

STAFF REPORT
Community Development Department
Petition Number: VAR-13-007

To: The Charlotte County Board of Zoning Appeals
From: Shaun Cullinan, Zoning Official
Prepared By: Ken Quillen, AICP, Planner III
Report Date: December 31, 2013 **BZA meeting date:** January 8, 20143

Requested Action/General Information:

Michael and Sherry Schroeder are requesting a variance of 10.0' to reduce the required rear yard setback from 20.0' to 10.0' to allow construction of a swimming pool for an existing single-family residence in the Manasota Single-family-3.5 zoning district. Subject property is located at 4141 North Beach Road on Manasota Key in Englewood (see **Location Map**). The attached **Zoning Map** shows the zoning of this property, which is Manasota Single-family-3.5. This property has a Low Density Residential, FLUM designation.

Subject property consists of 10,000 square feet (100' by 100') and is part of two lots which were created by the Lemon Bay Haven Subdivision recorded in 1974. This lot meets the minimum 80' lot width requirement, but does not meet the minimum lot size of 12,445 square feet. Therefore, this is a legal non-conforming lot. The applicant would like to construct a swimming pool, which is a permitted accessory structure for the existing single-family residence.

The applicant has submitted the attached **Boundary Survey** (Exhibit A), which shows the existing single-family residence located on this lot. The applicant has also submitted a **Site Plan** (Exhibit B), which shows the proposed swimming pool located on the lot with a proposed 10.15' rear setback and 10.04' west side setback. Exhibit C is a more detailed drawing of the proposed swimming pool. The Board of County Commissioners recently amended the Manasota Key Zoning District Overlay on September 24, 2013. **Section 3-9-53(j)(9), (10), (11) and (12)** (Exhibit D) of this code requires a minimum 10-foot peripheral landscape strip, which the applicant is proposing to comply with as part of the rear yard setback variance request.

This residence was constructed in 2004, prior to adoption of the Manasota Key Code, in conformity with all codes as shown on the **Boundary Survey** (Exhibit A). Although a pool could have been constructed 10' from a rear lot line under the regular County Code, 20' is required for all structures under the Manasota Key Zoning District Overlay Code.

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 December 23, 2013. The Manasota and Sandpiper Key Advisory Committee met on December 18, 2013, and also recommended approval of the requested variance (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 10,000 square foot lot was platted in 1974. It does meet the 80' minimum lot width requirement, but does not meet the minimum 12,445 square foot lot size requirement of code. The orientation, configuration and depth of this 100' by 100' lot are also unique and peculiar conditions, which are not generally applicable to other properties.

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 20' rear yard setback for a swimming pool would result in 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 swimming pool, which is a permitted accessory structure and use in the MSF-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: Staff is not aware of any evidence that indicates granting of the requested variance 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 not been created by the current property owner. The Mansota Key Zoning District Overlay code, which was adopted in 2005 and most recently revised in 2013, increased the rear setback requirement from 10' to 20' for a swimming pool.

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

Finding: The requested variance, to reduce the rear yard setback from 20' to 10' will allow construction of a 9' wide swimming pool. The applicant has stated that this 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 construction of a swimming pool, 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 be adopted, as conditions of approval, to ensure that development is in compliance with the purpose and intent of the Zoning Code.

The recommended condition(s) are as follows:

1. The variance, as approved by the Board of Zoning Appeals, is to reduce the required 20' rear yard setback by 10' to allow a 10' rear setback.
2. This variance extends only to a new swimming pool as proposed in the documents submitted with this application. This variance shall carry with the swimming pool only once it is constructed.
3. If the swimming pool is constructed and at a later date 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, Pool Plan, Section 3-9-53 (2), Narrative (2), Environmental Specialist Memorandum (2), and Manasota Key recommendation



Community Development

CHARLOTTE COUNTY

Location Map for VAR-13-007

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 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: 12/18/2013 2:18:32 PM

