

**STAFF REPORT**  
**Community Development Department**  
**Petition Number: VAR-14-007**

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**To:** The Charlotte County Board of Zoning Appeals  
**From:** Shaun Cullinan, Zoning Official  
**Prepared By:** Ken Quillen, AICP, Planner III  
**Report Date:** December 1, 2014                      **BZA meeting date:** December 10, 2014

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**Requested Action/General Information:**

Blase Bisceglia, agent for Michael Bartnikowski, is requesting a variance to eliminate the wildlife opening required in a solid privacy fence for property located in the Manasota Single-family-5 zoning district. Subject property is located at **170 Friendship Lane** in Englewood (see **Location Map**). The attached **Zoning Map** shows the zoning of this property, which is *Manasota Single-family-5*. This property has a *Low Density Residential*, Future Land Use Map (FLUM) designation.

Subject property consists of a single 4,250 square foot lot (50' by 85') located on the north side of Friendship Lane in *S. J. Chadwick's Subdivision*, which was recorded in 1949. This lot is nonconforming with regard to the 70' minimum lot width and 8,712 square foot minimum lot area required by the Manasota Key Overlay Code. **Subsection 3-9-53(k)(5) (Exhibit A)**, of the Manasota Key Overlay Code, allows fences up to six feet high in the side and rear yards up to the property line. Subparagraph **(k)(5)d (Exhibit A-3)**, requires openings for wildlife (minimum 9" by 6") in solid walls or fences such as privacy fences. The applicant applied for a fence permit to erect a four-foot picket fence and a six-foot privacy fence in the side and rear yards. County staff reviewed and approved the **Permit No. 20140812712 (Exhibit B)** on August 19, 2014, without first having the Manasota Key Architectural Review Advisory Committee review and comment on the permit application. An inspection of the fence found that the solid privacy fence does not have the wildlife openings required every 25 feet along the bottom of the fence by the Manasota Key Overlay Code.

Rather than modify the fence the fence contractor has submitted this application for a variance for the owners. The applicant has submitted the attached **Site Plan (Exhibit C)**, which is not to scale, showing the fences in relation to the existing single-family home. This **Site Plan (Exhibit C)** is the same one submitted with the fence permit application; however, staff has indicated where six required wildlife openings should have been located with red dots. The attached **Narrative (Exhibit D)** explains why the applicant believes this request for a variance should be granted.

The Manasota and Sandpiper Key Advisory Committee met on October 1, 2014, and recommended that the required wildlife opening be added, see attached **Exhibit E**. The Community Development Department's Environmental Specialist has performed a cursory environmental review and their comments are in the attached **Memorandum (Exhibit F)** dated November 18, 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 fence involved. The conditions which do currently exist are also 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: To require the addition of six wildlife openings in the privacy fence may be an inconvenience; however, it is not 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 require wildlife opening in solid walls or fences 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: 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 been created by the fence contractor who was hired by the property owner. The fence contractor did create the existing conditions and could correct it by installing the required wildlife openings.

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

Finding: The requested variance, to eliminate the six required wildlife openings, may not be the minimum modification that would afford relief. Maybe three wildlife openings, one in the middle of each section of the privacy fence would be a workable solution.

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 eliminate all six required wildlife openings in a privacy fence, staff believes that the requested variance does not meet all seven criteria for granting a variance. Specifically criteria numbers 1, 2, 5 and 6.

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 eliminate three of the six required wildlife openings in the privacy fence.
2. The owner shall install a minimum of three six-inch by nine-inch wildlife openings, one near the middle of each section of fence along the two sides and rear lot lines.
3. This variance shall be for the existing fence fence only and all other future fences or replacement fence 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 3-9-53, Fence Permit, Site Plan, Narrative, Manasota Key ARC Recommendation (2), and Environmental Specialist Memorandum



Community Development

# CHARLOTTE COUNTY

## Location Map for VAR-14-007

Charlotte County Government

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www.CharlotteCountyFL.com



### 12/41/19 West County

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-S. Yancey 6261 Date Saved: 11/10/2014 11:40:07 AM

