STAFF REPORT
Community Development Department
Petition Number: VAR-13-003

To:	**The Charlotte County Board of Zoning Appeals**	
From:	**Shaun Cullinan, Zoning Official**	
Prepared By:	**Ken Quillen, AICP, Planner III**	
Report Date:	**June 4, 2013**	**BZA meeting date: June 12, 2013**

Requested Action/General Information:
Stephen and Nadine Pearson are requesting a variance to reduce the required 15.0' rear yard setback by 5.0' to allow a 10.2' setback for a swimming pool. This property is located at 817 East Fifth Street in Englewood (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 designation.

Subject property is an 11,500 square foot (100' by 115') lot, which was platted in 1959, prior to both the 1962 and 1981 Zoning Codes. This lot is conforming with regard to the minimum lot width (80') and area (10,000) requirements of the present zoning code. The lot depth is 115', ten feet less than the standard 80' by 125' (10,000 square foot) lot.

The applicant has submitted the attached ***Boundary Survey*** (Exhibit A) and ***Site Plan*** (Exhibit B), which shows the existing single-family residence and proposed pool deck located on this lot. **Section 3-9-96** (Swimming Pools), which is attached and labeled Exhibit C, requires a swimming pool to have a minimum 15' setback from a waterway. The owners are requesting a variance of five feet from this 15' setback requirement so they may be allowed to construct the swimming pool and pool cage with a 10.2' setback from the canal.

This lot is not as deep as a standard lot; however, it is much wider, which does allow sufficient room on either side of the house to construct a swimming pool of the size being proposed. As such, there are other areas on subject property where the swimming pool could be constructed that comply with all of the setback requirements of code. It should also be noted that this home has a 40' front yard setback instead of the 25' front yard setback required by the zoning code. The applicant's narrative states that the previous owner intentionally located this home closer to the waterway. Although this condition was created by a previous owner it is a self-imposed hardship created by the developer of this property.

The applicant has submitted the attached ***Narrative*** (Exhibit D) 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 E) dated May 21, 2013.

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 11,500 square foot lot (100' by 115') is a large conforming lot, with regard to lot width and size, which was legally created on November 17, 1959. This is not 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 strict and literal enforcement of the side and rear setbacks for a swimming pool would not create an undue hardship on the property owners. There are other locations on subject property where a swimming pool could be constructed according to all the setback requirements of code.

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 swimming pool, which is a permitted use in the Residential Single-family-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: There does not appear to be any evidence that the granting of the requested variance, to allow construction of a swimming pool with a 10.2' rear setback, would 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 been created by the current owner. The swimming pool, as proposed, could be constructed in other locations on subject property according to all the setback requirements of 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 five-foot variance, adjacent to a waterway, is not 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 inconsistent with this objective.

ANALYSIS AND CONCLUSIONS:

After review of the site and the application requesting a variance, to allow construction of a swimming pool with a 10.2' rear yard setback, staff believes that the requested variance does not meet all seven criteria for granting a variance. Specifically standards numbered 1, 2, 5, 6 and 7 have not been met.

If the Board of Zoning Appeals decides to approve the requested variance 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. This variance, as approved by the Board of Zoning Appeals, is to reduce the required 15' setback from a waterway for a swimming pool by 5.0' to allow a setback of 10.2'.
2. This variance extends only to the swimming pool and pool cage as proposed for the existing single-family residence as it currently exists. This variance shall carry with the swimming pool 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.