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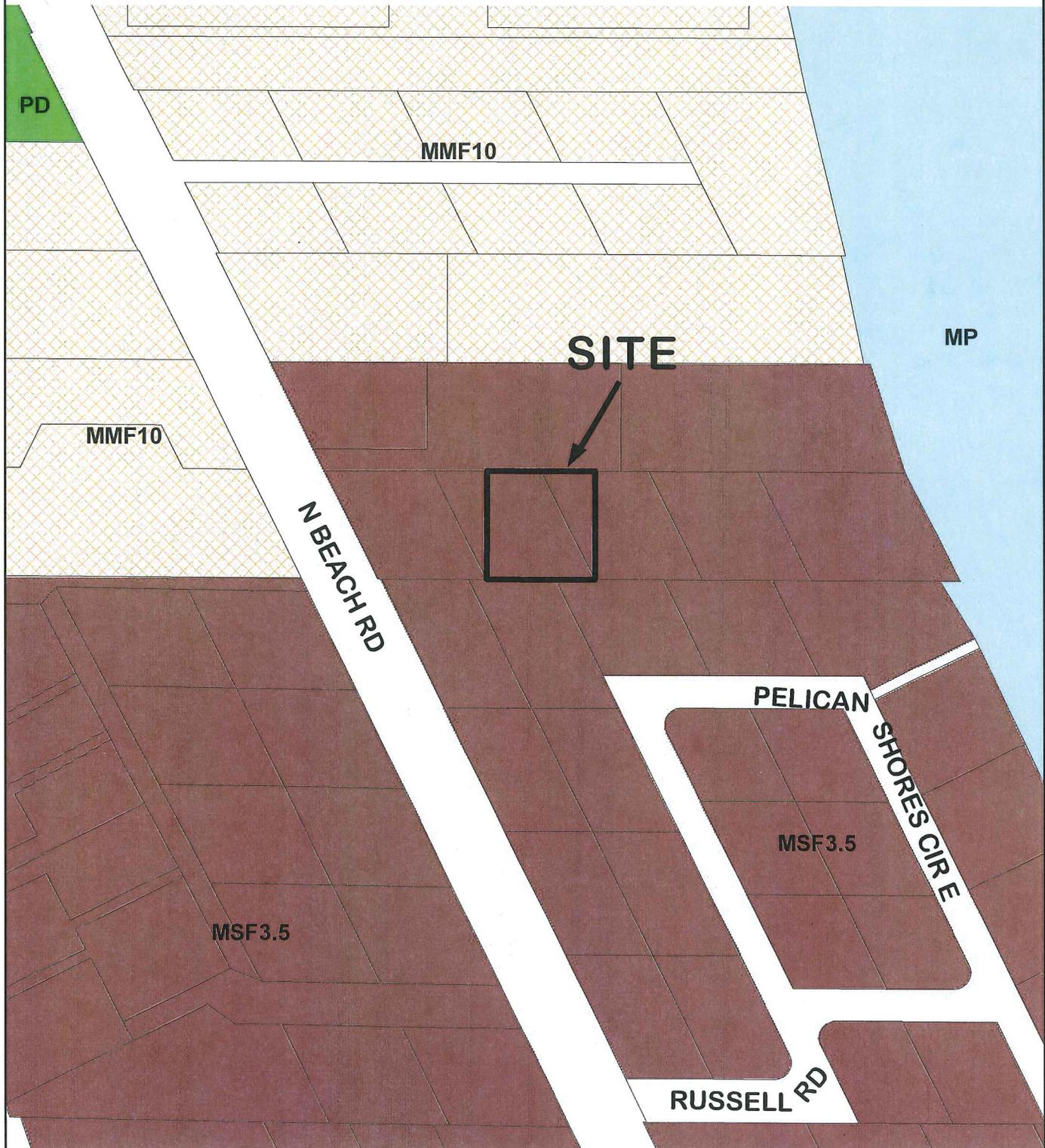
Community Development

