

STAFF REPORT
Community Development Department
Petition Number: VAR-14-001

To: The Charlotte County Board of Zoning Appeals
From: Shaun Cullinan, Zoning Official
Prepared By: Ken Quillen, AICP, Planner III
Report Date: February 4, 2013 **BZA meeting date:** February 12, 2014

Requested Action/General Information:

Darin and Mary Waldeck are requesting a variance of 6.2' to reduce the required rear yard setback from 15.0' to 8.8' for a new screen enclosure and swimming pool at an existing single-family residence in the Residential Single-family-3.5 zoning district. Subject property is located at **5174 Cooper Terrace** in Port Charlotte (see **Location Map**). The attached **Zoning Map** shows the zoning of this property, which is Residential Single-family-3.5. This property has a Low Density Residential, FLUM designation.

Subject property is an irregular pie shaped lot, consisting of 19,977 square feet, which was created by the Port Charlotte Subdivision (Section 54) recorded in 1959. This lot meets the minimum lot width and size requirements; however, 9,280 square feet of this lot is located north of the seawall as submerged land in the Myakka River. Therefore, the upland area of this lot is only 10,697 square feet with an 80 foot effective lot depth.

The applicant is proposing to remove the non-conforming covered lanai and construct a new screened pool cage and swimming pool, which are permitted accessory structures for the existing single-family residence.

The existing single-family residence, covered lanai, and seawall were constructed in 1984. The applicant has submitted the attached **Boundary Survey (Exhibit A)**, which shows the existing single-family residence, covered lanai, and seawall located on this lot. This variance request is based on the dimensions provided by the **Boundary Survey**, which shows a measurement of 8.80' between the lanai and the seawall cap. However, the Zoning Code measures setbacks from the face of an existing seawall. This seawall cap is 18 inches wide and staff has determined that the face of the seawall is setback nine inches from the outside edge of the seawall cap. Therefore all measurements given to the inside edge of the seawall cap are nine inches off from the face of the seawall. The applicant has also submitted the attached **Pool Plan (Exhibit B)**, which is a more detailed drawing of the proposed swimming pool and screen enclosure located adjacent to the residence.

The applicant has submitted the attached **Narrative (Exhibit C)** 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 D)** dated January 16, 2014.

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 lot, which was platted in 1959, does meet the minimum lot size and width requirements; however its pie shaped configuration, orientation to the Myakka River, and effective lot depth of only 80', is due to the location of the seawall. These are 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 15' rear yard setback for a screen enclosure for a swimming pool does 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 screen enclosure and swimming pool, which are permitted accessory structures 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: 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. A developer created this odd shaped lot in 1959 and included some submerged lands, which may not be developed. Also, a previous owner or builder constructed this existing residence and seawall in 1984.

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 15' to 8.8' will allow construction of a 10' wide screen cage along the rear of the residence for access to a new 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.

For the staff recommendation staff has revised the dimensions to take into account the nine inch difference between the dimensions on the Boundary Survey and the face of the seawall. The recommended conditions are as follows:

1. The variance, as approved by the Board of Zoning Appeals, is to reduce the required 15' rear yard setback from a waterway by 5.5' to allow a 9.5' rear setback.
2. This variance extends only to a new screen cage and swimming pool as proposed in the documents submitted with this application. This variance shall carry with the screen cage and swimming pool only once they are constructed.
3. If the screen cage and swimming pool are constructed and at a later date removed 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, Pool Plan, Narrative, and Environmental Specialist Memorandum