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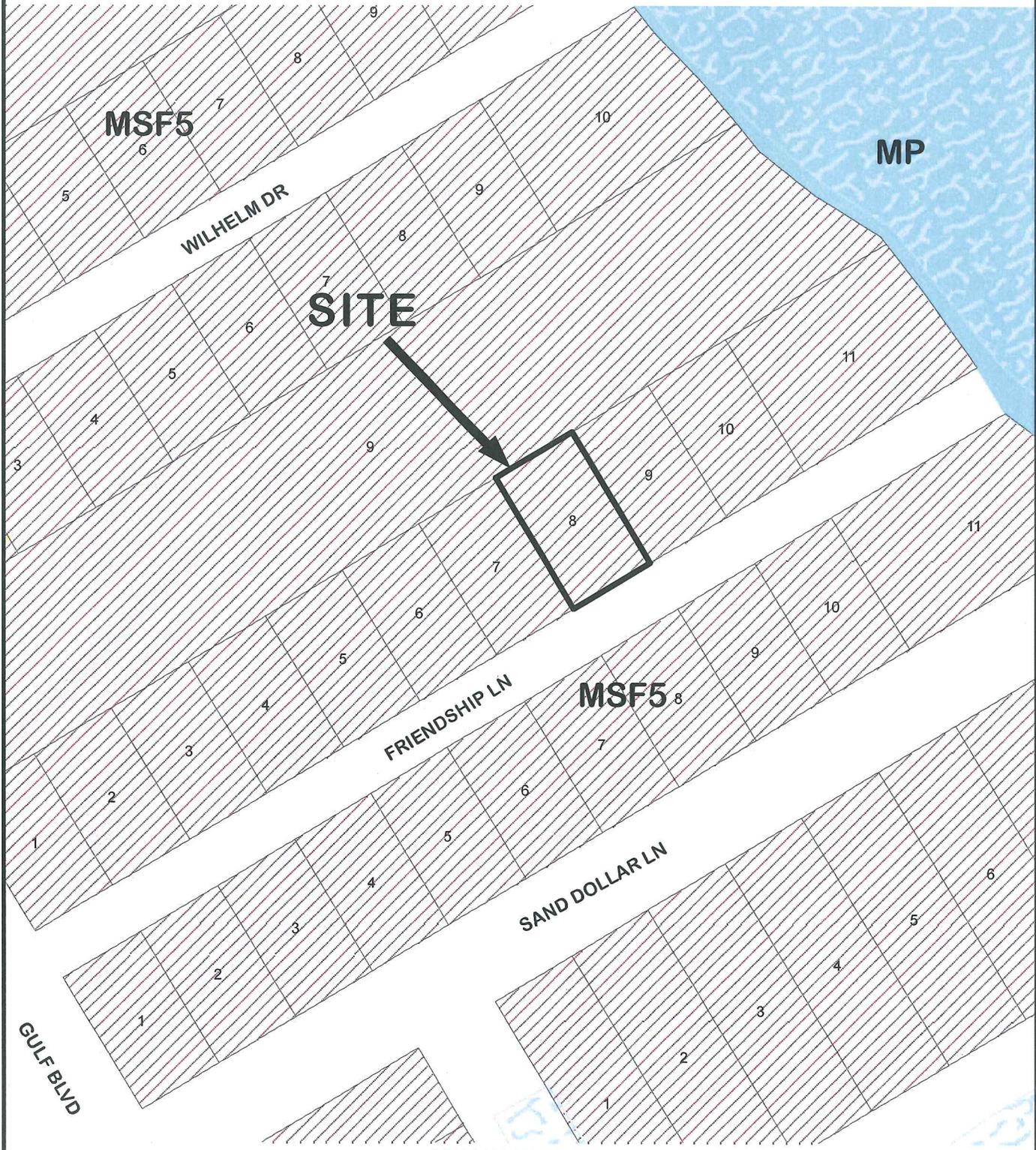
Community Development

# CHARLOTTE COUNTY Zoning Map for VAR-14-007

Charlotte County Government

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Community Development

# CHARLOTTE COUNTY

2014 Aerial View for VAR-14-007

Charlotte County Government

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12/41/19 West County

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### Sec. 3-9-53. Manasota Key zoning district overlay.

(a) **Definitions.** When terms are defined both in this Section 3-9-53 and elsewhere in the County Code, definitions for such terms in this subsection shall control. The following terms shall have the meanings set forth in this subsection:

*Advisory committee* shall mean the Manasota and Sandpiper Key advisory committee established by the board on October 12, 2004, pursuant to Resolution Number 2004-212.