CHARLOTTE COUNTY Zoning Map for VAR-13-007

Charlotte County Government

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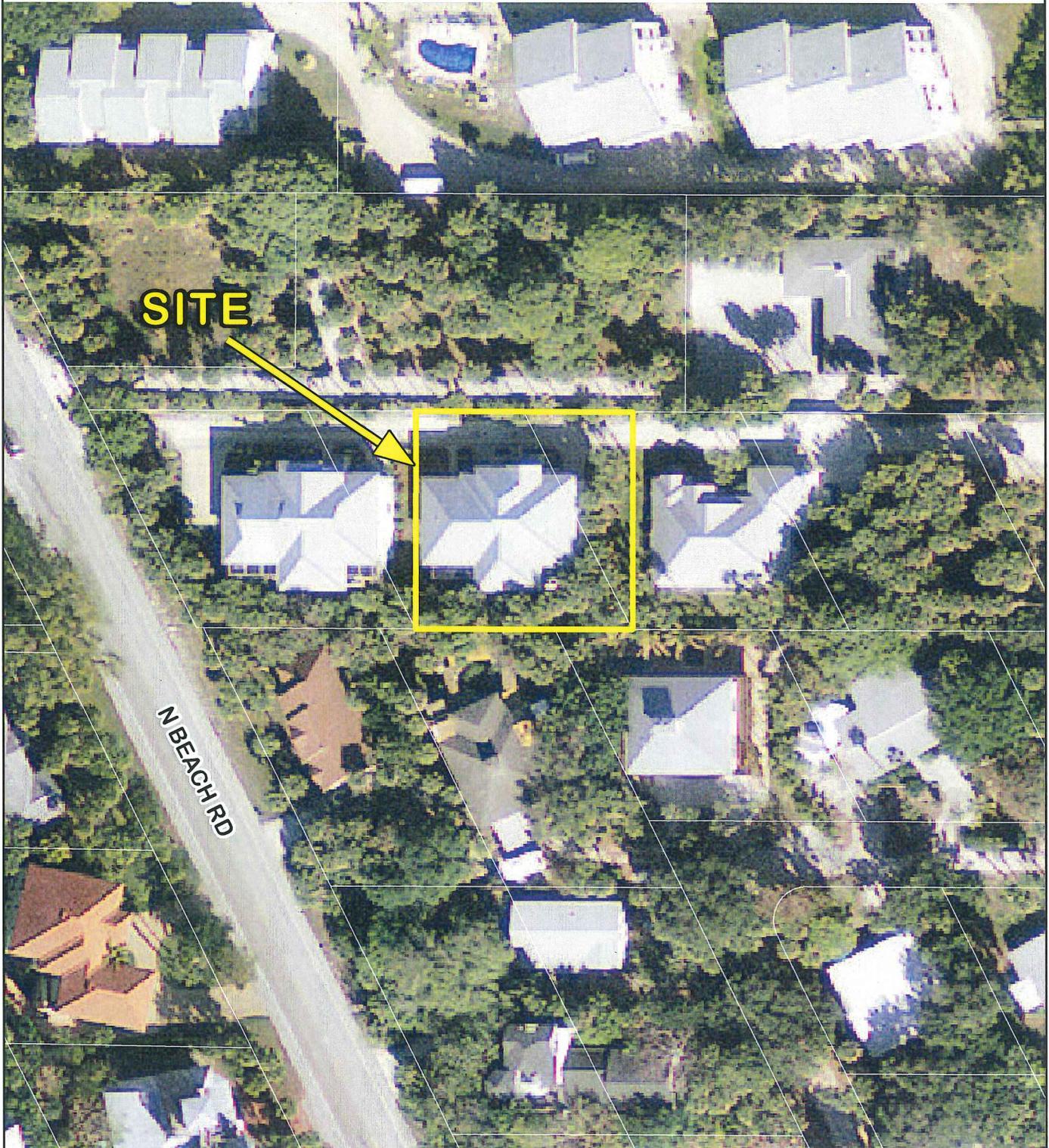
CHARLOTTE COUNTY