Community Development

CHARLOTTE COUNTY

Location Map for VAR-14-001

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Community Development

CHARLOTTE COUNTY

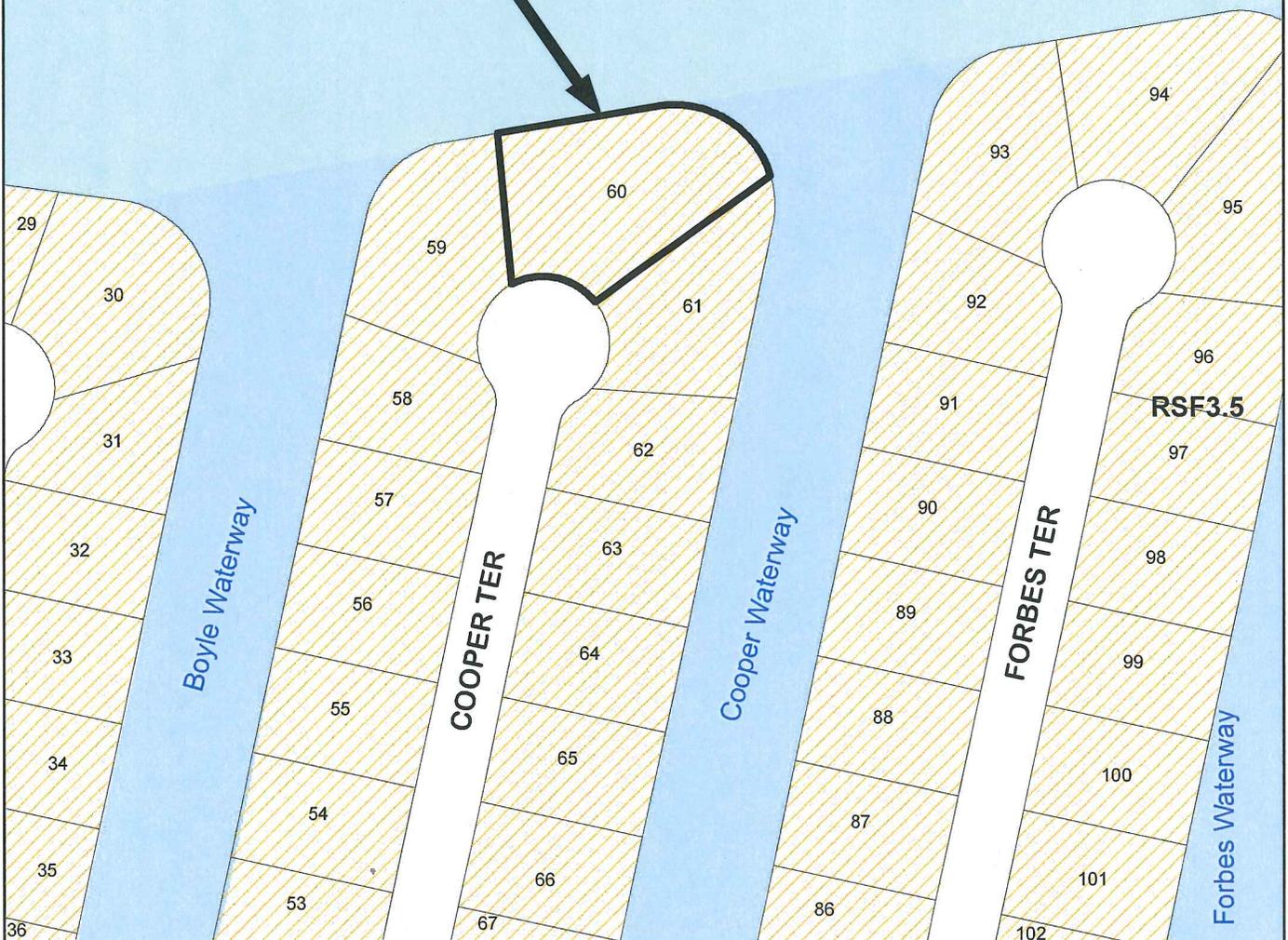
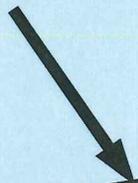
Zoning Map for VAR-14-001

