

STAFF REPORT
Charlotte County Growth Management Department
Petition Number: VAR-13-002

To: The Charlotte County Board of Zoning Appeals

From: Shaun Cullinan, Zoning Official

Prepared By: Ken Quillen, AICP, Planner III

Report Date: April 2, 2013

BZA meeting date: April 10, 2013

Requested Action/General Information:

Philip Eason, agent for Margaret Scarl, is requesting a variance to reduce the required 20.5' westerly street side yard setback by 4.0' to allow a 16.5 setback. This property is located at 105 Wilhelm 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.

The property owner's obtained a variance on June 8, 2011, to allow development of a single-family residence on this substandard size lot. The attached **Notice of Approval** for VAR-11-04 (**Exhibit A**) is evidence of this approval. This lot is substandard with regard to the minimum lot width and area requirements of the zoning code. 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. This lot is a legally created 4,250 square foot (50' by 85') lot, which was platted in 1946.

The applicant has submitted the attached **Site Plan** (**Exhibit B**), which shows the proposed single-family residence located on this lot. This proposed development meets all of the setback requirements of the Manasota Key Code, however, section **3-9-98**, titled "**Waterfront property**", which is attached and labeled **Exhibit C** has additional requirements for properties located within 1,200 feet of the Gulf of Mexico and other waterways. These include greater setback requirements based on the height of a building or structure. The taller a structure is, the greater the setback.

As such, a portion of the proposed single-family residence does not meet the setback requirement along the westerly street side yard, which is located adjacent to Gulf Boulevard. The applicant has also submitted scaled architectural drawings for the **Building Elevations** (**Exhibit D-1**), **Floor Plans** (**Exhibit D-2**), and **Section Plans** (**Exhibit D-3**), of the proposed single-family residence.

The applicant has submitted the attached **Narrative** (**Exhibit E**) 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 F**) dated March 29, 2013. The Manasota and Sandpiper Key Advisory Committee met on March 20, 2013, and tabled any action on this requested variance until their next meeting on April 3, 2013. As such staff is unable to include their recommendation in this staff report.

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 an existing non-conforming lot, with regard to lot size, which was legally created on May 9, 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: A combination of factors, including "Flood Damage Prevention", which require elevating the building, and "Waterfront Property" code, which requires additional height restrictions are both applicable to this substandard size lot. Literal enforcement of these codes does create an undue hardship on this 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, to allow construction of a single-family residence on this lot, which meets the other three setback requirements, would not be injurious to, 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 giving rise to the requested variance have not been created by the current owner/applicant; but rather is a result of the 1946 subdivision plat and later adoption of the Charlotte County Zoning code and the Manasota Key Code.

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

Finding: The requested variance, to allow a four-foot variance on the westerly side of this 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: **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.

ANALYSIS AND CONCLUSIONS:

After review of the site and the application requesting a variance, to allow development of a single-family residence on a sub-standard sized lot with a four-foot westerly side yard setback, 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 reduce the required 20.5' westerly street side yard setback by 4.0' to allow a setback of 16.5'.
2. This variance extends only to the single-family residence as it is currently proposed to be constructed and located on subject property and shall carry with this structure only once it is constructed.
3. 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 (3), Location Map, Zoning Map, Aerial Photo, Notice of Approval, Site Plan, Section 3-9-98, Elevations, Floor Plans, Section Plans, Narrative, Environmental Specialist Memorandum and Aerial Photographs



Community Development

CHARLOTTE COUNTY

Location Map for VAR-13-002

Charlotte County Government

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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 guarantees, 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: 3/22/2013 1:46:41 PM
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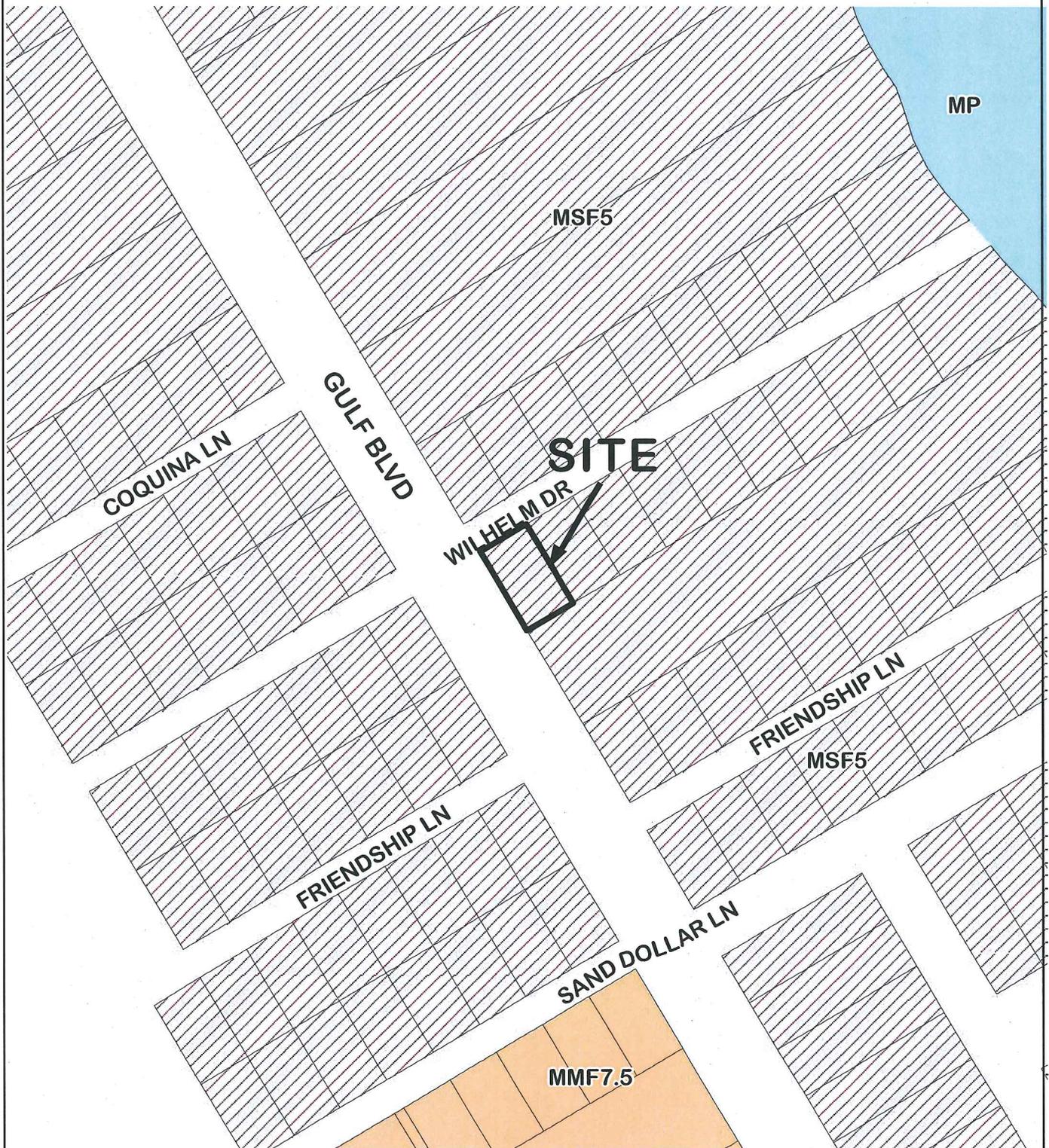


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CHARLOTTE COUNTY

Zoning Map for VAR-13-002



12/41/19 West County

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Community
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CHARLOTTE COUNTY

Aerial View for VAR-13-002

Charlotte County Government

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104#116

COPY

**NOTICE OF APPROVAL
FOR A VARIANCE TO THE CHARLOTTE COUNTY ZONING CODE**

Pursuant to Charlotte County Code Section 3-9-6.1(d), this is to acknowledge the approval of the Variance application which was heard by the Charlotte County Board of Zoning Appeals.