Aerial View for VAR-13-007

Charlotte County Government

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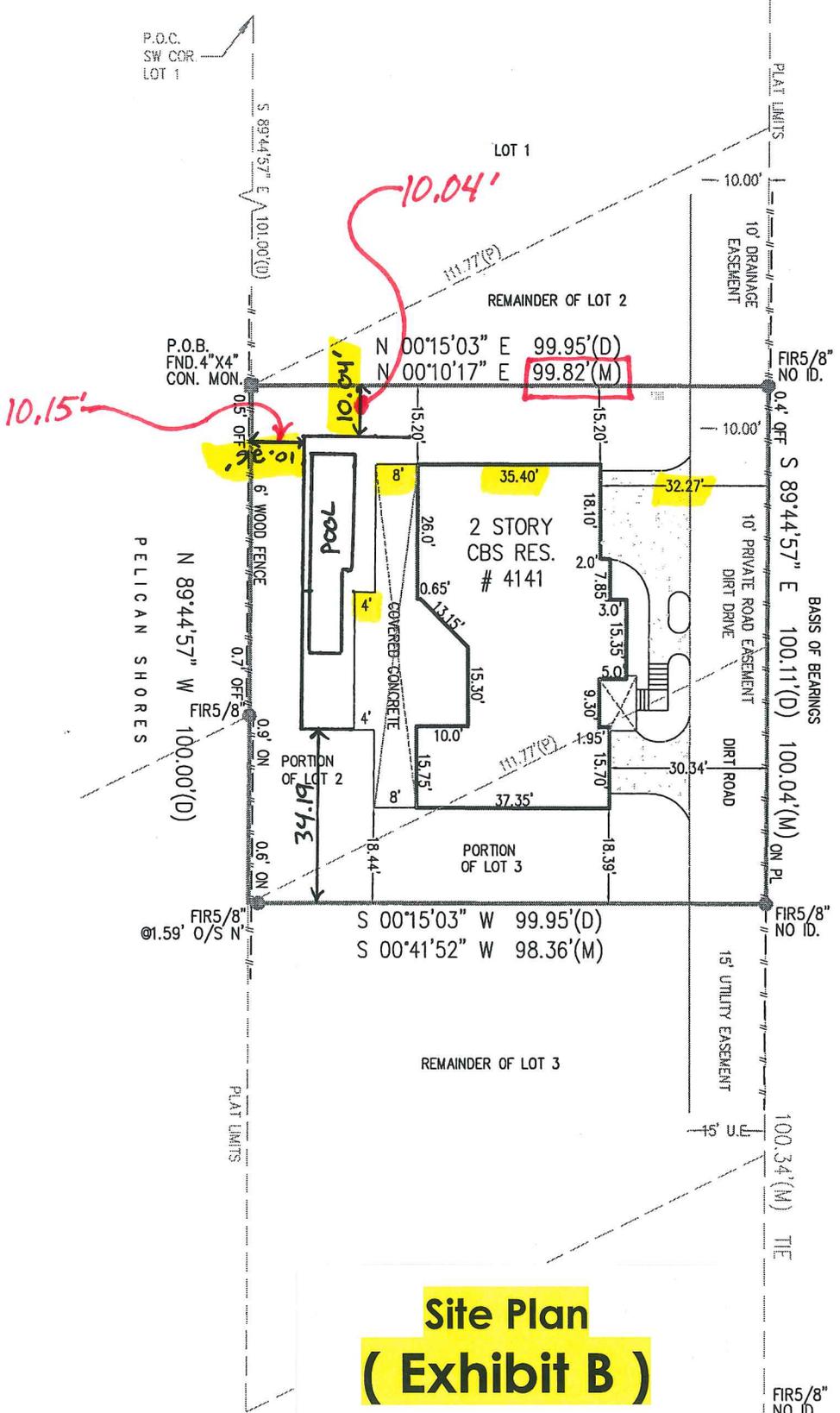
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BOUNDARY SURVEY



SCALE: 1" = 30'

POPA POOLS & SPAS
 24100 Tiseo Blvd., Unit 6
 Port Charlotte, FL 33954
 (941) 629-1000

License # CPC1458096

PROJECT :
MICHAEL & SHERRY SCHROEDER
 4141 N BEACH RD
 ENGLEWOOD, FL 34223

PLAN IS COMPLIANT WITH 2010 FLORIDA BUILDING CODE AND ANSI/NSPI STANDARDS. ELECTRICAL DESIGNED TO 2005 NATIONAL ELECTRICAL CODE WITH GROUNDING REQUIREMENTS.

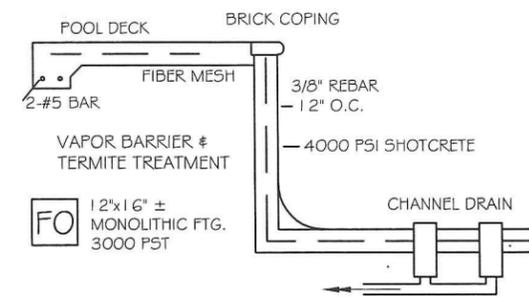
AN APPROVED SAFETY BARRIER OR WIRELESS ALARMS ARE REQUIRED BY FLORIDA LAW, AND MUST BE INSTALLED PRIOR TO POOL BEING FILLED WITH WATER.

ACTUAL DEPTH OF POOL MAY BE DETERMINED BY THE VOLUME OF GROUNDWATER INTRUSION. SHOULD WELL POINTS BE REQUIRED AND APPROVED BY OWNER TO REACH DESIRED DEPTH IT WILL BE AT OWNERS EXPENSE.