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MP
Myakka River
SITE



33/40/21 Mid-County

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Community Development

CHARLOTTE COUNTY

Aerial View for VAR-14-001

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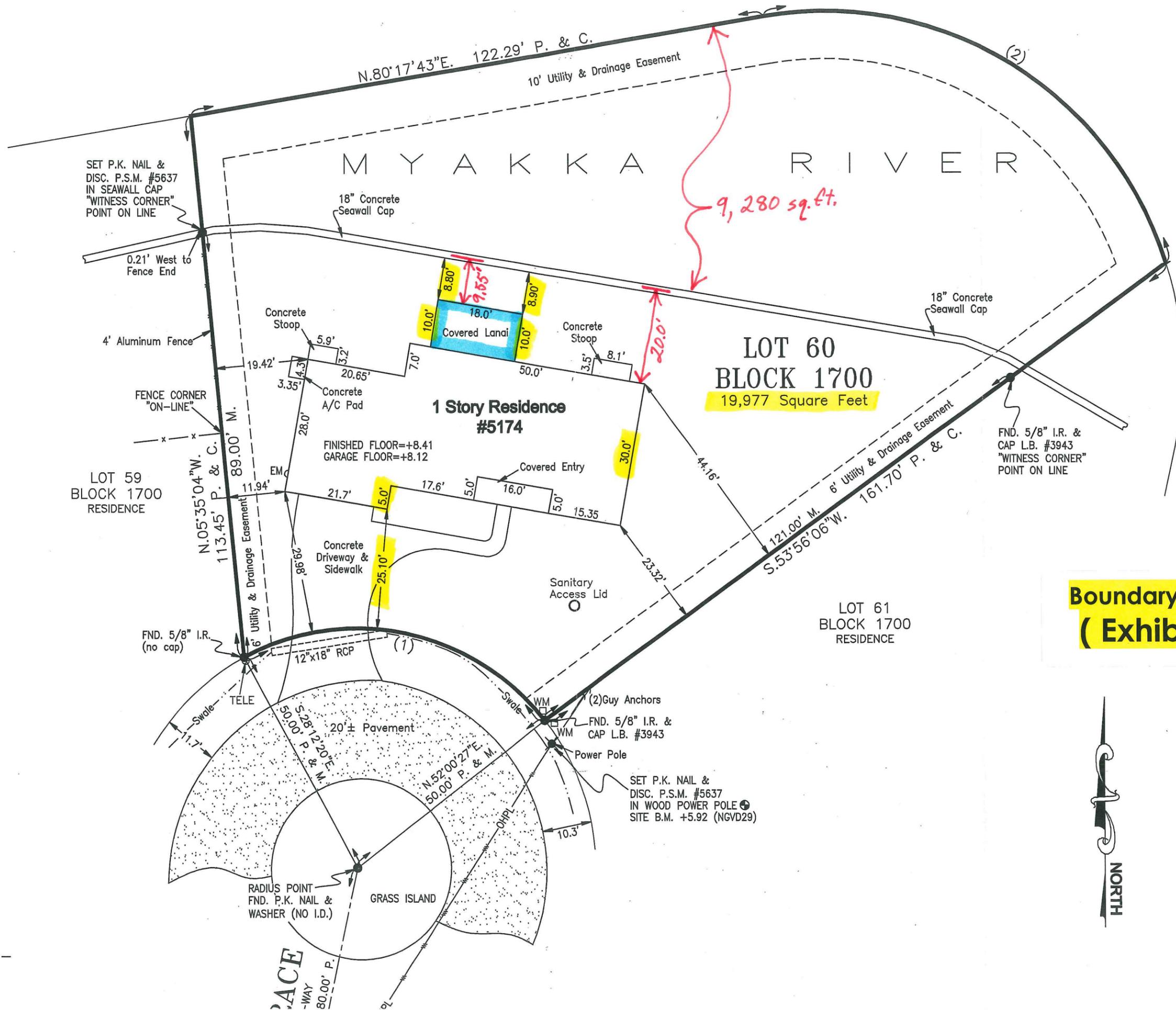
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**Boundary Survey
(Exhibit A)**



Curve - 1 P. & M.

Radius= 50.00'
Delta= 80°12'47"
Arc= 70.00'

FACE
-WAY
80.00' P.