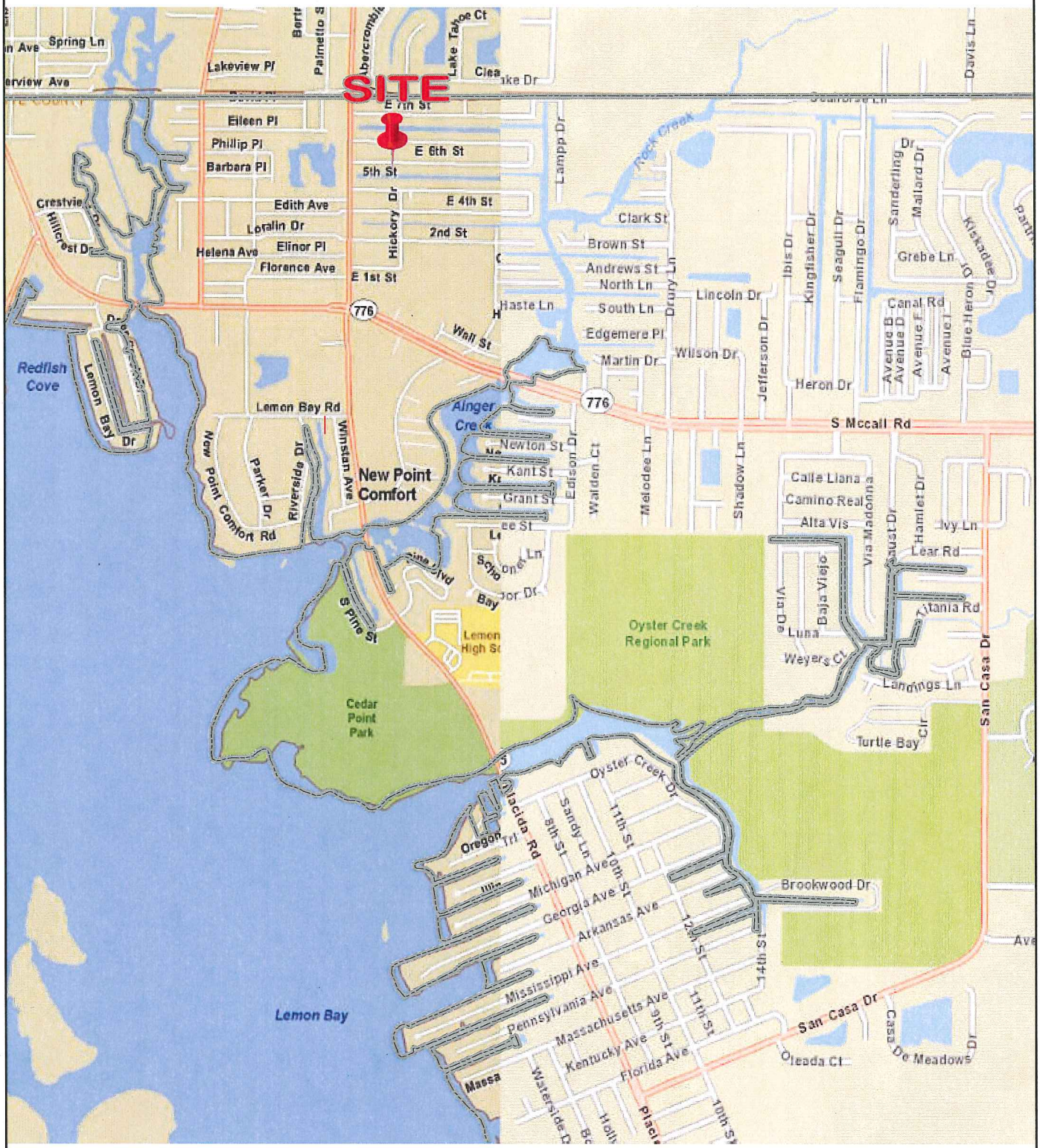
Please be advised that the final decision regarding the petition rests with the Board of Zoning Appeals, and will be decided upon consideration of all the evidence introduced at the hearing.

Attachments: Staff Report (3), Location Map, Zoning Map, Aerial Photo, Boundary Survey, Site Plan, Section 3-9-96, Narrative and Environmental Specialist Memorandum