Applicant: Philip Eason, 890 South McCall Road, Englewood, Florida 34223

Owner: Chuck and Margaret Scarl, 10866 Prouty Road, Painseville, OH 44077

Location: 105 Wilhelm Drive, Englewood, Florida and is described as Lot 1 of S. J. Chadwick's re-subdivision of lot 10, of Government lots 3 and 4, located in Section 19, Township 40 South, Range 24 East.

Petition number: VAR-11-04

Approval Date: June 8, 2011

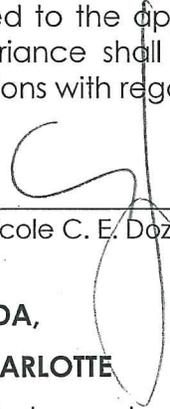
Approved Variance:

A variance to allow development of a single-family residence on a legal non-conforming lot with less than 5,000 square feet of land area in a Manasota Single-family-5 (MSF-5) zoning district.

Conditions Placed on the Approval:

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.

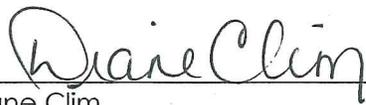
Please be advised that any variance granted shall expire three (3) years after the date of approval unless the use allowed by the variance is in existence and actively occurring on the subject property prior to the date of expiration. Any such variance which, ceases to exist and actively occur on the subject property shall expire three years from the effective date of this regulation unless good faith commencement of the variance has begun prior to expiration. Prior to expiration, the applicant or property owner may request an extension from the Board of Zoning Appeals. Such extension may be granted to the applicant or owner upon showing of good cause. Any non-conforming variance shall be subject to the requirements of Section 3-9-10 of the Zoning Regulations with regard to non-conforming uses.

Prepared by: 
Nicole C. E. Dozier, Zoning Official

CHARLOTTE COUNTY CLERK OF CIRCUIT COURT
OR BOOK 3576, PGS 1769-1769 1 pg(s)
INSTR # 2023812
Doc Type NOT, Recorded 06/10/2011 at 11:11 AM
Rec. Fee: \$10.00
Cashiered By: MARGEC Doc. #:2

**STATE OF FLORIDA,
COUNTY OF CHARLOTTE**

The foregoing instrument was acknowledged before me this 8th day of June, 2011, by Nicole Dozier, who is personally known to me, and who did not take an oath.

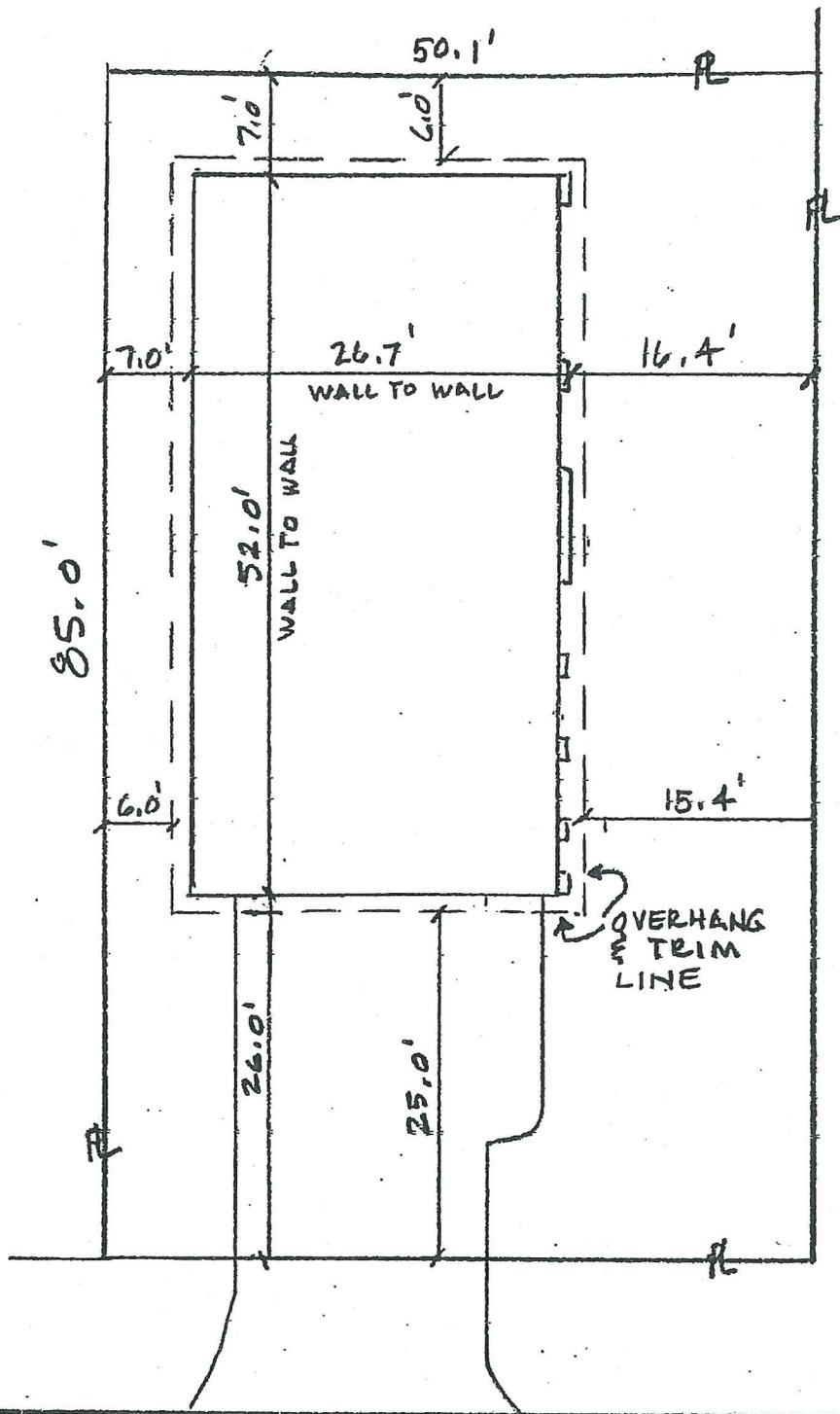

Diane Clim, Notary Public



**Notice of Approval
(Exhibit A)**



Return to Growth Management, Zoning Division / Ken Quillen



GULF BLVD.