*Appurtenances* shall mean something added to another, more important thing on a building that is customarily incidental and subordinate to a principal building.

*Building setback calculation* shall mean the methodology used in the overlay code to determine the stepped setback required from the property line for a building based on building height and stepped setback calculation points.

*Driveway* shall mean a permeable surface designed for use by vehicles that connect a road to a structure.

*Driveway crossover* shall mean that portion of a driveway located on a setback.

*Height, building or structure* in this Code shall mean the distance from zero (0) feet NGVD to the top of the highest constructed element.

*Highest constructed element* shall mean the highest point of a building or the highest point of any rooftop livable space or appurtenances thereto.

*Manasota Key Overlay Code* shall mean the Manasota and Sandpiper Key Zoning District Overlay Code established by section 3-9-53 and as amended into the County Code.

*Manasota Key* shall mean the land located south of the Sarasota-Charlotte County line, west of Sandpiper Key, north of Stump Pass Beach State Park and east of the Gulf of Mexico.

*Manasota commercial general* or MCG shall mean the commercial general zoning district established by the overlay code.

*Manasota commercial tourist* or MCT shall mean the commercial tourist zoning district established by the overlay code.

*Manasota environmentally sensitive* or MES shall mean the environmentally sensitive zoning district established by the overlay code.

*Manasota multifamily* or MMF shall mean the multifamily zoning districts established by the overlay code.

*Manasota planned development* or MPD shall mean the planned development zoning district established by the overlay code.

*Manasota single-family* or MSF shall mean the single-family zoning district established by the overlay code.

*Maximum building height* within the Manasota and Sandpiper Key overlay district shall mean the building height as measured from zero (0) feet NGVD to the top of the highest constructed element.

*Maximum building height calculation* means the height of a building measured from zero (0) feet NGVD to the top of the highest constructed element which is the highest point of a building or the highest point of any rooftop livable space or appurtenances thereto.

*Minimum finished floor elevation* shall mean the minimum finished floor elevation to be issued which on Manasota Key in the A-1 Zone in the V-Zone (governed by Florida DEP se

**Section 3-9-53(k)(5)**  
**( Exhibit A-1 )**

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yard variances which result in a side yard of less than ten (10) feet, and the provisions contained in sections 3-9-10.c.5.c and 3-9-75(2) shall not apply when they would result in a side yard of less than ten (10) feet.

- (13) *Parking standards.* For any residential development within the overlay district, each residential dwelling unit shall provide a minimum of two (2) spaces per unit. Multifamily developments shall provide additional parking spaces for services and guests. Service parking requirements shall be the lowest whole number that is greater than or equal to ten (10) percent of the number of units contained within the multifamily project. Guest parking requirements shall be the lowest whole number that is greater than or equal to twenty (20) percent of the number of units contained within the multifamily project. At least one (1) of the guest parking spaces as required by this section shall be handicapped accessible. Beach access points on the islands shall not be obstructed by parked cars or any other barriers. Parking of unlicensed or unregistered automobiles, recreational vehicles, boats and/or trailers shall be prohibited.
- (14) *Disaster recovery.* Following a natural disaster, as determined by the board of county commissioners, multifamily developments that are nonconforming due to their density may be rebuilt with no increase in square footage, so long as they comply with as many other development standards of this Code as possible, while still allowing the overall pre-disaster density which existed to be retained. In redevelopment of the site, first priority shall be given to establishing the peripheral landscape strip, to the greatest extent possible. Documentation shall be provided to indicate where a particular development standard cannot be met.
- (15) *Underground utilities.* Electrical wires that connect poles with structures shall be placed underground.
- (16) *Spot ground elevations.* The spot ground elevations for new development and for reconstruction that exceeds fifty (50) percent of the replacement value of an existing structure shall be established prior to any clearing of the site by a signed and sealed survey prepared by a surveyor licensed in Florida. There shall be a minimum of one (1) spot elevation per site, with additional spot ground elevations provided at every one (1) foot of elevation change within the site.

(k) *Architectural design standards.* These architectural design standards shall apply to all new development within the overlay district and to any alterations or additions to existing structures that exceed fifty (50) percent of the replacement value of the structure. These standards shall regulate the appearance and constructive elements of structures and be used in addition to those expressed elsewhere in this Code.