Community Development

CHARLOTTE COUNTY

Location Map for VAR-13-003



05/41/20 West County

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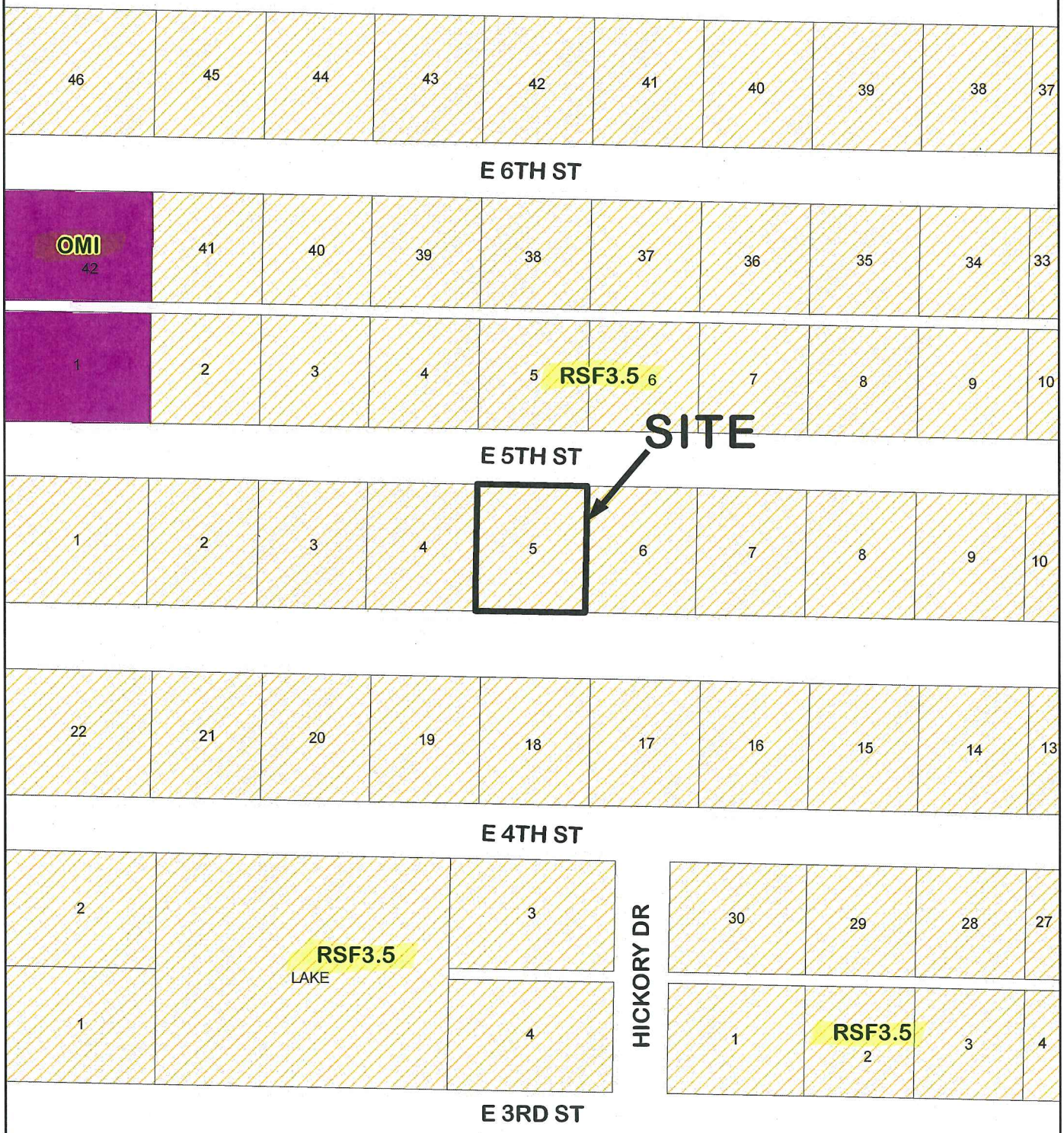
Community Development