FLOODZONE
AE 11'

105 WILHELM DRIVE

SITE PLAN

Site Plan
(Exhibit B)

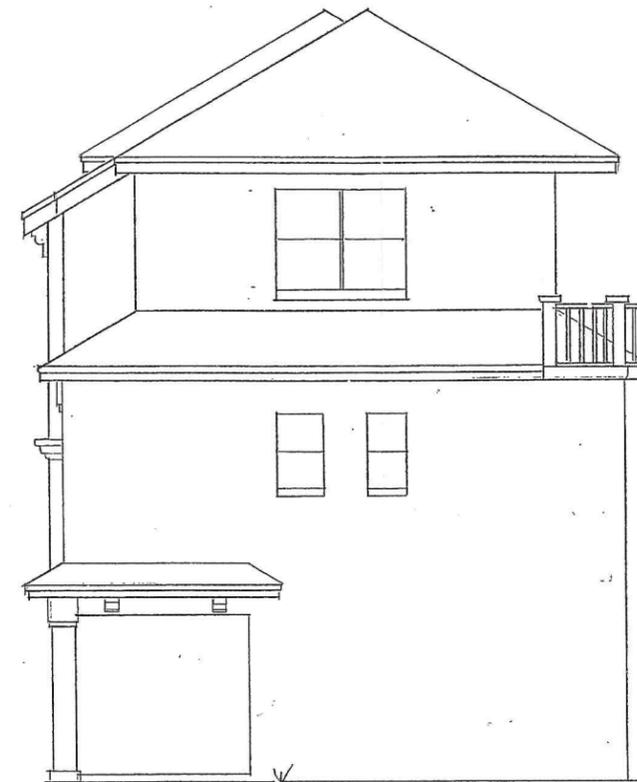
Sec. 3-9-98. - Waterfront property.

- (a) Marine businesses and waterfront industrial uses are permitted to build up to the seawall, bulkhead or bulkhead line of any creek, canal, river, lake or other body of water, natural or artificial, in the county.
- (b) Where the provisions of this section are deemed inconsistent with the Manasota Key Zoning District Overlay, the provision of the later shall apply.
- (c) The following requirements shall apply, in addition to all other zoning requirements, to any lot, or portion of lot, located anywhere on a barrier island or within one thousand two hundred (1,200) feet of the water of Charlotte Harbor, the Gulf of Mexico, Lemon Bay, Gasparilla Sound, Placida Harbor, Red Fish Cove, the Myakka River, the Peace River, or Coral Creek.
 - (1) No residential or commercial building shall exceed thirty-five (35) feet in height from the lowest habitable floor for which a building permit can be issued to the highest point of a flat roof and mansard roof, or to the mid point height between the eaves and ridge of gable, hip and gambrel roofs. In no event shall any area above thirty-five (35) feet be used or made available for storage or human occupancy. No boat storage facility shall exceed forty-eight (48) feet in height from average natural surrounding grade. This restriction shall not apply to properties located in the Riverwalk District of the Charlotte Harbor Community Redevelopment Area, identified in section 3-9-50.5(c), if the development complies with the performance standards of that code.
 - (2) Buildings shall be set back from property lines abutting streets not less than the greater of the distance required by the applicable zoning district or a distance equal to the height of any setback calculation point, as such term is defined in subsection (b) (7) hereof. This restriction shall not apply to properties located in the Charlotte Harbor Community Redevelopment Area.
 - (3) Buildings shall be set back from side property lines not abutting streets not less than the greater of the distance required by the zoning classification or a distance equal to one-half ($\frac{1}{2}$) the height of any setback calculation point. No building shall be constructed or located within twenty (20) feet or a distance equal to the height of any setback calculation point, whichever is greater, of the mean high waterline of Charlotte Harbor, Lemon Bay, Gasparilla Sound, Placida Harbor, Red Fish Cove, the Myakka River, the Peace River, or Coral Creek.
 - (4) No building except single-story accessory structures shall be constructed a lesser distance from another building on the same lot than a distance equal to the height of the higher building.
 - (5) No building shall be constructed or located within fifty (50) feet or a distance equal to the height of any setback calculation point, whichever is greater, of the mean high water line of the Gulf of Mexico. No building may be constructed seaward of the coastal construction control line unless a permit has been issued by the state.
 - (6) No building shall exceed two hundred (200) feet in width or length on properties abutting the shorelines of the Gulf of Mexico, Lemon Bay, Placida Harbor, Gasparilla Sound, Charlotte Harbor, the Myakka River, the Peace River, Red Fish Cove, or Coral Creek.
 - (7) For purposes of this subsection 3-9-98(b), a setback calculation point shall be defined as any given point on the outside of a building located between the lowest minimum habitable floor elevation for which a building permit may be issued and the highest

Waterfront Property (Exhibit C)



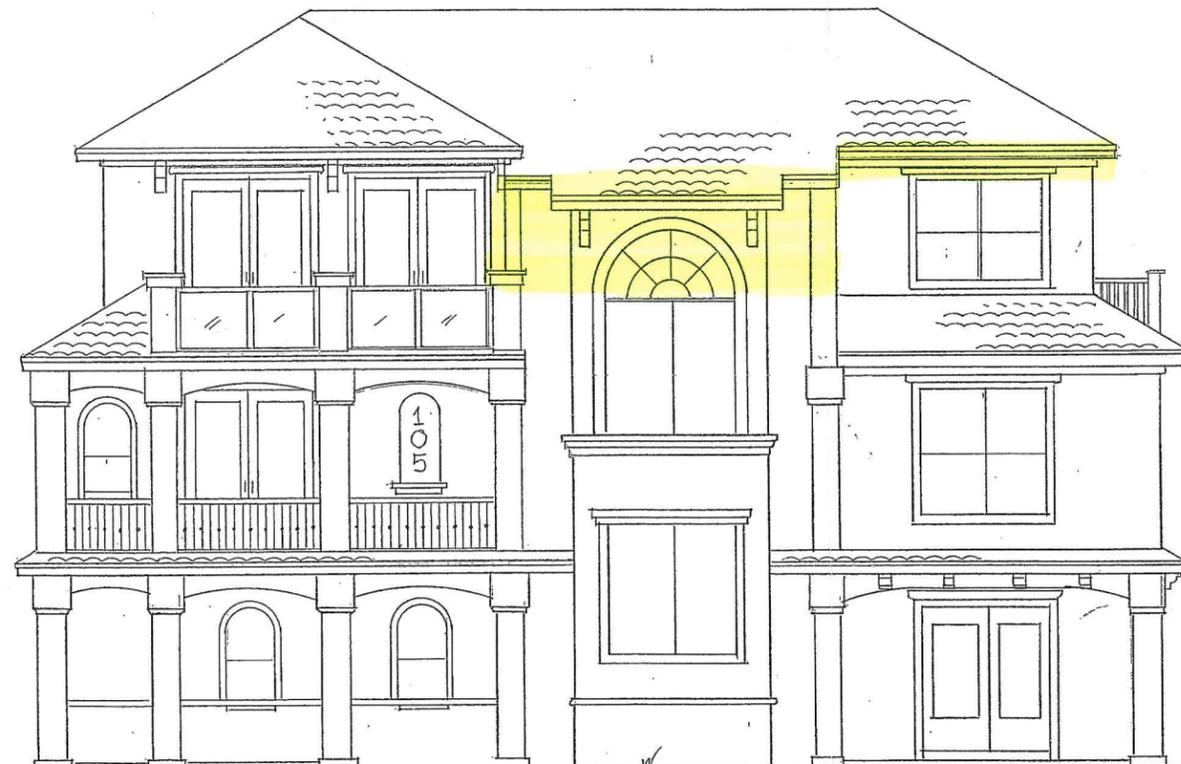
LEFT SIDE - EAST 1/4"



