Michel Melillo JEAN-MICHEL MELILLO R.S.&M. 5553 JOB NUMBER 12-1159		

**Boundary Survey**  
**(Exhibit A)**

EXHIBIT A

(941) 505-0366  
 Fax: 505-0368

LB 6713

10-26-2012

**VARIANCE NARRATIVE FOR ARTHUR RAY TALSMA, TRUSTEE  
3811 BARNEGAT DRIVE, PUNTA GORDA, FL 33950**

This is a request for a variance from the requirement of § 3-9-32 of the Code of Laws and Ordinances of Charlotte County concerning the setback requirements for the side and rear of the structure built on the subject property.

The strict application of the requirement of the Code will create a practical difficulty and undue hardship on the property owner. There are extraordinary factors, which make this variance request necessary, and should be granted based upon the following conditions:

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

The subject property is an irregular, pie-shaped parcel located on a canal within the Riviera Lagoons subdivision, which is in unincorporated Punta Gorda in Charlotte County, Florida. Due to the irregular shape of the lot, the house is situated at an angle on the lot and the sides of the home do not run parallel with the side lot lines. The distances from the house to the side lot lines decreases as you move from the front to the rear of the property, decreasing from 31.5 feet from side lot line at the front, west corner of the property, to 6.3 feet at the rear, west corner of the home. With respect to the rear setback, the platted lot line extends into the canal behind the property into Mullet Lagoon. As a result, the measurement from the rear of the structure to the mean, high-water line is somewhat amorphous and not easily capable of precise determination. Furthermore, it is entirely possible that the mean, high-water line could have changed over the last 24 years since this home was built.

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

The owner of the home is eighty-seven (87) years of age. The home on the subject property was built in 1988 by the developer of Riviera Lagoons. The current owner has owned the subject property since it was built by the developer of Rivera Lagoons. The current owner selected the lot and the floor plan of the subject property in a package from the developer. During construction of the home, the owners resided out-of-state and were not in a position to supervise construction or placement of the home. The side setback on the rear, west corner of the home is 6.3 feet, rather than 7.5 feet as required by Code. The size of the setback in the rear of the home is incapable of precise determination because of the location of the mean, high-water line, but appears to be approximately 11 feet at its closest point. The strict and literal enforcement of the zoning application would create an undue hardship on the elderly owner, as the home has been in existence since 1988, and it is not feasible to change the footprint of the home to increase the setback on the rear or west corner of the home.

- 3. The variance request does not involve any use which is prohibited in the district where the property is located.**

The use of the subject property is and will continue to be for single-family residential if the variance is approved.

- 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.**

The variance would not be injurious to or incompatible with contiguous uses, the surrounding neighborhood, or otherwise detrimental to the public welfare. The home has been in the same location since 1988. The side setback is approximately a foot less than what is required. The rear setback is incapable of precise determination because of the location of the mean, high-water line, but does not affect any other property owners because the subject property backs up to a canal. The granting of a variance regarding the setback would not adversely affect contiguous uses, the surrounding neighborhood or the public welfare.

- 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.**

The special conditions and circumstances do not result from the actions of the applicant or of the current owner. The condition was caused by the developer of Riviera Lagoons and structure was approved and passed final inspections by Charlotte County both at the time of initial construction in 1988, and again in 2005 when repairs to the spa enclosure were done after Hurricane Charley.

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

The requested variance is the minimum modification that will afford relief. There is no other remedy that is feasible in light of the location of the structure.

- 7. The requested variance is consistent with the Charlotte County Comprehensive Plan.**

There are no goals, objectives, or policies of the Charlotte County Comprehensive Plan that are negatively implicated by this variance.

**Narrative  
( Exhibit B-2 )**



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## MEMORANDUM

**Date:** November 29, 2012  
**To:** Ken Quillen, Planner III  
**From:** Jamie Scudera, Environmental Specialist  
**Subject:** VAR-12-010  
Talsma Setback Variance  
3811 Barnegat Dr.

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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 review was conducted by staff. The property consists of a developed single family residence located on a tidal canal. The request is for a variance from the side and rear yard setbacks for an existing home.

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:

- ❖ As this proposal moves forward, the Environmental Review Section has no issues which need to be addressed.

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

JS

**( Exhibit C )**

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**COMMUNITY DEVELOPMENT DEPARTMENT- -Zoning Division**

18400 Murdock Circle | Port Charlotte, FL 33948

Phone: 941.743.1290 | Fax: 941.743.1598



**Photo of existing West Side Yard**



**Photo of existing Rear Yard**

**Photographs (November 27, 2012)**

**3811 Barnegat Drive**

**( Exhibit D )**