CHARLOTTE COUNTY

Zoning Map for VAR-13-003



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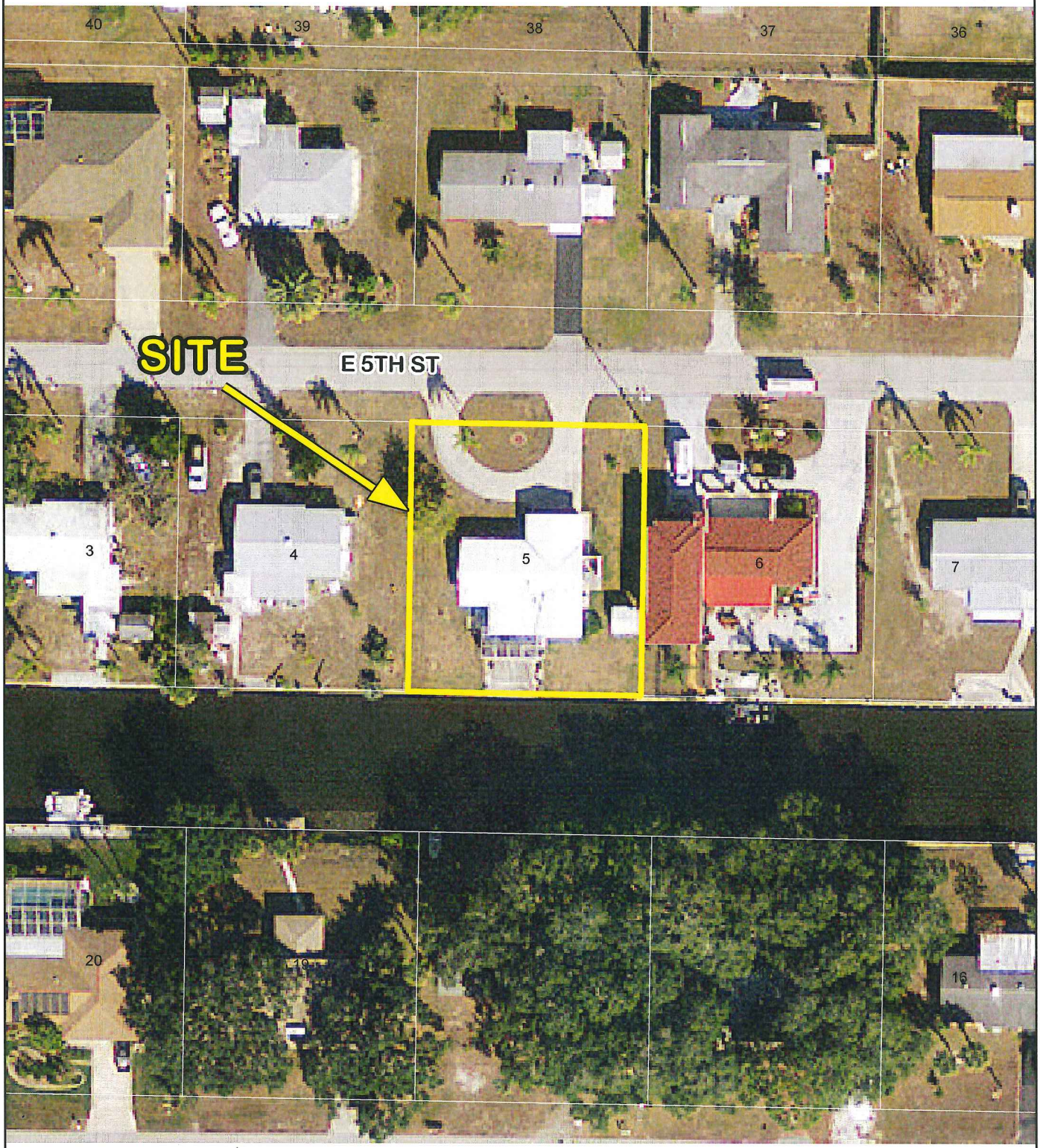
Community Development

CHARLOTTE COUNTY

Aerial View for VAR-13-003



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LEGEND

⊗ = 5/8" IRON ROD FOUND (I.D. NOTED)
● = 5/8" CAPPED IRON ROD SET (L.B. #6639)
▲ = NAIL & DISK (I.D. NOTED)

(P) = PLAT DIMENSION
(M) = MEASURED DIMENSION
(C) = CALCULATED DIMENSION
U. & D. = UTILITY & DRAINAGE
L.B. = LICENSED SURVEYOR BUSINESS
L.S. = LAND SURVEYOR
P.C. = POINT OF CURVATURE
P.T. = POINT OF TANGENCY
P.I. = POINT OF INTERSECTION
R/W = RIGHT-OF-WAY
C/L = CENTER LINE
T.B.M.= TEMPORARY BENCH MARK
F.F. = FINISHED FLOOR
GAR. = GARAGE ELEVATION