- (1) *Driveways and parking areas and walkways/sidewalks.*
- a. No driveway shall exceed twenty-four (24) feet in width where it connects with the roadway.
  - b. In MES and MSF Districts, only one (1) driveway crossing is permitted within the front yard setback. In MMF Districts, one (1) driveway crossing allowed every three hundred (300) feet within the front yard setback.
  - c. New private roads and parking and driveways, and those where fifty (50) percent of their area is repaired or replaced shall be paved with crushed shell, stone, brick, or other permeable materials, in accordance with the latest technology allowed by permitting districts, and in a manner that will permit maximum water absorption.
  - d.

## Section 3-9-53(k)(5) ( Exhibit A-2 )

Awnings shall be permanently affixed and shall have a minimum clearance of eight (8) feet above any sidewalk and eighteen (18) feet above any driveway.

- c. Gutters shall resemble or match the building trim or primary facade color. Gutters shall not cause water to accumulate on neighboring properties or directly upon driveways, sidewalks, or walkways.
  - d. The space between the first floor of a building and the ground shall be screened with lattice or breakaway walls. Lattice or breakaway walls shall be used specifically to conceal appurtenances placed below the first floor and the ground, and shall be the same pattern and appearance as the outside of the structure, and shall be permanently affixed to the principal structure and be constructed of vinyl or painted wood.
  - e. All structures shall post address numbers on the front façade in a location either by the entrance or garage door, or signage easily visible and legible from the adjacent roadway.
  - f. Sunshades shall be permanently affixed and shall be retractable for use as hurricane shutters providing they meet county and state code.
- (4) *Lighting fixtures, structures, and elements.*
- a. All outside lighting fixtures shall be installed consistent with the Sea Turtle Lighting standards.
  - b. Fixtures for lighting areas shall follow a consistent theme.
  - c. Light posts shall be installed consistent with the following standards:
    1. Light posts shall be constructed and installed to resemble wood, polished concrete, or painted metal.
    2. Unfinished or unpainted metal and concrete surfaces and untreated wooden posts are prohibited.
    3. Light posts on private property shall not exceed sixteen (16) feet in height.
  - d. Outside lighting fixtures shall be installed to orient light downward and to provide glare reduction optics and shielding features. No fixture shall direct light upward or onto adjacent property. (Exemptions shall include small accent lights that are directed upward to softly illuminate landscaping.)
  - e. Light globes shall not protrude below shades.

(5) *Fencing and walls.*

- a. Chain link fencing is prohibited. Coated chain link fencing may be used to enclose tennis courts and swimming pools, or as temporary security fencing for construction sites. In such cases, the fence shall be replaced at the first signs of wear or rust. A coated chain link fence may also include tennis fence netting.
- b. Concrete block walls must be split-faced or finished, and capped. Unfinished concrete block is prohibited.
- c. Wood fences must be constructed of pressure-treated lumber to prevent deterioration and rot.
- d. Solid walls and fences on or near the periphery of a lot must contain openings that may be used by wildlife. These openings must be at least nine (9) inches wide and six (6) inches high and must be located every twenty-five (25) feet along the bottom of the fence or wall.
- e.

**Section 3-9-53(k)(5)**  
**( Exhibit A-3 )**



**Charlotte County Government  
Community Development  
PERMIT - OFFICE COPY**

In consideration of the granting of this permit, it is agreed, in all respects, the work is to be performed and completed in accordance with the permitted plans and the applicable codes of Charlotte County, Florida. This permit may be revoked at any time upon the violation of any of the provisions of said laws, ordinances, or rules and regulations or upon any change in the plans and specifications unauthorized by this department. Permit is void after 6(six) months from the date of issuance if work is not started. To keep this permit valid, a legitimate inspection must be passed within 6(six) months of the previous passed inspection. **NOTICE:** In addition to the requirements of this permit, there may be additional restrictions applicable to this property that may be found in the public records of this county, and there may be additional permits required from other governmental entities such as water management districts, state agencies or federal agencies.

