

**STAFF REPORT**  
**Community Development Department**  
**Petition Number: VAR-15-006**

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**To:** The Charlotte County Board of Zoning Appeals  
**From:** Shaun Cullinan, Planning and Zoning Official  
**Prepared By:** Ken Quillen, AICP, Planner III  
**Report Date:** September 2, 2015                      **BZA meeting date:** September 9, 2015

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**Requested Action/General Information:**

Sunia Piermont, agent for Fairhomes Pearson Properties, is requesting a variance to reduce the required 25-foot rear (street) setback by five feet to allow a 20-foot rear (street) setback for a proposed swimming pool and screen enclosure in the Residential Single-family-3.5 zoning district. Subject property is located at **2410 Pebble Creek Place** 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, Future Land Use Map (FLUM) designation.

The attached **Aerial Photograph** shows subject property, which is a regular shaped lot created by the Pebble Creek Subdivision in 1992. This 90' by 131' lot meets the minimum lot width requirement of 80 feet, as well as, the 10,000 square foot minimum lot size requirement, with 11,790 square feet. Staff has attached a copy of **Section 3-9-33 Residential Single-family** (**Exhibit A**) from the Land Development Regulations. **Subsection (g)** (**Exhibit A-2**) lists the development Standards, which requires a 25-foot rear street setback.

The applicant has submitted the attached **Boundary Survey** (**Exhibit B-1**), which was done on November 24, 2014, showing the existing vacant lot, which has frontage onto two streets, Pebble Creek Place to the west and Hiawatha Street to the east. An application has been submitted (permit number 20150610611) to construct a new single-family residence on this lot. The applicant is requesting this variance to allow development of this lot as proposed with a new single-family residence and a swimming pool with a 20-foot setback as shown on the **Proposed Site Plan** (**Exhibit B-2**).

The applicant has also 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 August 21, 2015. This review states that there are no environmental issues regarding the requested variance.

**Findings: The five standards for approval of variance according to Section 3-9-6.3(i) 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: Although subject property meets the minimum lot width and lot size requirements of code it is unique because the lot does have double street frontage. This situation requires a 25-foot setback from both the front (west) and rear (east) lot lines. Peculiar conditions do exist that are not generally applicable to other properties.

2. The strict and literal enforcement of the zoning section of the Land Development 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.

Finding: A swimming pool and screen enclosure is a typical accessory use to single-family residences in Florida. A strict and literal enforcement of the 25-foot rear street yard setback for the swimming pool would require a redesign of the home and swimming pool, which may be considered an undue hardship as distinguished from a mere inconvenience.

3. 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: This variance request is to allow a swimming pool and screen enclosure as proposed with a 20-foot rear street yard setback. Staff believes that the proposed swimming pool and screen enclosure would not be injurious to or incompatible with the adjacent residences or detrimental to the public welfare.

4. 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 applicant purchased subject property in August of 2012 with all of the existing structures and conditions already in place. These conditions cannot reasonably be corrected by the applicant and were created in 2005 when the swimming pool was constructed by a previous owner.

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

Finding: The requested variance of five feet is the minimum modification that will afford relief, according to the applicant, because this would allow normal use of this lot and provide a 20-foot rear setback, which is what would be the required setback under normal conditions.

### **ANALYSIS AND CONCLUSIONS:**

After review of the site and the application requesting a variance staff believes that the requested variance to allow a swimming pool as proposed does meet all five 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 Land Development Regulations. The recommended conditions are as follows:

1. The variance as approved by the Board of Zoning Appeals is to reduce the 25' rear street setback by five feet to allow a 20-foot rear street setback.
2. This variance extends only to the swimming pool and pool cage only as shown on the Proposed Site Plan in the documents submitted with this application.
3. If the proposed swimming pool and pool cage is constructed and at a later date removed this variance shall expire and 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.
4. If the proposed swimming pool and pool cage is not constructed within two years of this approval date then this variance shall expire and all future development must be constructed according to all applicable codes in existence 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 3-9-33 (2), Boundary Survey, Proposed Site Plan, Narrative (2) and Environmental Specialist Memorandum



Community Development

# CHARLOTTE COUNTY

## Location Map for VAR-15-006



13/40/21 Mid-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 guarantees, 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 7070 Date Saved: 8/7/2015 1:32:11 PM

Path: M:\Departments\GIS\Projects\Petition\_Maps\Current\_Planning\2015\Variance\VAR-15-006\PKT\Location Map Template.mxd