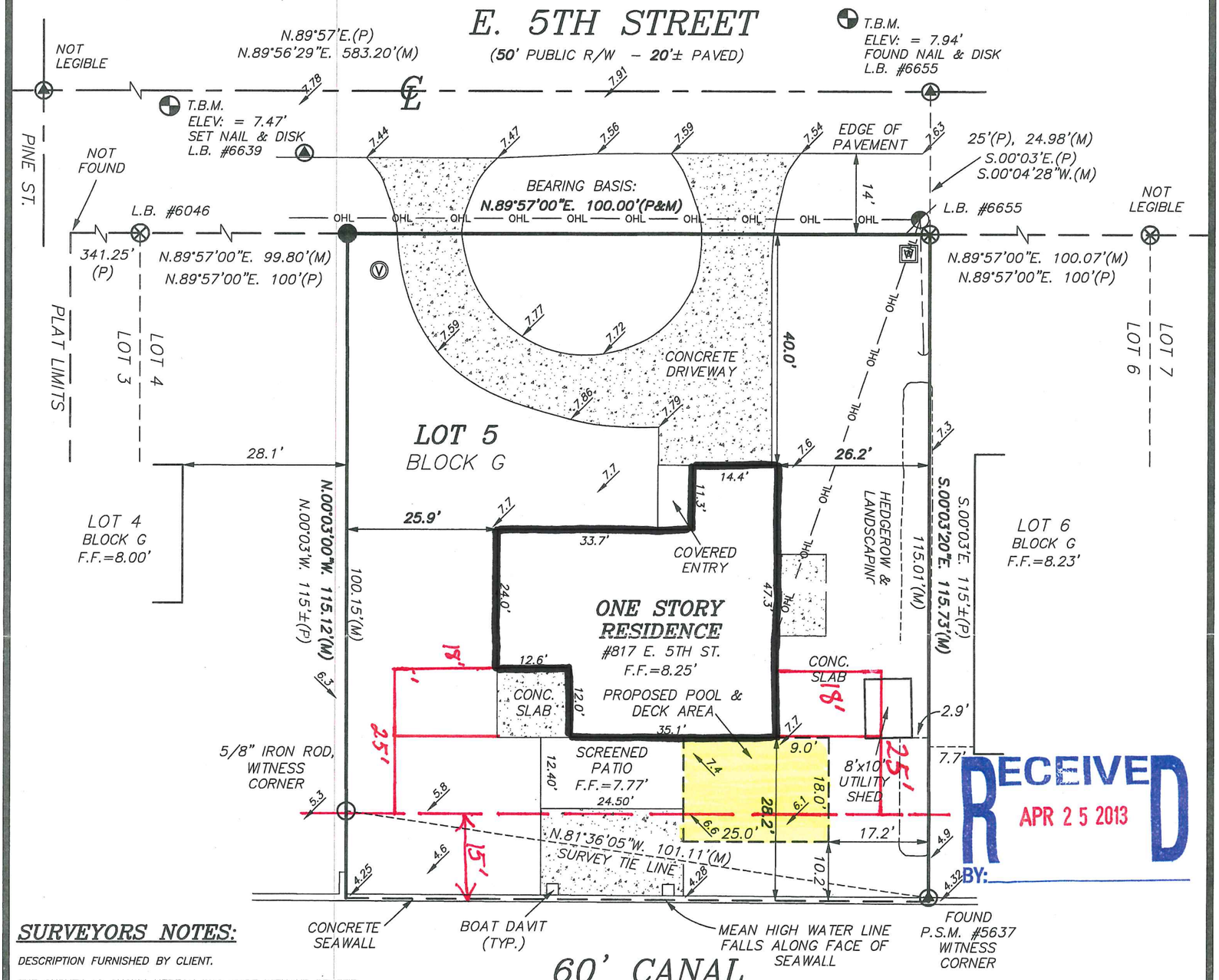
—OHL— = OVERHEAD UTILITY LINES
(TYP.) = TYPICAL
CONC. = CONCRETE
I.D. = IDENTIFICATION
Ø = UTILITY POLE
Ⓥ = VENT PIPE
Ⓦ = WATER METER
EL., ELEV. = ELEVATION

2.00 = EXISTING ELEVATIONS
N.G.V.D. = NATIONAL GEODETIC VERTICAL DATUM
F.I.R.M. = FLOOD INSURANCE RATE MAP
↩ = GUY ANCHOR

SECTION 5, TOWNSHIP 41S., RANGE 20E.

N ASSUMED
W E
S

SCALE 1" = 20'



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SURVEYORS NOTES:

DESCRIPTION FURNISHED BY CLIENT.

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THERE ARE NO APPA[illegible]S OTHER THAN SHOWN, NO BOUNDA[illegible]SEMENTS OR CLAIMS OF EASEMENTS OF W[illegible]LEDGE.

NO UNDERGROUND I[illegible]ROVEMENTS HAVE BEEN LOCATED EXCE[illegible]

BEARINGS SHOWN HE[illegible]' THE RECORD PLAT OF **ROCK CREEK PAR[illegible]** E SOUTH R/W LINE OF **E. 5TH STREET,**

SYMBOL CHARACTERS[illegible] MAY NOT BE DEPICTED TO SCALE[illegible]URPOSES.

Boundary Survey (Exhibit A)

THIS SURVEY IS PR[illegible]YRIGHT AND IS CERTIFIED ONLY TO[illegible]'ED HEREON, AND ONLY FOR THIS PA[illegible]TION. THE SURVEYOR EXPRESSLY DISCLA[illegible]TION TO THIRD PARTIES IN FUTURE[illegible]O PERSON OTHER THAN THOSE LISTE[illegible]N THIS SURVEY.

CERTIFIED TO:

NADINE & SJP PEARSON

FLOOD ZONE DATA:

THIS IS NOT A CERTIFIED FLOOD ZONE DETERMINATION

IT IS THE RESPONSIBILITY OF THE OWNER AND/OR CONTRACTOR TO VERIFY FLOOD ZONE INFORMATION AND ANY BUILDING RESTRICTIONS PRIOR TO CONSTRUCTION.