Permit No. **20140812712** Permit Type / Sub-Type : Growth Mgmt / Zoning Permits / Residential Fence

**Job Address :** 170 Friendship LN, Englewood, Fl, 34223

Section : 12 Township : 41 Range : 19 Folio # : 411912480017  
 Lot / Block : 0008 / 0000 Subdivision : CWS  
 SETBACKS Front : Rear : Right : Left :

Owner Name : BARTNIKOWSKI MICHAEL JOSEPH &LRB TRS

CONTRACTOR : License # :

**GENERAL**

Construction Cost : \$7,500.00 Inside Lot : CHECKED  
 Flood Zone : 11AE In SFHA : Y

**FENCE**

Fence Height : 6

Date Issued : 08/19/2014 Issued By : Stephanie Raucci

Description of Work : Install 4' vinyl fence 6' privacy fence with one gate.

**24 HOURS NOTICE REQUIRED FOR INSPECTION 941/833-4086  
TOLL FREE FROM ENGLEWOOD 941/681-3768**

Know the Florida Litter Law. Florida Statutes 403.413 Commercial illegal dumping is a 3rd degree felony which can be punishable by imprisonment, fines, forfeiture of equipment, and civil penalties.

Notice: In addition to the requirements of this permit, there may be additional restrictions applicable to this property that may be found in the Public Records of this county, and there may be additional permits required from other governmental entities such as water management districts, state agencies, or federal agencies.

Notice: Each building permit for the demolition or renovation of an existing structure shall contain an asbestos notification statement which indicates the owner's or operator's responsibility to comply with the provisions of s.493.003 and to notify the Department of Environmental Protection of her or his intentions to remove asbestos, where applicable, in accordance with State and Federal law.

Notice: It should be the responsibility of every contractor who shall make contracts for the installation or repairs of building, structure, electrical, gas, mechanical, or plumbing systems, for which a permit is required, to comply with state or local rules and regulations concerning licensing and inspections which the applicable governing authority may have adopted.

**NOTICE TO APPLICANT:** Please note outstanding balance of impact fee(s) in the amount of 0.00 due on this permit. Impact fees would be due prior to issuance of a Certificate of Occupancy.

**Permit  
( Exhibit B )**

20140812712

50' of 6' privacy

Any structure or appearance located within an easement will require approval pursuant to the procedure established by the Charlotte County Engineering Department.

There is a legal obligation by the owner and/or builder on this property to comply with the recorded deed restrictions.

Plan approved subject to compliance with Charlotte County Zoning Regulations  
Date: AUG 19 2014