NEC 680.26(C)-EQUIPOTENTIAL BONDING GRID W/ 8AWG SOLID COPPER GROUND

SHOTCRETE ONLY (NO GUNITE)

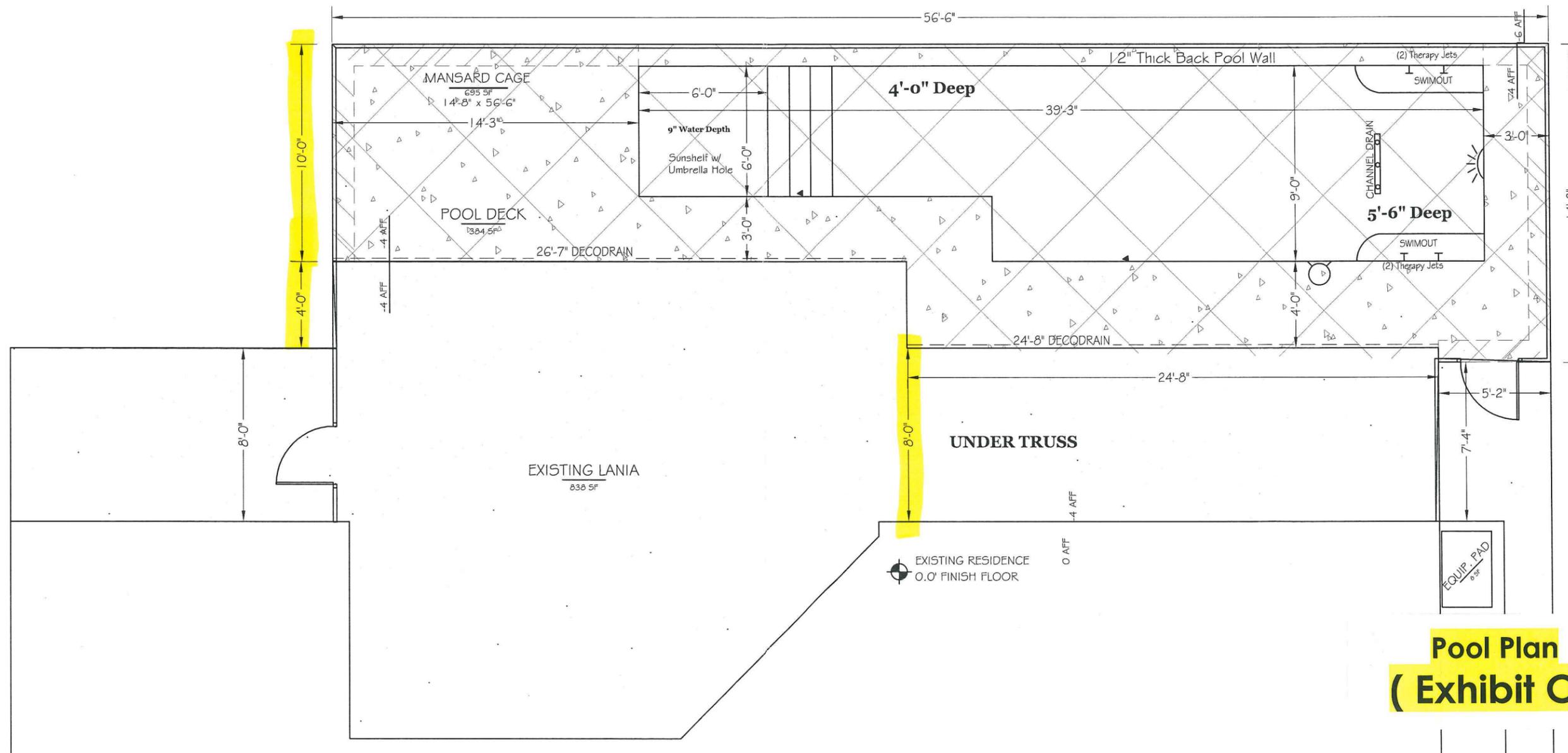
NON-DIVING POOL



1 POOL LAYOUT
 3/16" = 1'-0"

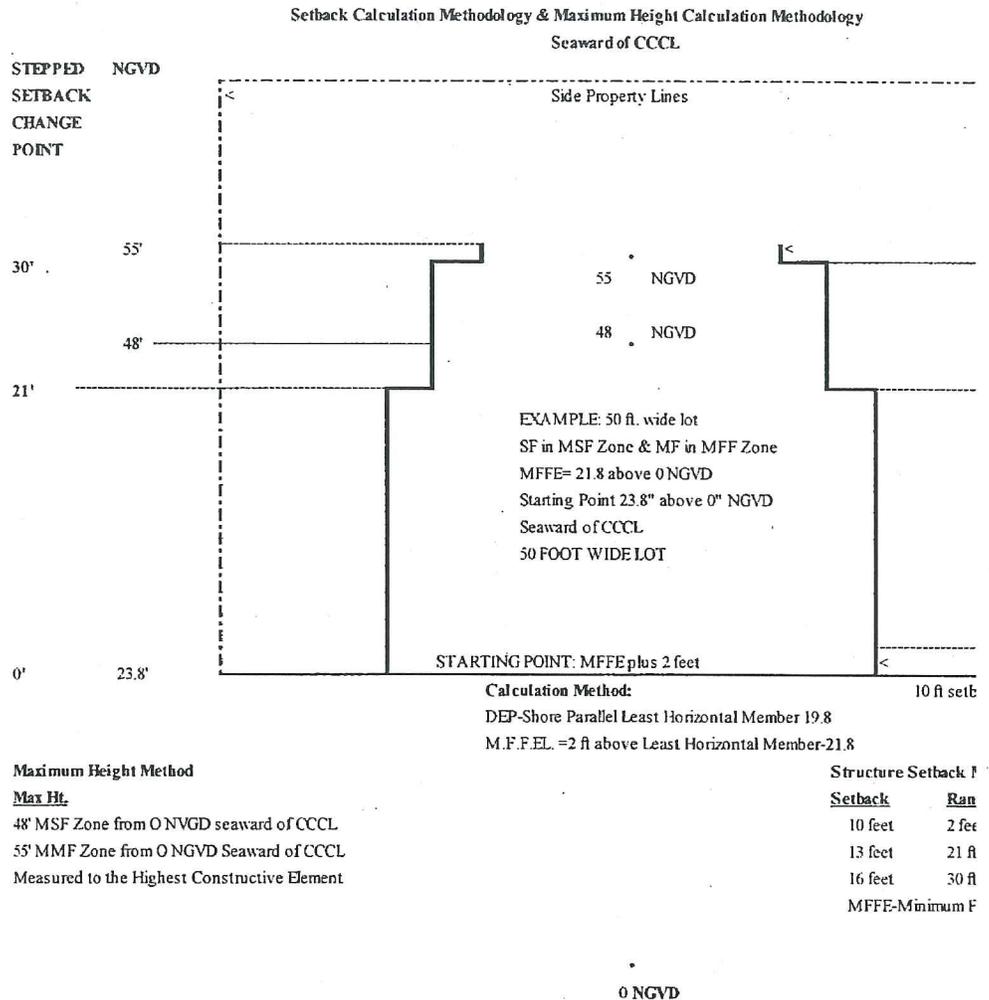
11/21/2013

All Dimensions are Approximate



**Pool Plan
 (Exhibit C)**

3-9-53(j)



- (9) **Peripheral landscape strip.** Peripheral landscape strips are required on all lots within the Manasota overlay district. All properties, conforming and nonconforming, shall have front, side interior and rear interior peripheral landscape strips of no less than ten (10) feet from the property line. Peripheral landscape strips shall be located immediately adjacent and parallel to all sides of a lot boundary. All peripheral landscape strips shall be green open areas. No encroachments shall be allowed within the ten (10) feet peripheral landscape strip including but not limited to structures, accessory structures, AC units, driveways, parking areas, pools and pool accessories, electrical equipment, signage, and holding tanks. Neither a structure nor any portion thereof shall be erected or shall encroach or overhang upon the required peripheral landscape strip. The only exceptions shall be:
- Dune walkovers, sidewalks and driveway crossovers, where permissible.
 - Fences,
 - Guttered roof overhangs that may extend two (2) feet into the peripheral landscape strip,
 - Sunshades that may extend two (2) feet into the peripheral landscape strip.
 - For nonconforming multifamily lots fifty (50) feet wide or less, the owner may request an administrative waiver of up to setback (two (2) feet on each side) to red meeting driveways and parking requirem

Section 3-9-53
(Exhibit D-1)

3-9-53 (j)

Waiver limits are as follows: No portion of the waiver areas shall be used for habitable space, for an increase in building envelope of livable area from the first floor to the highest constructed element or be permanently enclosed or roofed; and, the waiver request must document need for additional space exclusively for parking and driveway use that does not increase the livable space envelope and offers the least invasive design option regarding encroachment into the side peripheral landscape strips.