FLOOD ZONE DETERMINATION IS FOR INFORMATIONAL PURPOSES ONLY. PROPOSED FINISHED FLOOR ELEVATIONS CAN ONLY BE DETERMINED BY PERMITTING AUTHORITY.

PROPERTY SHOWN HEREON APPEARS TO LIE WITHIN FLOOD ZONE " **AE** " BASE FLOOD ELEVATION (**10**) AS PER F.I.R.M. MAP **#12015C 0179 F, DATED 5/05/03.**

TO BE VERIFIED BY THE LOCAL F.E.M.A. OFFICIAL

SURVEYOR'S NOTE:
The approximate Mean High Water Line as shown on this Plat is not a tidal property boundary, was not located in accordance with procedures specified in the "Coastal Mapping Act of 1974" (Chapter 177, Part II of the Florida Statutes), and the "Rules of the Department of Natural Resources" (Chapter 16-3 of the Florida Administrative Code) and is not to be used as, represented to be, or be admissible as a tidal property line before any administrative body or court of law. The approximate Mean High Water Line has been used due to it being incidental to the purpose to which this Plat has been prepared.

ELEVATION NOTE:

ELEVATIONS SHOWN HEREON ARE BASED ON CHARLOTTE COUNTY BENCHMARK MR-2, ELEVATION 6.84' N.G.V.D. 1929.

BOUNDARY & TOPOGRAPHIC SURVEY OF:
LOT 5, BLOCK G
ROCK CREEK PARK
3RD ADDITION

ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK **6**, PAGE **1**, OF THE PUBLIC RECORDS OF CHARLOTTE COUNTY, FLORIDA
CHARLOTTE COUNTY, FLORIDA

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REVISION:

DATE OF FIELD SURVEY: 4/10/13
FIELD BOOK: 578 **PAGE:** 25
CHECKED BY: **DRAWN BY:** B.G.R.
FILE #: 13-04-28

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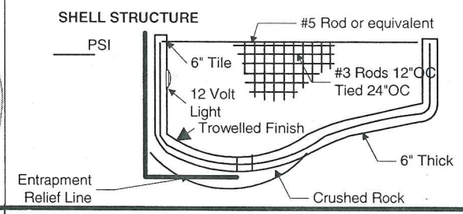
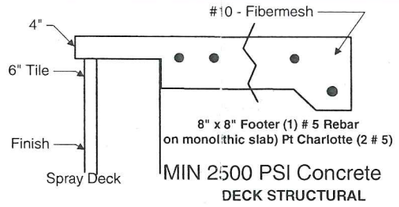
Superior Pools of Southwest Florida Inc.