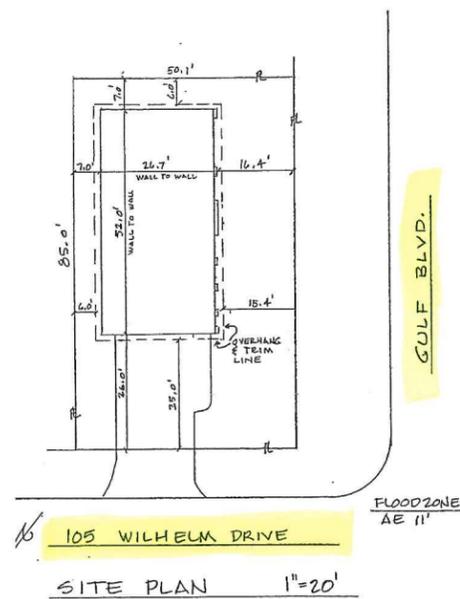
REAR VIEW - SOUTH 1/4"



WILHELM ST - NORTH 1/4"



BEACH ROAD VIEW - WEST 1/4"



**Elevations
(Exhibit D-1)**

RESIDENCE CHARLES & MARGARET
for
S CARL
105 WILHELM ST

BUILT BY:
BAY FRONT BUILDERS

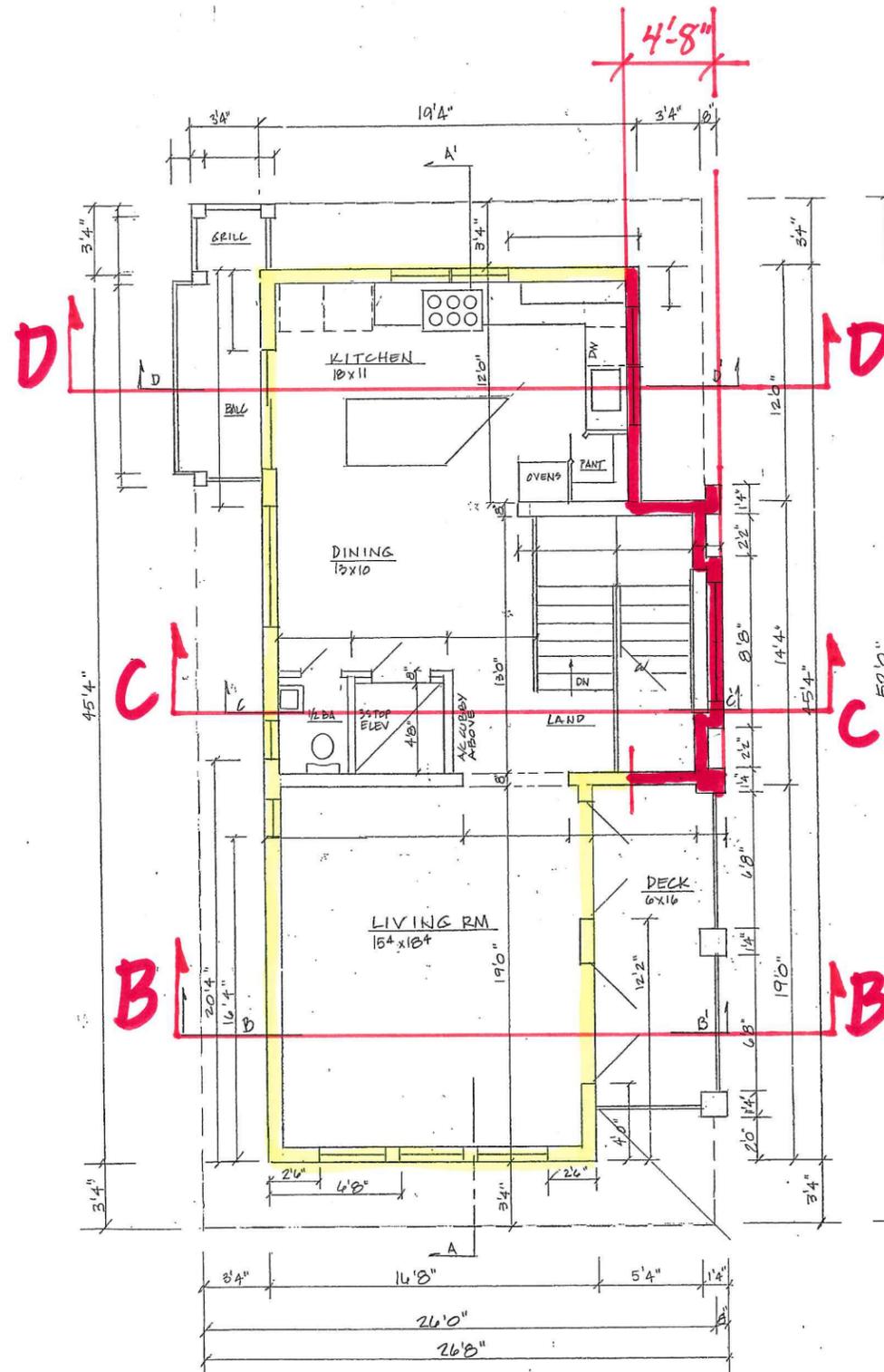
307 ARTISAN AVENUE
Englewood, FL 34223
Phone (941) 774-0559
Fax (941) 773-4991
Marty A. Tracy, cpbd
martyatracyplans@comcast.net
Your Guide to Artistic Home Design

C.N. Johnson, PE
64 Aqua Lane
N. Ft. Myers, FL 33903
339-692-9317
P.E. License No. 42326
Date
"THESE PLANS ARE DESIGNED IN COMPLIANCE WITH ASCE 7-10 AND THE FLORIDA BUILDING CODE 2010 EDITION WITH ALL REVISIONS AND ADDENDUMS FOR THE ULTIMATE DESIGN 108 MP, WIND 50"