Install 4' vinyl picket fence and 6' privacy fence w/ one gate. non

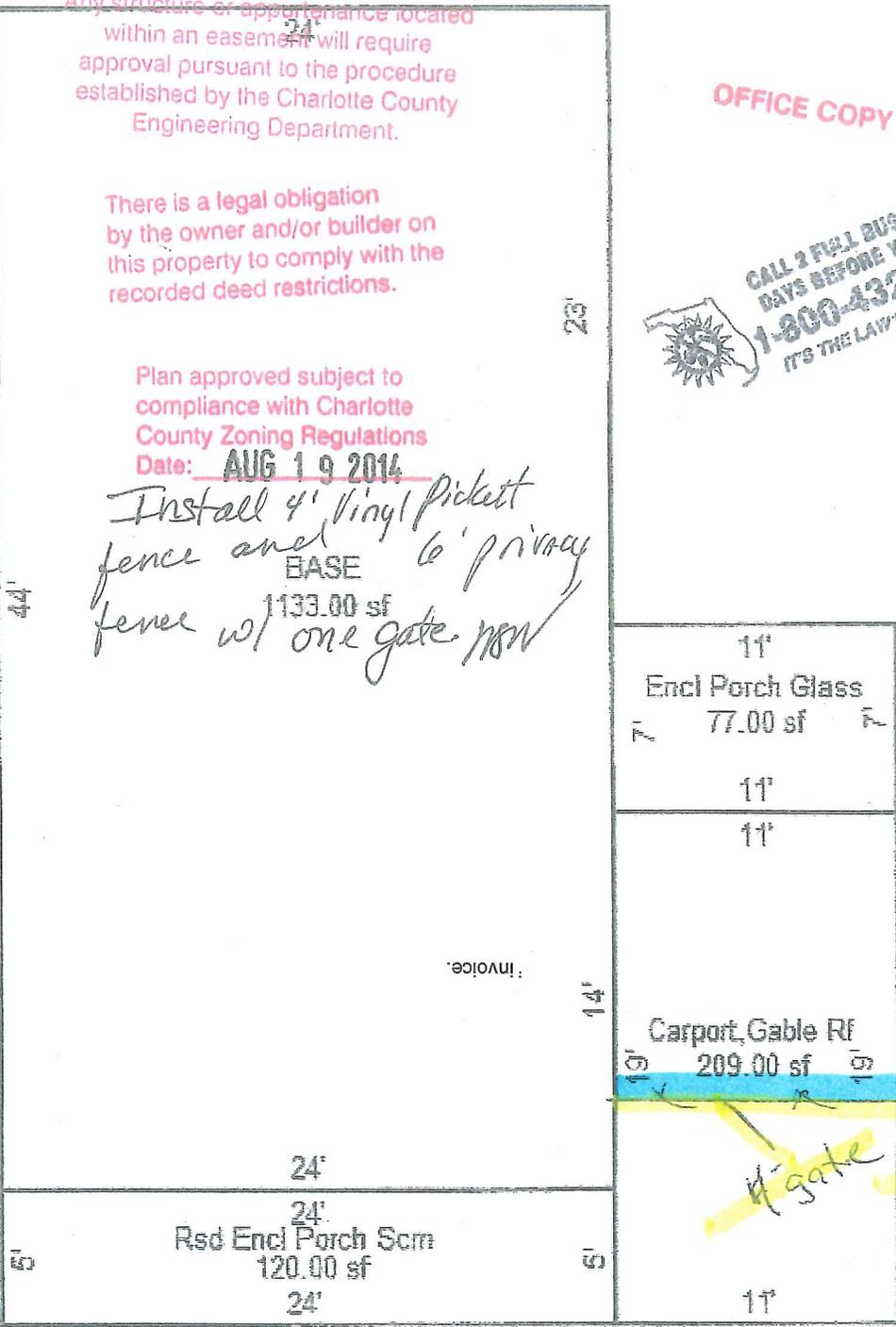
BASE  
1133.00 sf

OFFICE COPY



60' of 6' privacy

60' of 6' privacy



Invoice

9'

4' picket

Site Plan

( Exhibit C )

Friend ship



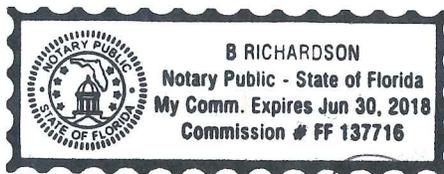
10/21/2014

Charlotte County Zoning,

On 8/19/2014, we received an approved permit from Charlotte County to install 27' of 4' vinyl fence with one 4' gate and 211' of 6' vinyl fence at 170 Friendship Lane, Englewood, Fl 34223. We installed the fence as per the permit (#20140812712). When the property was inspected, it failed due to it not having turtle holes (Charlotte County Code 3-9-53). We were not informed that we needed turtle holes in the fence at the time of permit. We were told by Charlotte County Zoning that we were financially responsible for adding the turtle holes because we did not know the code was in the books, and have always trusted the Permitting department to inform us when something as important as turtle holes is not on a permit. This was an error at Charlotte County permitting, not in our office, and we are asking for a variance as this will cause Tarpon Bay to be financially responsible for approximately \$2000 to remove the fence, get custom routed material manufactured and install. We should not be held financially responsible for codes that we were not aware of, when we submitted a permit request, we must assume that said request is reviewed and approved by the proper representatives so that we do not install fences incorrectly or not to code

Sincerely,

Blase Bisceglia



STATE OF FLORIDA  
COUNTY OF Charlotte

Sworn to (or affirmed) and subscribed before me this 21<sup>st</sup> day of Oct, 2014,  
by

Blase Bisceglia who is Personally Known  OR Produced  
Identification

Type of Identification Produced \_\_\_\_\_

**Narrative**  
**( Exhibit D )**



Manasota/Sandpiper Key Architectural  
Committee Submitted Plans  
Recommendation to:  
 Approve  Deny

Community Development Date: 10/11/14  
Zoning Division Signed: [Signature]

18400 Murdock Circle, Port Charlotte, FL 33948-1094  
Phone: (941) 743-1964 (941) 743-1230 Fax: (941) 743-1578  
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Comments:

SUBJECT TO  
COMMENTS ON  
AND WILDLIFE  
OPENINGS  
GRT

### Residential Fence Permit - Application

Incomplete applications will not be accepted.