- (10) ***Yard setbacks.*** Yard setbacks, greater than ten (10) feet peripheral landscape strip, shall be required for structures based on zoning district minimum yard requirements, abutting properties, abutting water, and building height requirement of the Overlay Code. No primary structures shall be allowed to encroach within the greater yard building setback area, however appurtenances and mechanical equipment for the primary structure, which are typically allowed within required yards may be located within the greater yard setback. Accessory structures, parking, and driveways may be located within the greater yard building setback area as long as County Codes and the Overlay Code district standards and architectural standards are met.
- (11) ***Accessory structures.*** No accessory structures shall be allowed within the ten-foot peripheral landscape strip. All accessory structures must conform to the side and rear setback requirements of the appropriate zoning district. Detached permanent garages must conform to the front setback requirements of the appropriate zoning district. All other accessory structures must be located behind the leading edge of the living area of the principal structure. The only exception is on lots three hundred (300) feet or greater in depth which may have screened accessory structures located in front of the building façade provided they are located at least one hundred fifty (150) feet from the county right-of-way. Other accessory structure requirements are contained under the architectural design standards below. Multifamily developments when permitted in any zoning district are permitted to contain a clubhouse, recreation room or similar community room to serve the residents of the development.
- (12) ***Nonconforming lots.*** It is the intent of this section to specify provisions of the Overlay Code that supersede the county nonconforming provisions and exceptions to yards provisions and which sections of the county code remain in place. It is also the intent to include provisions unique to nonconforming lots in the overlay boundary. Other than the administrative waiver provided for in this Overlay Code, it is the intent that all lots contain a ten-foot peripheral landscape strip.
- a. Within the Manasota and Sandpiper Key overlay district, the provisions of the County Code requiring a variance to build on a lot less than five thousand (5,000) square feet or less than fifty (50) feet in width shall not apply as long as the building conforms to the requirements for the zoning district in which the lot is located.
 - b. The minimum side yard interior setbacks in all districts for conforming and nonconforming lots, including lots less than five thousand (5,000) square feet shall be ten (10) feet. The only exception is provided for under the administrative waiver procedure for MMF and MCT-Residential lots in this Code. In these cases, documentation shall be provided to indicate why the administrative waiver is warranted; and an administrative variance shall be not granted in addition to the administrative waiver.
 - c. The variance provisions of the County Code relief in hardship cases for nonconforming administrative variance under section 3-9-

**Section 3-9-53
(Exhibit D-2)**

Variance - Application Narrative

Michael R. & Sherry L. Schroeder of 4141 N. Beach Rd., Englewood FL 34223

The following narrative describes the scope of the request and addresses the criteria set forth in Sect. 3-9-6.1(d) of the Charlotte County Zoning Code.

Background

We are a family of four and purchased the above address as our single family residence with the idea of having the proverbial Florida pool home located in a coastal community near other Florida based family members. We are also intent upon enjoying our retirement at this residence as well. We closed on the home in January of 2013 and since moving into it on the 16th of July, we have been painstakingly planning our future pool by researching pool construction techniques, products and equipment as well as acquiring numerous construction estimates, each having stated that they verified the setback requirements and essentially designing the same pool, showing the same 10' rear setback. Desiring to move our air conditioner condenser unit from an elevated rear deck in August, we concurrently permitted and hired an electrical contractor for the addition of another electrical panel and several conduit runs to service the future pool equipment as well. However, upon contracting with a Charlotte County based pool contractor and submitting a swimming pool construction permit application in October, it was denied based upon setback requirements. This application therefore requests a rear setback variance of 10' to allow a 10' setback rather than the required 20' setback which will still accommodate the required 10' Peripheral Landscape Strip within the setback and not encumber the adjacent residential lots or create any undesirable effects upon the community.

Criteria Applicable to this Variance

1. The subject property is zoned MSF 3.5 and consists of a 9995 square foot area and therefore has the peculiar condition of having significantly less square footage than required by the MSF 3.5 zoning code of 12,445 square feet which is compounded by easements for the Lemon Bay Haven subdivision utilities and private road across the entire lot frontage.

Narrative
(Exhibit E-1)

2. The enforcement of applicable zoning codes would cause undue hardship upon the property owners as they both suffer from injuries for which aquatic therapy has been recommended and prescribed. This variance request includes the construction of a lap style swim area as well as heated aqua therapy jets for the treatment of said injuries. Another hardship results from the zoning code for which the variance is sought as it was not in existence when the property was designed and constructed in 2004.