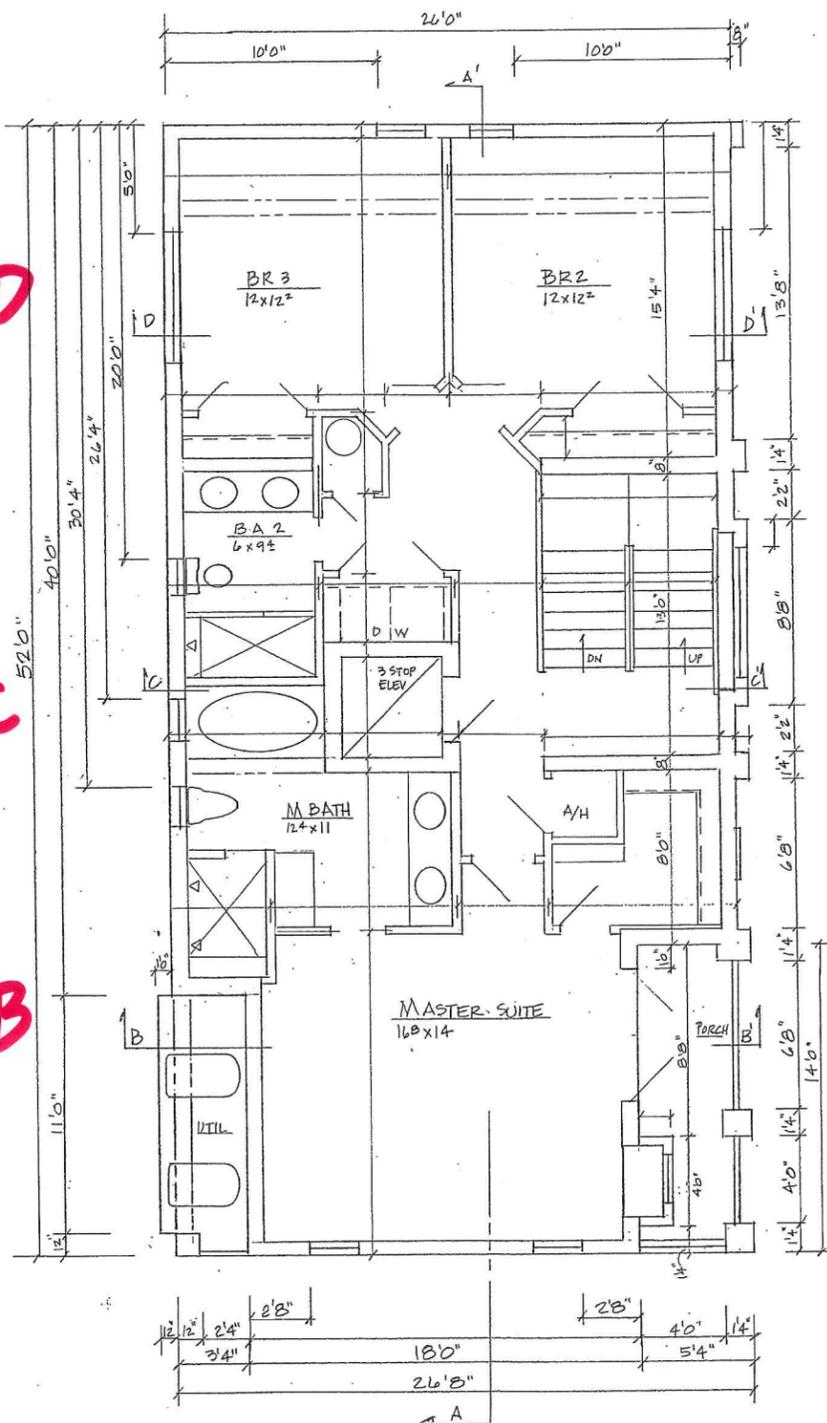
AREA	GROUND	MAIN	UPPER	TOTAL
LIVING		1755	860	2615
PORCHES	108	115		223
DECK/BALC			161	161
VESTIBULE	244			244
GARAGE	472			472
ENTRY	65			65
TRASH	91			91
	1369	1370	1041	3770

2,135 sq. ft.

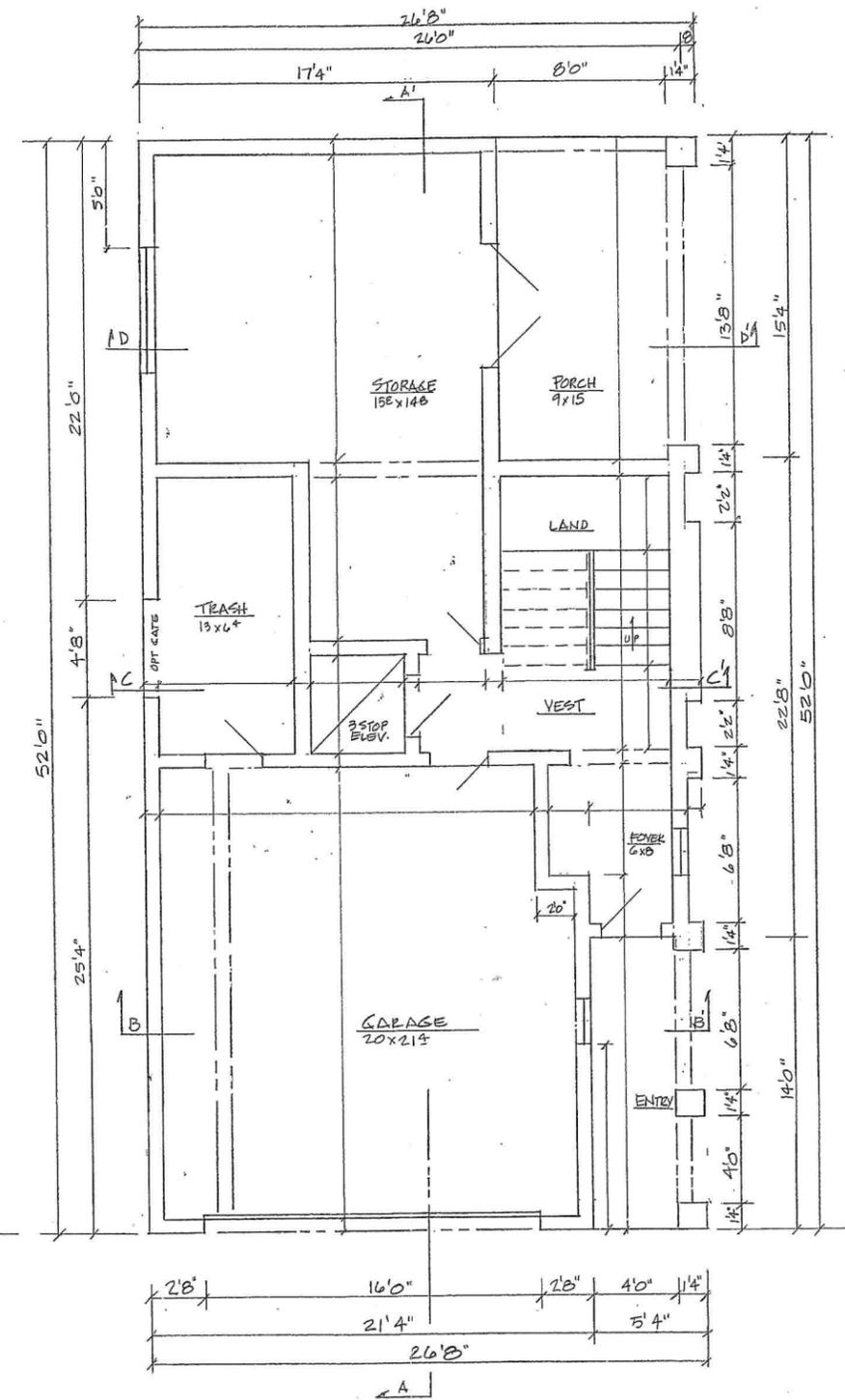
Floor Plans (Exhibit D-2)