Our Name Says It All

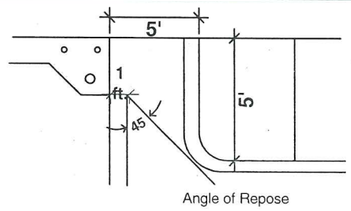




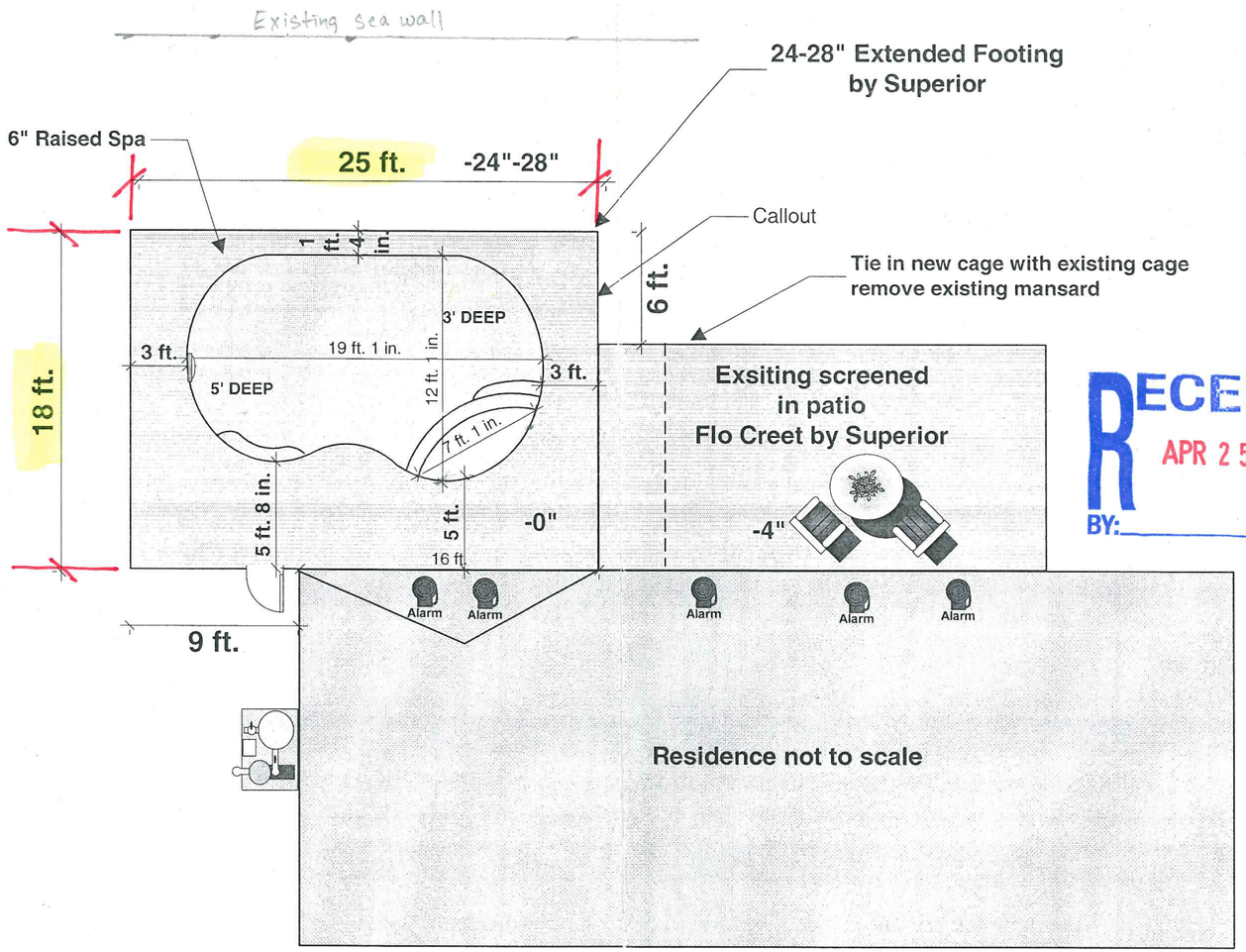
Superior is NOT responsible for repair or replacement of landscaping, Sod, irrigation, fence or stucco

Superior Pools
517 Tamiami Trail
Pt Charlotte 33953
Phone 941 743 7171
Designed by:
Robin Barber

3/27/2013 Nadine/Steve Pearson
817 5th St E
Englewood 34223
917 359 1943



SCALE: 1/8" = 1'



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GENERAL SPECIFICATIONS

Pool Size: Depth 3' to 5'
Area Sq Ft. 189 Perimeter LF 53
Deck Size: Deck SQ FT 261
Earth Disposal: Dig and Haul
Deck Topping: Flo-Crete
Existing Lanai SQ FT 288
Existing Entry: NO SQ FT
Elevation: Existing Raised Deck:
Grading by: Superior
Electric by: Superior
Shallow end steps: Yes
Swimout: Yes Handrail: No
Loveseat:
Screen Cage: Mansard Color
Returns: 3 Therapy Jets: No
Lights: 1 Skimmer: Yes
Pump: Intelliflow Pentair Filter: Cartridge
Chlorinator:
Time Clock: Yes Trans: Yes
Heater:
Automatic Pool Cleaner: No

SPA SPECIFICATIONS

Shape: Size:
Raised: Pump:
Spillover: Light:
Heater: Therapy Jets:
Step: Rail:

Notes:
1.Battery Alarms
2.Intelliflow
3.
4.
5.
All dimensions 5% tolerance

Site Plan
(Exhibit B)

NOTE:
Dimensions may vary slightly depending on each home.Plan is property of Superior Pools, Inc. and may not be copied or reproduced in any way withoutwritten consent from Superior Pools, Inc.

MARCITE/QUARTZ DISCLAIMER:
Marcite/ QUARTZ is composed of natural materials which have certain inherent characteristics,a certainamount of shading or color variation is a natural occurrence and should not be constructed as a defect. Therefore marcite/ QUARTZ is warranted only to waterproof the pool.

Heater | Pump & Filter | Main Drain | Skimmer | Directional Return | Therapy Jets | Handrail | Light | Alarm | Junction Box | Elevation | Fountain Head | Spa Light | Cleaner Stub

LOCATION POINTS, DIMENSIONS AND CONSTRUCTION SPECIFICATIONS HAVE BEEN EXPLAINED TO ME AND I APPROVE OF THEM. EVERYTHING WE HAVE DISCUSSED AND AGREED TO IS SHOWN AND THERE ARE NO VERBAL AGREEMENTS. I UNDERSTAND THAT ANY CHANGES WILL NECESSITATE EXTRA CHARGES.