Date Received: AUG 19 2014 Receipt Number: \_\_\_\_\_  
Permit Number: 20140812712 Zoning Tech. Signature: [Signature]

1. Job Site Address: 170 Friendship Ln., Englewood 34223  
(Address) (City) (zip + four)

2. Legal description: Lot(s): 8 Block(s): \_\_\_\_\_  
Subdivision: \_\_\_\_\_ Unit or Sub-section: \_\_\_\_\_  
Parcel(s) or Tract(s): 411912480017  
Section(s): 12; Township: 41 (South); Range: 19 (East)

3. Property Owner: Bar+nikowski, Michael Joseph + LRB TRS  
4820 Waterville Swanton Rd, Swanton OH 43558  
(Address) (City) (State) (zip + four)  
419-265-3214 / \_\_\_\_\_ / \_\_\_\_\_  
(Phone Number) (Fax Number) (E-mail Address)

4. Name of Contractor (Applicant): Tarpon Bay Gen Contracting  
7541 Sawyer Circle, Port Charlotte FL 34223  
(Address) (City) (State) (zip + four)  
941-697-4448 / 1941-698-9862 / tbgc@embarqmail.com  
(Phone Number) (Fax Number) (E-mail Address)

5. Zoning Classification of Property: MSE5

6. Description of Work to be done: install 27' of 4' vinyl fence

7. Setbacks: front, \_\_\_\_\_; rear, \_\_\_\_\_; side, \_\_\_\_\_; side, \_\_\_\_\_

8. Construction Cost: \$7500.00

Applicant Check List

1) Application \_\_\_\_\_

2) Site plan drawn to scale with accessory affidavit or survey showing location of proposed fence (2 copies) \_\_\_\_\_

3) Notice of Commencement over \$2,500.00 \_\_\_\_\_

4) Copy of Release of Easement (if applicable) \_\_\_\_\_

(Return completed form to the Zoning Division)

**Manasota Key ARC**  
**( Exhibit E-1 )**

## MANASOTA AND SANDPIPER KEY ADVISORY ARC. COMMITTEE MINUTES

Oct. 1, 2014

The meeting was called to order by Jack Landis at 9:00 AM. Present were BJ Galberaith, Andrea Barber, Francis Dumont, Jerry Tumanic and Craig Lindblad. Joe Jenkins was absent and excused. Buddy Braselton represented Charlotte Co.

Minutes: of September 17, 2014 meeting were approved.

### ARC Applications:

72 Sunrise Dr., Jeffrey & Kathleen Ellingham application to enclose the carport was recommended approval.

170 Friendship, Lynnette Barnkowski after the fact application for a fence permit absent of wild life openings, was recommended by the committee to add the wild life openings.

5055 N. Beach Rd., Tiki Apartments, application for fence permit was recommended to be postponed to allow committee members to visit the site. The fence to obscure a dumpster is located in front of the leading edge of the building and within an easement.

2779 N. Beach Rd., Paul Vanderberg, application for a boat dock and 2 lifts was recommended denial as it does not comply with plat requirements, exceeds canal width allowable size, and does not clarify roof material and color. Survey was not provided.

### Old business

The committee noted Gulf View Grill has not provided the committee with permits and applications for pavers, bar, electrical and miscellaneous improvements.

Meeting adjourned at 10:30 am

Next meeting will be Nov. 5, 2014

Respectfully submitted,



BJ Galberaith, Secretary

Manasota Key ARC  
( Exhibit E-2 )



## MEMORANDUM

**Date:** November 18, 2014  
**To:** Ken Quillen, Planner III  
**From:** Jamie Scudera, Environmental Specialist  
**Subject:** VAR-14-007, Bartnikowski fence variance, 170 Friendship Lane

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 or ordinances and offers the following comments:

- ❖ The site consists of an existing single family residence located on a highly sensitive coastal island community.

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:

- ❖ In regards to the lack of wildlife openings in the existing fence, any traversing wildlife that cannot go under or over the fence will likely divert to another opening on a neighboring property or where a break in the fence occurs. It is highly encouraged by staff that any areas where wildlife digs under the fence not be filled in but left as a 'natural opening'

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 in the Zoning Office at (941) 743-1290.

JS

**( Exhibit F )**

P:animal/Specexcep\_Variences/2014/VAR-14-007(FriendshipLaneFence).doc



**Street View - Google Maps © 2014**