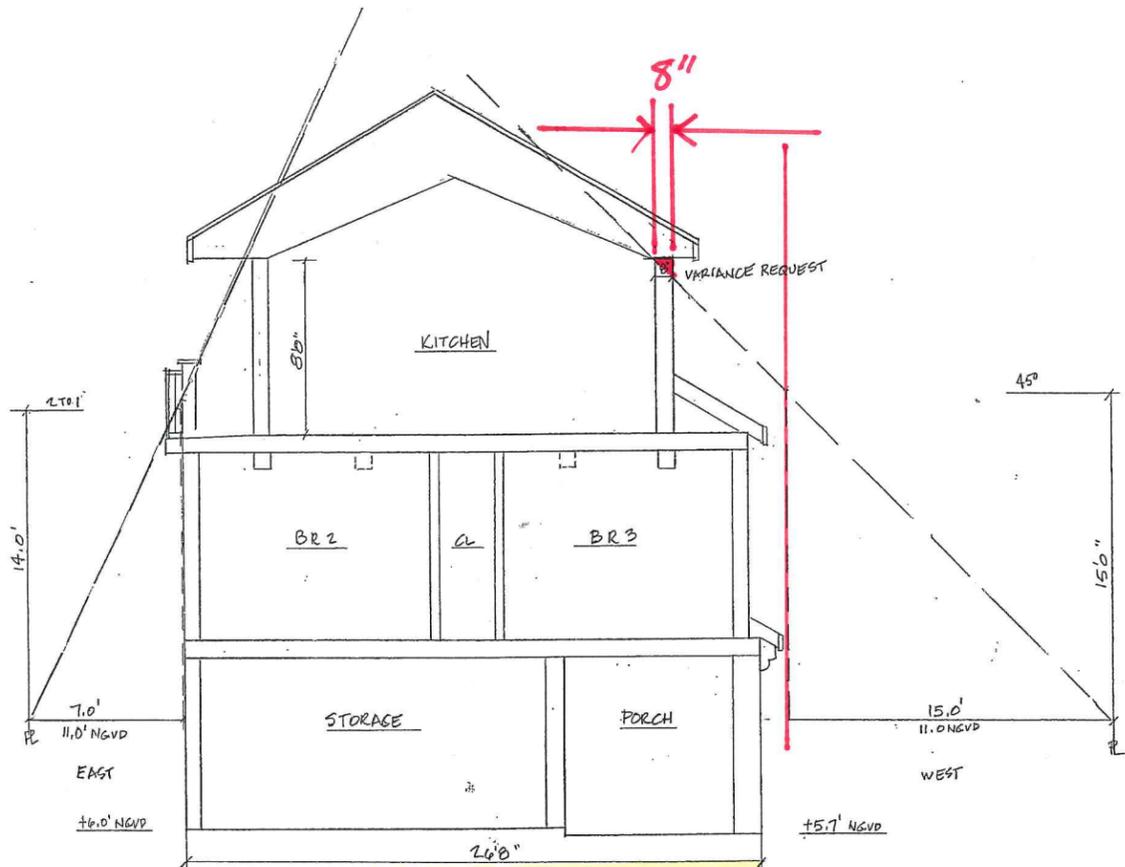
UPPER FLOOR PLAN 1/4"



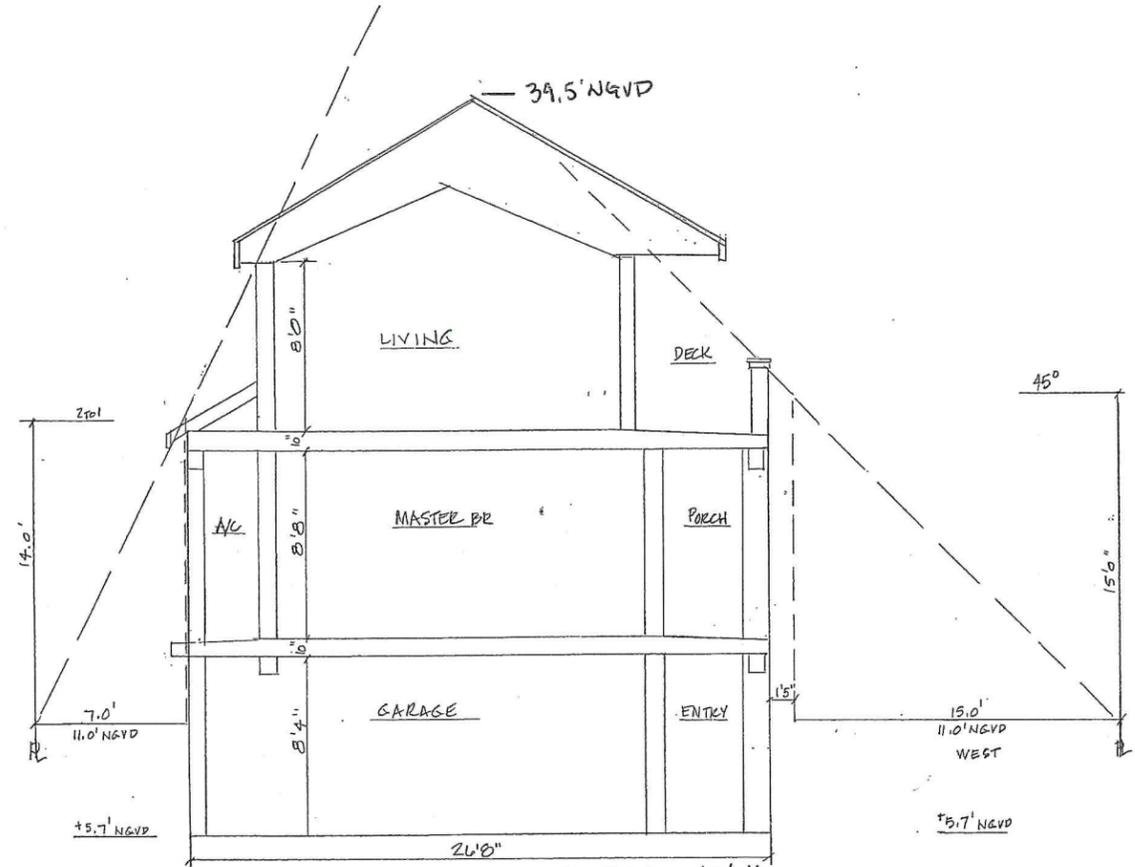
MAIN FLOOR PLAN 1/4"



