

STAFF REPORT
Community Development Department
Petition Number: VAR-14-003

To: The Charlotte County Board of Zoning Appeals

From: Shaun Cullinan, Zoning Official

Prepared By: Ken Quillen, AICP, Planner III

Report Date: April 1, 2014

BZA meeting date: April 9, 2014

Requested Action/General Information:

Mary Sprague, agent for Riskall, LLC, is requesting a variance of 2' to increase the maximum fence height allowed in a rear yard from 6' to 8' to allow an 8-foot high privacy fence for six lots in the Residential Single-family-3.5 zoning district. Subject property is located at **8000-8048 Weyers Court** in Englewood (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, Future Land Use Map (FLUM) designation.

Subject property consists of seven lots (lots 1, 2, 3, 17, 18, 19 and Tract C) all located in the Hidden Waters Subdivision, which was recorded in June of 2007. These lots were created for the development of single-family homes and are all currently vacant and still under unified ownership by the developer, Riskall, LLC. **Subsection 3-9-77 (Exhibit A)**, of the Zoning Code, allows fences up to six feet high in the side and rear yards up to the property line. The applicant obtained a permit in 2005 (No. 2005051903) and erected a four-foot high split-rail fence along the northerly property line. The owner would like to replace this fence with a new eight-foot high fence to screen the mobile home subdivision from this new single-family residential development. As such, the applicant has submitted this application for a variance.

The applicant has submitted the attached **Site Plan (Exhibit B)**, showing all the lots located within this subdivision and the location of the existing and proposed fence. The eight-foot high fence is proposed to be located five feet south of the northerly lot line of lots 1, 2, 3, 17, 18, 19, and Tract C. The applicant has also submitted the attached **Photographs (Exhibit C)**, which shows various views of the mobile home subdivision and the existing four-foot high split-rail fence.

The attached **Narrative (Exhibit D)** explains why the applicant believes this request for a variance should be granted. The Community Development Department's Environmental Specialist has performed a cursory environmental review and their comments are in the attached **Memorandum (Exhibit E)** dated March 17, 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: Staff is not aware of any unique or peculiar conditions or circumstances which relate to location size and characteristics of the land or structures involved. The conditions which do currently exist are also generally applicable to other properties, including the mobile home subdivision located adjacent to the north.

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 six-foot height limitation for fences in side or rear yards does not 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 Zoning Code does not prohibit fences in residential districts, but does restrict their height in side and rear yards to 6' in the RSF-3.5 and MHS zoning districts.

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. The proposed eight-foot high solid sight-obscuring fence would have a greater affect related to the restriction of light and air to adjacent property, however, the five-foot setback proposed for this fence may reduce these effects.

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 property owner. The developer, which is also the current property owner and applicant, did create the existing conditions.

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

Finding: The requested variance, to increase the fence height allowed by two feet in the rear yard, will allow construction of an eight-foot high fence along the rear lot lines of the seven lots. 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 an eight-foot high sight-obscuring fence, staff believes that the requested variance does not 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 conditions are as follows:

1. The variance, as approved by the Board of Zoning Appeals, is to increase the permitted fence height from 6' to 8' in the rear yards of lots 1, 2, 3, 17, 18, 19 and Tract C for a solid or sight-obscuring fence. This fence shall be setback a minimum of five feet from the rear lot lines of each of these lots.
2. The owner shall obtain a fence permit and the fence shall be constructed according to all applicable building codes, including wind loads and flood prevention standards.
3. This variance shall be for the proposed fence only and all other future principal and accessory structures shall comply with all County codes and ordinances in effect 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, Section 3-9-77, Site Plan, Photographs, Narrative (2), and Environmental Specialist Memorandum