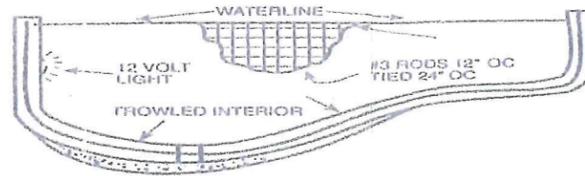
Commercial/Residential
Licensed/Insured
State Certified
CPC052515

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CUSTOMER INFORMATION

Name: **DARIN & MARY WALDECK**
Address: **5174 COOPER TERRACE**
City: **PORT CHARLOTTE**
County:
Home Phone: Cell: **941-468-4096**
Email:
Builder: Phone:
Submit Permit To: County:
LEGAL DESCRIPTION:
LOT _____ BLOCK _____
SECTION _____ SUBDIVISION _____

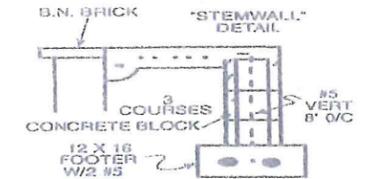
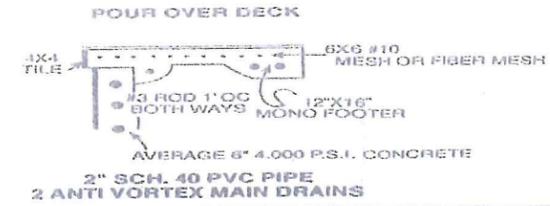


Scale 1/8" = 1'0".

Locations, points, dimensions, and construction specifications have been explained to me and I approve of them. Everything we have discussed is shown and there are no verbal agreements. I understand that any changes may necessitate extra charges.