GROUND FLOOR PLAN 1/4"

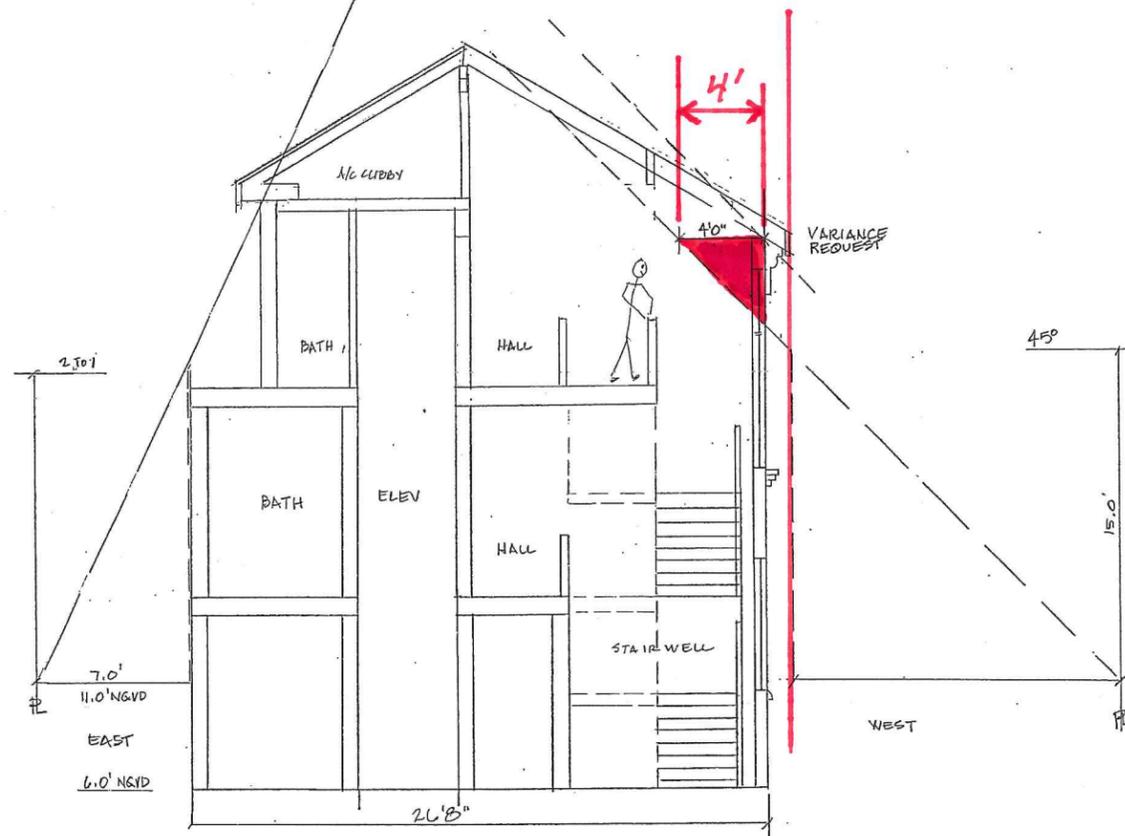


SECTION D-D' 1/4"

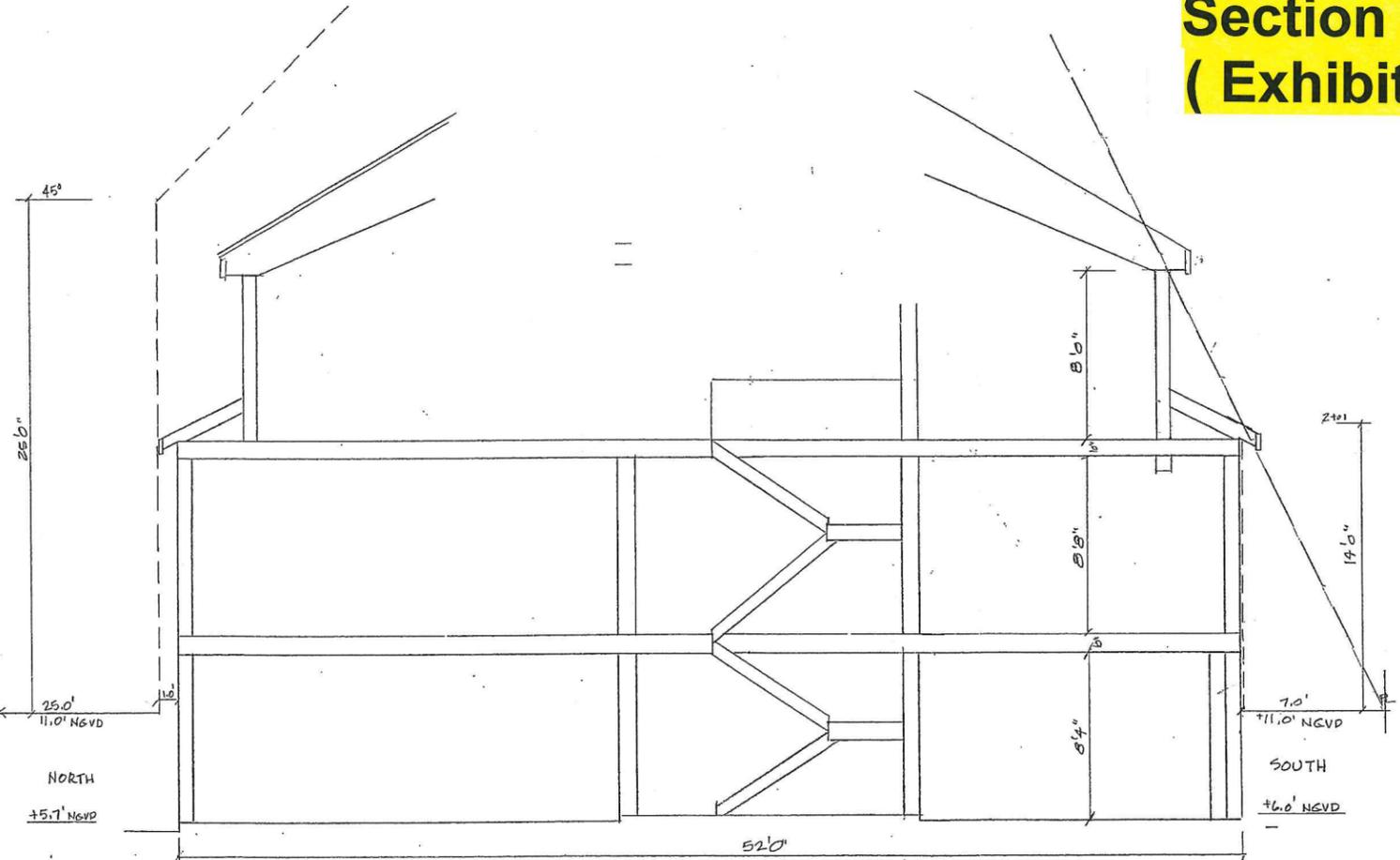


SECTION B-B' 1/4"