OWNER:_____

DATE:_____

c. Type 3 Permit: $1,000.00

(3) In reviewing an application the zoning official shall take the following factors into account:

a. Ensure that the proposed temporary use complies with all the requirements of this section; and

b. Review the compatibility of any proposed use with surrounding uses, ensuring that any anticipated nuisances or incompatible features involved are suitably separated from adjacent uses; and

c. Ensure that the proposed temporary use will not create any vehicular parking or circulation problems, or will result in excessive vehicular traffic being generated or diverted onto residential streets.

(Ord. No. 89-47, § 18, 6-22-89; Ord. No. 2002-011, § 1, 4-9-02; Ord. No. 2008-088, § 1, 10-21-08)

Sec. 3-9-96. Swimming pools.

(a) *Location.* Swimming pools shall be located only in the buildable area where principal buildings and accessory buildings are permitted, except that the minimum setback from a waterway for a pool or screen enclosure shall be fifteen (15) feet.

(b) *Screen enclosures.* Screen enclosures may be attached to the principal building but shall not be considered a part of the principal building.

(Minutes of 12-8-81, § 8)

Sec. 3-9-97. Visibility at road intersections.

(a) Within the area formed by the right-of-way of intersecting roads and a straight line connecting points of such right-of-way lines at a distance of forty (40) feet from the point of intersection, such connecting line extending beyond the points to the curb lines, there shall be a clear space with no obstruction to vision between a height of three (3) feet and a height of eight (8) feet above the average grade of each road as measured at the centerline thereof. The requirements of this section shall not be deemed to prohibit any necessary retaining wall.

(b) Trees shall be permitted in the clear space if foliage is cut away within the prescribed heights. Lamp posts and sign posts shall be permitted if illuminating fixtures and sign faces are not within the prescribed clear space.

(Minutes of 12-8-81, § 8)

Cross reference—Roads and bridges, Ch. 3-6.

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.

Section 3-9-96
(Exhibit C)

April 19, 2013

RECEIVED
APR 25 2013
BY:

Community Development Department Zoning Division
18400 Murdock Circle
Port Charlotte, FL 33948

To whom it may concern:

Please accept this variance application for 817 E. 5th Street in Englewood. I am the property owner and am requesting a variance of 5 feet closer to my existing sea wall. Our plan is to build a pool in this area.

In 1971 my aunt and uncle built this house. My uncle loved the canal and wanted the house built as close to it as possible. This is the reason why the house is closer to the canal than others in the neighborhood. In the 1970's, most homes did not have a pool. A pool was considered a luxury item that only very wealthy people could afford. My aunt and uncle did not consider ever putting a pool on the property; therefore they did not leave enough space to comfortably fit a pool in the future.

We currently only have one extra foot of space available from the existing patio area to build the pool. This gives us a section that is only 13 feet wide. The pool must be 5 feet from the house. Under these circumstances, the pool would be 7 feet wide. With 5 feet of variance, we can have a 12 foot wide pool. This is still a modest sized pool, but adequate for our needs. Building the pool behind the house, facing the canal, will add to the relaxing atmosphere of the pool area.

The neighborhood is not a restricted community. There are no laws or governances in place. The pool would not impede the welfare or health of any of the neighbors. We would not interfere with the sewers or other public works by building our pool in this space.

Our plan for the pool is quite modest. It is only 12 feet wide at the widest spot and 19 feet long. We are asking for the minimum requirements for a small pool. Many of my neighbors on the canal side have built pools on their properties in recent years. This helps the neighborhood compete with new, larger communities that include pools as basic options.

In conclusion, my aunt and uncle left us this house knowing that we would take care of it, and, over time, make improvements to their home. Over the past seven years, we have taken the crucial steps of hurricane proofing our home. Now we would like to build a pool, yet another modern day investment for a Florida home. These are all investments they would have wanted us to make.

Thank you for your serious consideration of this application. I look forward to hearing from you soon.

Sincerely,

Nadine A. Pearson

Nadine A. Pearson

Narrative
(Exhibit D)

MEMORANDUM

Date: May 21, 2013

To: Ken Quillen, Planner III

From: Jamie Scudera, Environmental Specialist

Subject: VAR-13-003
Pearson Pool Variance
817 East Fifth Street

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 and ordinances. We offer the following comments:

- The site consists of a developed single family residence on a man-made canal.

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 to contact me at (941) 743-1290.

JS

(Exhibit E)

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