Community Development

CHARLOTTE COUNTY

Location Map for VAR-14-003

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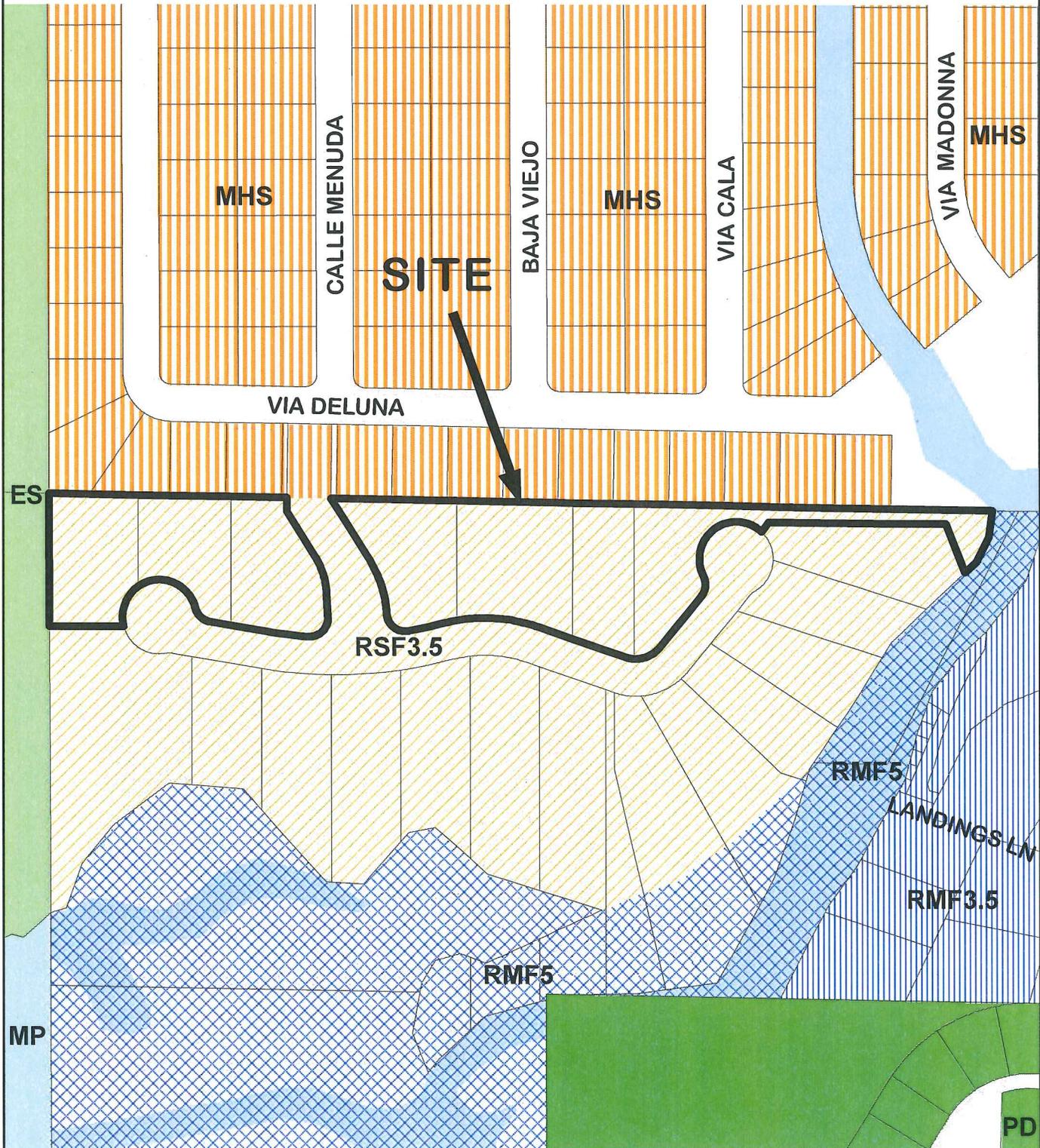
Community Development

CHARLOTTE COUNTY Zoning Map for VAR-14-003

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Community Development

CHARLOTTE COUNTY

Aerial View for VAR-14-003

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Sec. 3-9-77. Fences; walls.

- (a) In all residential districts except residential estate (RE), side and rear setback requirements shall not apply to fences and walls six (6) feet high or less behind the minimum front setback line. Front setback requirements shall not apply to opaque fences or walls three (3) feet high or less or nonopaque fences or walls four (4) feet high or less.
- (b) In all nonresidential and residential estate (RE) district, fences and walls located on lot lines shall not exceed eight (8) feet in height, except as otherwise provided in [section 3-9-97](#), Visibility at road intersections.
- (c) Fences charged with electricity are permitted only in agricultural districts, (AE, AG, AC and AE-10)
- (d) Barbed wire fencing shall be permitted only:
 - (1) In agricultural districts;
 - (2) In commercial and industrial districts on top of fences or walls; and
 - (3) Around institutional uses and utility installations in any district.
- (e) Any deviations from the above requirements may only be allowed upon approval of a variance from the board of zoning appeals.
- (f) For the purpose of this section, the height of the fence or wall shall be measured from the finished grade of the site, excluding berms.

(Minutes of 12-8-81, § 8; Ord. No. 89-47, § 8, 6-22-89; Ord. No. 91-06, § 3, 2-26-91; Ord. No. 92-68, § 1, 8-12-92)

Sec. 3-9-78. Form of ownership.

This chapter shall be construed and applied with regard to the use of property and without regard to the form of ownership.

(Minutes of 12-8-81, § 8)

Sec. 3-9-78.1. Historical structures.