3. The variance request does not involve prohibited land use as it is for an accessory structure that would otherwise be permissible without variance elsewhere in Charlotte County and is requested by full time residents who will not allow, participate with or condone the violation of any ordinance, statute or other lawfully prohibited conduct at the subject property.

4. The variance requested will not obstruct the view of water bodies or other scenic parks, beaches, wilderness or open areas; or obstruct the path or flow of wildlife, watersheds, drainage, wind, sunlight, thoroughfares or easements of any type and will therefore not be injurious to or incompatible with adjacent land uses or the surrounding community.

5. The subject property owners did not intentionally cause themselves protracted injury, did not design the building lot at its existing layout or square footage and did not enact the zoning code necessitating the variance. All of these conditions cannot reasonably be corrected or avoided by the owners who, consequently, did not create the conditions necessitating the requested variance.

6. The variance requested includes a narrow maximum pool width of 9' thereby limiting the scope of its use resulting in the minimum modification of applicable zoning code at issue that will afford relief.

7. The granted variance will fully comply with the Smart Charlotte 2050 process and all Elements of the Charlotte County Comprehensive Plan as it is for a permissible accessory use structure at an existing single family use property.

Narrative
(Exhibit E-2)



MEMORANDUM

Date: December 23, 2013
To: Ken Quillen, Planner III
From: Jamie Scudera, Environmental Specialist
Subject: VAR-13-007
Schroeder residence pool, 4141 North Beach Road

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

- ❖ A Charlotte County GIS aerial review was conducted by staff. The property consists of a developed single family lot on a highly sensitive coastal island community. Due to this site being located on a coastal community there is a probability of listed species utilization on site.

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 or permits, and mitigation (if necessary) will be required.

(continued on page 2)

(Exhibit F-1)

- ❖ 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.

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)



Community Development Department Zoning Division

18400 Murdock Circle, Port Charlotte, FL 33948-1094
Phone: (941) 743-1956 or (941) 743-1964 / Fax: (941) 743-1598
www.charlottecountyfl.gov

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Variance - Application

File#: VAR-13-007 Invoice #: 150337
 Date Submitted: 11-25-2013 Date of BZA Meeting: January 8, 2014
 Code M-SPECX (Office use only)

Incomplete applications will not be accepted.

1. Name of Applicant: Michael R. & Sherry L. Schroeder
4141 N. Beach Rd, Englewood FL 34223
 (Address) (City) (State) (Zip + four)
941-460-8284 / 941-460-8284 / sherryLS73@yahoo.com
 (Phone Number) (Fax Number) (E-mail Address)

2. Name of Local Agent: Michael R. and/or Sherry L. Schroeder
4141 N. Beach Rd, Englewood FL 34223
 (Address) (City) (State) (Zip + four)
941-460-8284 / 941-460-8284 / sherryLS73@yahoo.com
 (Phone Number) (Fax Number) (E-mail Address)

3. Owner(s) of Record: Michael R. & Sherry L. Schroeder
4141 N. Beach Rd, Englewood FL 34223
 (Address) (City) (State) (Zip + four)
941-460-8284 / 941-460-8284 / sherryLS73@yahoo.com
 (Phone Number) (Fax Number) (E-mail Address)

4. Owners Authorization: Should an applicant not be the owner of the property, which is the subject of the request, the applicant must attach (on a separate sheet) a notarized authorization giving the applicant the right to apply for the special exception.

5. Full Property Address: 4141 N. Beach Rd, Englewood, FL 34223
 (Address) (City) (Zip + four)

6. Tax ID/Parcel No.: 411902235005

7. Legal description: Lot(s): Part 2 Part 3 Block(s): —
 Subdivision: Lemon Bay Haven (LBH) Unit or Sub-section: 0002
 Parcel(s) or Tract(s): —
 Section(s): 02; Township: 41 (South); Range: 19 (East)

8. Total Land Area: (in square feet or acres) 9995 Sq. Ft. (99.95 x 100')

9. Existing Zoning District: MSF3.5
 Existing Future Land Use Map (FLUM) Designation: Low Density Residential

Manatee/Sarasota/DeSoto/Polk/Duval/Alachua
 Committee Submitted Plans
 to Existing Future Land Use Map (FLUM) Designation to:
 Approve Deny
 Date 12/18/13 (Return completed form to the Zoning
 Signed: [Signature]
 Comments:

(Exhibit G)