[Signature]
Authorized Signature Date: 12/12/13

MAIN DRAIN SUCTION COVERS
Compliant with
ANSI / ASME A112.19.8M
STANDARDS

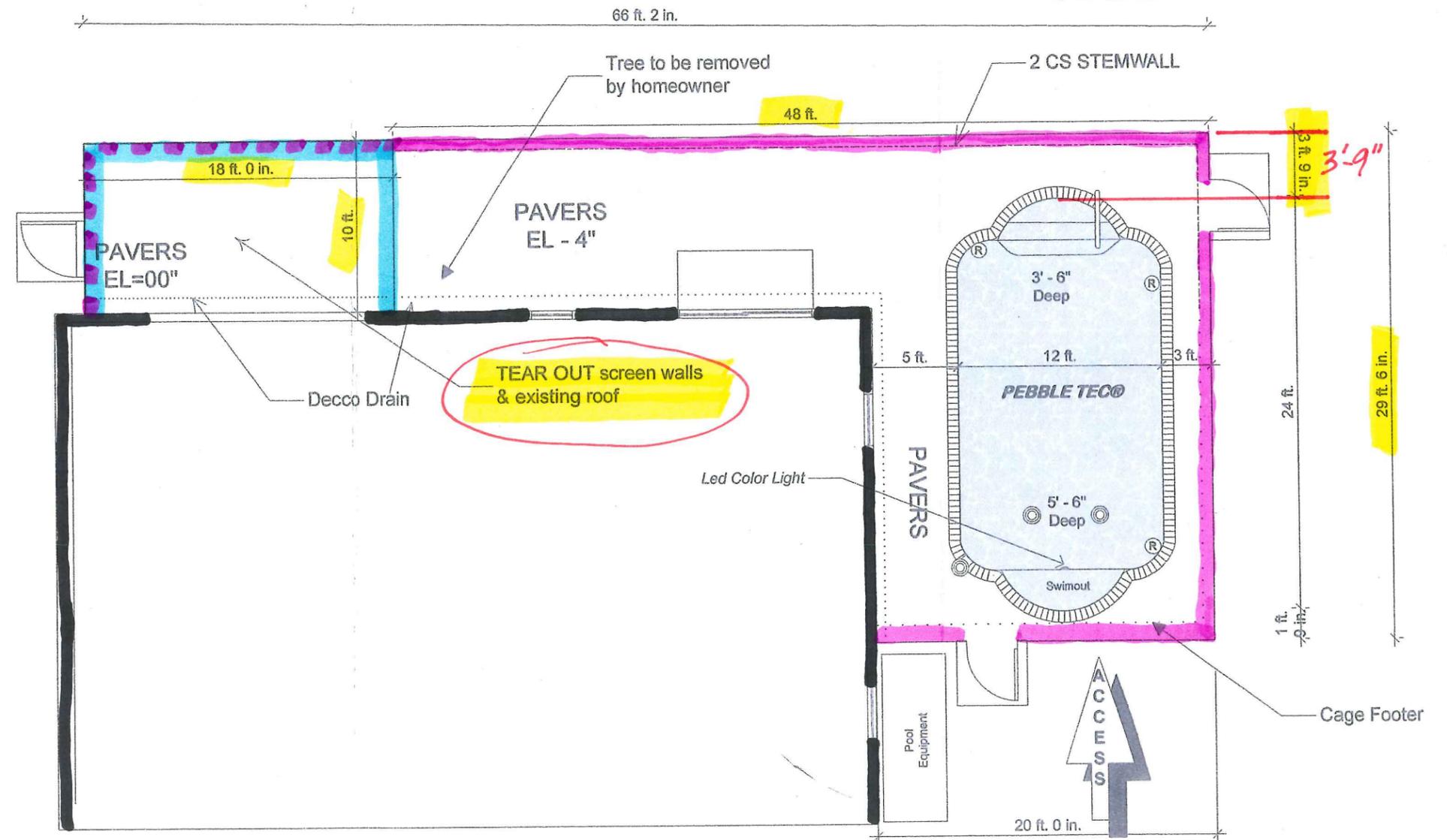


Access _____
Electric _____
Water _____
Septic _____
Trees _____

Plan is compliant with 2010 FL building code and the ANSI/NSP 5 standards. Electrical designed to the 2008 National electrical code with grounding requirements pertaining to Article 680.26 - 2010 Energy conservation code section 403

- Size: 12'x24' Perimeter: 63
- Shape: CUSTOM
- Depth: 3'-6" To: 5'-6"
- Earth Disposal: REMOVE
- Pool Deck: PAVERS SQ FT: 619
- Existing Lanai: PAVERS SQ FT: 180
- Existing Entry:
- Stemwall # of Courses: 2 COURSE
- Pool Deck Elevation: LEVEL WITH LANAI
- Prewire Electric:
- Time Clock/ Transformer:
- GFI: YES
- Swimout: YES Lounge Seat:
- Sun Shelf:
- Pebble Tec: STANDARD COLOR CHOICE
- Return Inlets: 3 Therapy Jets:
- Pool Light: LED COLOR Handrail: YES
- Pump/Hp: 3/4 Filter: CARTRIDGE
- Chlorinator: IN-LINE
- Fountain: Fountain Pump:
- Fountain Light: Deck Jets:
- Planter: In Deck: Raised:
- Cantilever: Brick: YES
- Pool Heater*: Pool Cover:
- Pool Cleaner/ Type:
- Spa: Size: Shape:
- Raised: Step: Hand Rail:
- Pump/ HP: Blower/ HP: Jets:
- Bubbler: Air Switch:
- Spa Light: Spa Cover:
- Spa Heat*:

Pool Plan (Exhibit B)



Cage Size: 66'x x29'-6"x20'
Roof Type: MANSARD
Wall Height: 8' Doors/ #: 3
Gutter: YES Stainless Steel Screws: YES

*GAS LINE, GAS TANK & HOOK UP NOT INCLUDED

DESIGNED BY: FRED KRAUS DATE: 12/11/13

Jan 2, 2014

RE: 5174 Cooper Ter. Port Charlotte, FL 33981

To Whom it Concerns;

The request for this variance is due to the hardship created by the irregular shape of the lot. Lot depth at proposed variance is approx only 80'. The only structure on this land is a small home which was built as close as zoning allows from street setback. The house could not have been positioned differently. The proposed cage and pool cannot be relocated closer to the front of home and still allow room for pool equipment, subpanel and existing sewer alarm box. There is an existing lanai that was permitted when the home was built at 10.5 ft from seawall. We are asking to continue that stemwall parallel to the seawall to fit a small pool and very little lanai area. The proposed cage and pool would be compatible with other homes in this area.

Thank you in advance for giving this your consideration,



Darin Waldeck

**Narrative
(Exhibit C)**



MEMORANDUM

Date: January 16, 2014
To: Ken Quillen, Planner III
From: Jamie Scudera, Environmental Specialist
Subject: VAR-14-001
Waldeck residence, 5174 Cooper Terrace

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:

- ❖ The site consists of an existing single family residence on the end of a cul-de-sac in a residential neighborhood. The rear of the lot is sea walled and is adjacent to the Myakka River.

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 D)

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