**Section Plans
(Exhibit D-3)**



SECTION C-C' 1/4"



SECTION A-A' 1/4"

TO: Charlotte County Community Development Department
Zoning Division
RE: Scarl Residence
Variance Narrative
DATE: February 26, 2103

Chuck and Margaret Scarl have designed a minimal sized residence for construction on their south Manasota Key lot at the corner of Wilhelm Drive and Gulf Blvd. The home has been designed to be complaint with all Charlotte Zoning height restrictions and those setbacks for the ground floor structure footprint. The upper living level is compliant for the Waterfront Property Ordinance sideyard and Wilhelm Drive setbacks as well. We hereby request relief from the upper level Gulf Blvd. setback as defined in Ordinance 3-9-98 (c) (2) for the following areas:

- 4' vertically for 15'-8" of the central stairway access area
- 8" vertically for 12' of the southern end of the building at the kitchen area

We contend the following circumstances exist:

1. The property was legally subdivided in June of 1949 as a buildable lot by the Charlotte County Board of Commissioners. The platted size was 50' X 85'; 4,250 sq. ft. A hardship was created by subsequent Charlotte County ordinance which mandated larger minimum area and frontage for development. A variance (VAR 11-04) was granted June 8, 2011 to provide relief and allow construction of a single family residence on this lot.
Charlotte County Zoning ordinance dictates sideyard and streetside setback that allows a buildable footprint on this lot of only 30'X 55'; inclusive of overhangs. The natural grade of the lot is over 5' below the FEMA flood zone requirement, restricting ground level improvements of only garage and storage uses. The limited buildable footprint makes it impractical to construct an up to date structure with just one level of living area above the ground floor garage, thus creating the need for a three level structure.
2. The severity of the upper level setback as defined in 3-9-98 (c) (2) narrows the allowable upper level structure width to approximately 18'-8" at the ceiling height. Having already located the elevator to the central portion of the plan, the access stairs are kept on the perimeter and forced into the setback.
3. This structure shall be used strictly as a single family residence. The variance does not allow any prohibited usage.
4. The variance would not adversely harm the neighborhood as all neighboring property setbacks are in compliance
5. The Scarl's did not have any interest in the creation of the Ordinance that necessitate this request.
6. The home has been pushed as far away from Gulf Blvd. as the eastern sideyard setback will allow without further encroachment.
7. The requested variance is consistent with the Charlotte County Comprehensive Plan.

Narrative
(Exhibit E)



MEMORANDUM

Date: March 29, 2013
To: Ken Quillen, Planner III
From: Jamie Scudera, Environmental Specialist
Subject: VAR-13-002
Scarl Setback Variance, 105 Wilhelm 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 Charlotte County GIS aerial review was conducted by staff. The site does contain habitat that may be utilized by species listed by the United States Fish and Wildlife Service (FWS) or Florida Fish and Wildlife Conservation Commission (FWCC) as endangered, threatened, or a species of special concern.

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

Chapter 3-2:

Article IX. TREE REQUIREMENTS

**All heritage trees (per Section 3-2-190) must remain preserved.

(Exhibit F-1)

Chapter 3-5:

Article IV, *CLEARING, FILLING AND SOIL CONSERVATION*,
Article XVIII, *LANDSCAPING AND BUFFERS*

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

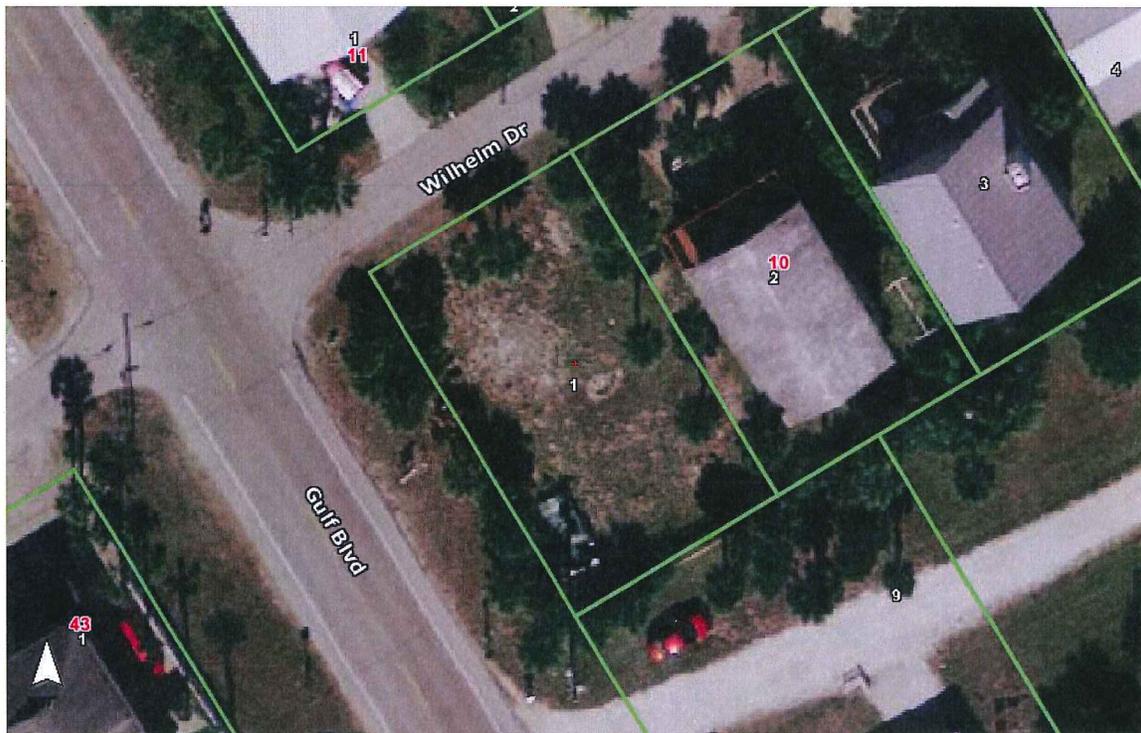
If there are any questions pertaining to this review please feel free to contact me at (941) 743-1290.

JS

(Exhibit F-2)



Aerial View of Subdivision



Aerial View of Lot One (1)

Aerial Photographs (February, 2004)

105 Wilhelm Drive

(Exhibit G)