- (a) Structures which have been designated as being historically significant shall be exempt from the provisions of the zoning code pertaining to nonconforming structures.
- (b) Owners of historically designated structures may petition the board of zoning appeals for a special exception for any type of use which would serve to perpetuate the viable contemporary utilization of the historic structure, regardless of whether such use is permitted by special exception in the zoning district in which the historic structure is located. The procedure for issuance of the special exception shall be in accordance with [section 3-9-7](#), and the property owner shall be required to prove that the proposed use will adequately provide for each of the criteria enumerated in the appropriate section of the zoning code, to the extent applicable.

(Ord. No. 89-47, § 9, 6-22-89)

Sec. 3-9-79. Home occupations.

It is the intent of this section to allow the operation of zoning district by special exception, and to regulate them sc

**Section 3-9-77
(Exhibit A)**

**Photographs
(Exhibit C)**



LOOKING NORTH AT TRACT C



LOOKING NORTH AT EASTERN CUL-DE-SAC



LOOKING EAST FROM LOT 3



LOOKING NORTHEAST FROM LOT 1



LOOKING NORTH AT THE EAST WALL



LOOKING WEST FROM LOT 19

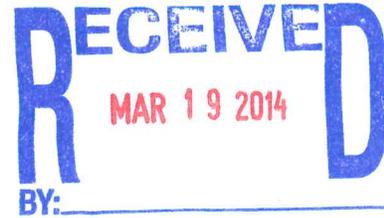
REQUEST FOR A VARIANCE FROM 3-9-6.1 OF THE CHARLOTTE COUNTY ZONING CODE

HIDDEN WATERS SUBDIVISION

WEYERS COURT, ENGLEWOOD, FL

DATE: February 25, 2014

REQUEST BY: Mary E. Sprague, PE
Riskall, LLC
Hidden Waters Subdivision
8017 Weyers Ct.
Englewood, FL 34224
(941) 504-0899



NARRATIVE

VARIANCE: We are requesting a variance of 2' from the allowed height of 6' on a fence to a proposed height of 8' on lots 1 – 3, 17 - 19 and Tract C. This fence will provide a buffer from both the difference in elevations (meeting current flood requirements) and the zoning (MHS to RSF). The proposed fence will be constructed of a solid white vinyl.

CRITERIA FOR VARIANCE:

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.

Hidden Waters is a 19 lot subdivision that was platted and constructed in 2006-2007. The zoning of the property was multi-family and allowed approximately 70 units prior to platting. We reduced the density to 19 single family lots. The property abuts Mobile Gardens, a 300 lot Mobile Home Subdivision zoned MHS.

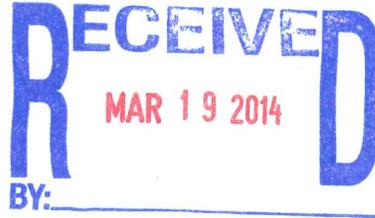
2. The strict and literal enforcement of the Zoning Regulations would create an undue hardship as distinguished from a mere inconvenience on the property owners. Physical handicaps or disability of the applicant and other considerations may be considered where relevant to the request.

The variance request will allow us to construct an 8' fence that will provide a separation and privacy of both Mobile Gardens and Hidden Waters due to the 2 different zoning districts which existed prior to the development of Hidden Waters. It also provides relief for both subdivisions for the increased finished floor elevation requirements. The required finished floor in our subdivision is 10.0' and 11.0'. The ground elevation varies from 6.6' to 7.2'. The construction of a 6' high fence would only be about 2' above finished floor. Construction of an 8' high fence will provide 4' privacy above the finished floor.

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

The variance request is for a fence only. We are allowed to construct a 6' fence on the property line without a variance, but due to the FEMA height requirements, our homes must be built higher than when Mobile Garden's homes were constructed. We will keep the fence 5' from the property line.

Narrative
(Exhibit D-1)



February 25, 2014
Variance from 3-9-6.1
Page -2-

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 granting of this variance would not be injurious or incompatible. In fact, it would give a separation between the two zoning districts and help offset the different heights of homes in the two districts.

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.

We did not create the difference in zoning districts. Also, since Mobile Gardens was developed in the 1960's, the flood elevations have since changed, requiring our homes to be built at a higher elevation than Mobile Gardens.

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

Vinyl fences are made at 6' and 8' heights. 2' height is the minimum variance since the height of vinyl fences which are available. Also, we are providing a setback to Mobile Garden's lots of 5' from the property line in order to construct the 8' fence. A 6' fence could be built directly on the property line with no setback and no variance. Because there is a swale along the rear yards of all these lots, 5' is the maximum we can set back the fence to keep it out of the swale.

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

This request is consistent with the Charlotte County Comprehensive Plan.

Narrative
(Exhibit D-2)



MEMORANDUM

Date: March 17, 2014
To: Ken Quillen, Planner III
From: Jamie Scudera, Environmental Specialist
Subject: VAR-14-003
Riskall, LLC Fence, 8000 – 8048 Weyers Court

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

- ❖ A cursory environmental review has been conducted by staff. A fence currently exists on site although Gopher Tortoise burrow(s) have been documented near the existing fence line by staff in the past. Charlotte county staff will conduct a Gopher Tortoise survey prior to issuance of the fence permit.

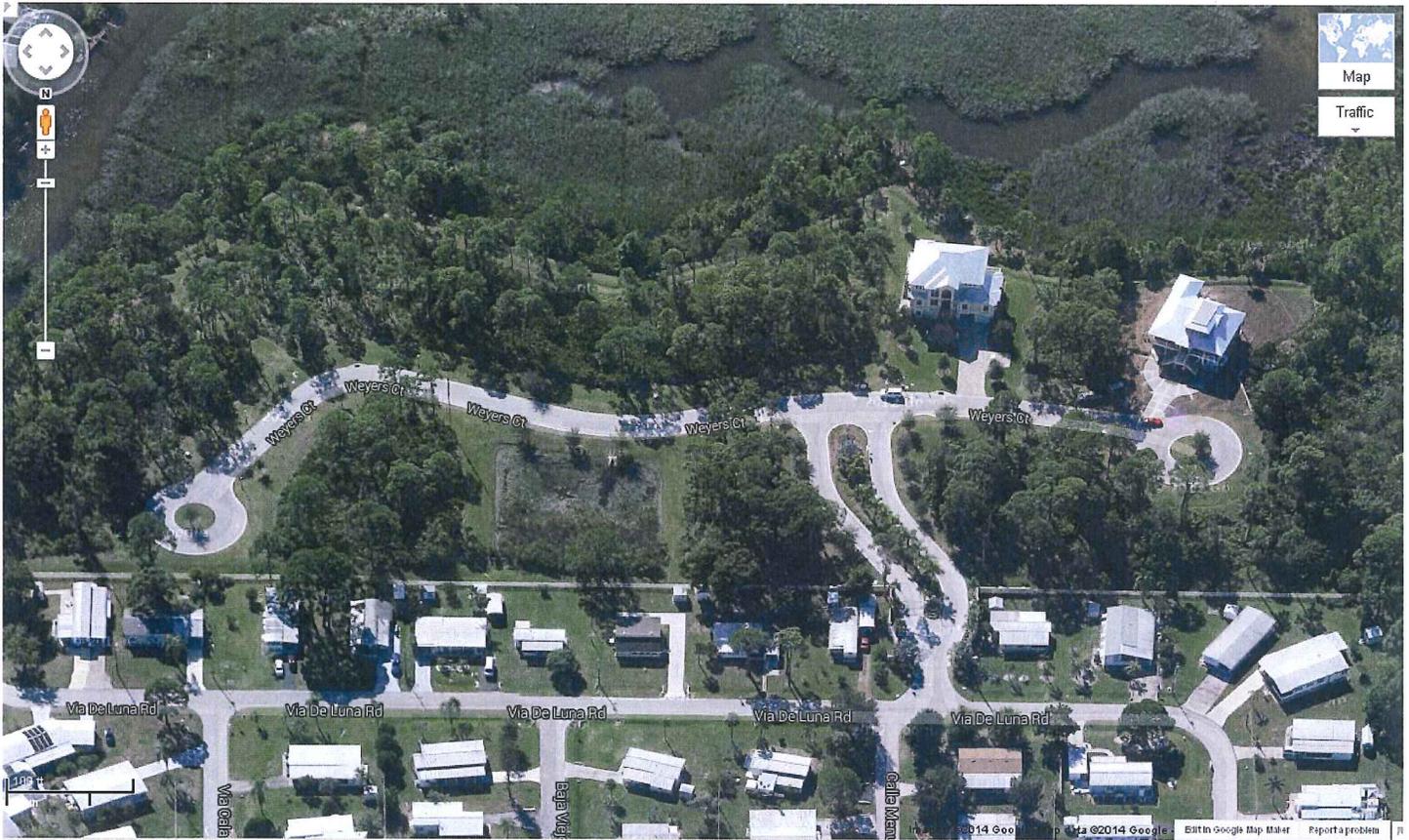
If this petition is approved, the following conditions will be reviewed for compliance upon Site Plan Review (if required) and the issuance of any county permit or land improvement activities:

- ❖ All applicable county, state and federal authorizations, permits, and mitigation (if necessary) will be required.

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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