NOT TO SCALE

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Community Development

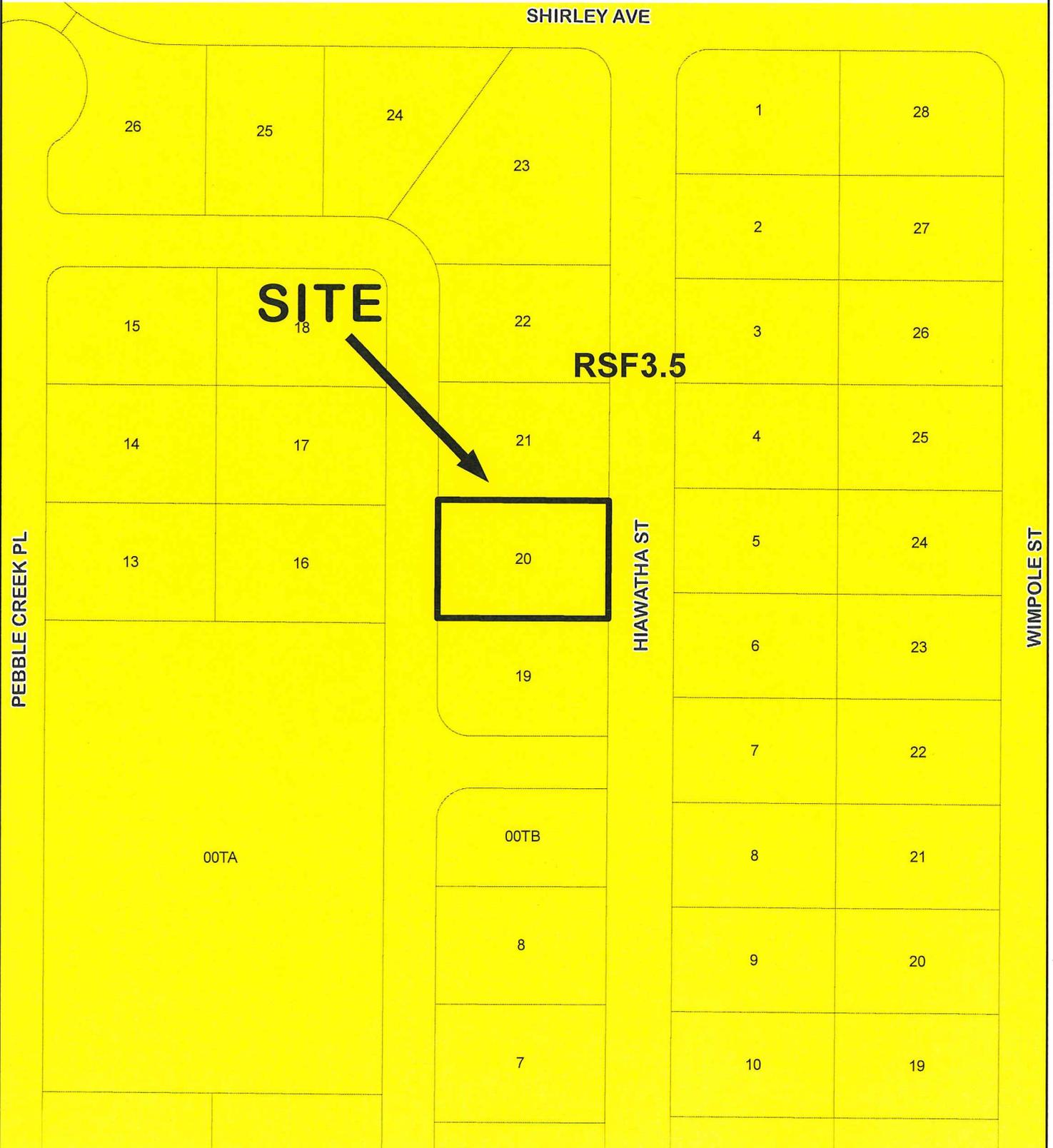
# CHARLOTTE COUNTY

## Zoning Map for VAR-15-006

Charlotte County Government

"To exceed expectations in the delivery of public services."

www.CharlotteCountyFL.gov



13/40/21 Mid-County

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Community Development

# CHARLOTTE COUNTY

## 2014 Aerial View for VAR-15-006



### 13/40/21 Mid-County

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NOT TO SCALE

**Section 3-9-33**

**Residential Single-family (RSF).**

- (a) *Intent.* The purpose and intent of these districts is to provide for single-family residential dwellings and other uses normally associated therewith. Among RSF-2, RSF-3.5 and RSF-5 districts, there are variations in requirements for lot area, width, and certain yards.
- (b) *Permitted Uses and Structures (P):* The following uses and structures are permitted in this district:
  - (1) Assisted living facility or day care center, adult, six or less. (see section 3-9-62 Assisted Living Facility)
  - (2) Emergency services.
  - (3) Manufactured home (DCA), minimum requirement is 150 miles per hour exposure "C".
  - (4) Minor Home Occupation. (see section 3-9-74 Home Occupations)
  - (5) Model home. (see section 3-9-78 Model Homes)
  - (6) Noncommercial boat docks.
  - (7) Park, public or not-for-profit.
  - (8) Single-family detached, which may have a guest suite that is structurally attached, with or without cooking facilities.
  - (9) Telecommunications facility, 50 feet or less in height. (see section 3-9-68 Communication Towers)
- (c) *Permitted Accessory Uses and Structures:* Uses and structures which are customarily accessory and clearly incidental to permitted and conditional uses and structures are permitted in this district.
  - (1) Boat lifts, boat ramps, and noncommercial boat docks.
  - (2) Carports, garages, and storage structures.
    - a. Detached accessory structures greater than 250 square feet in footprint shall be compatible in appearance with the primary residence, at a minimum, materials and color shall be compatible with the primary residence.
    - b. The total footprint of all detached accessory structures shall not exceed ten percent of the parcel size or 1,000 square feet, whichever is greater for a property less than a half-acre. If the property is one half acre or more in size, the total footprint of all detached accessory structures shall not exceed 3,000 square feet. The property owner(s) may apply for a Special Exception to exceed the total maximum accessory structures size limitations contained in this section.
    - c. Detached accessory structures shall be located behind the leading edge of the living area of the residence except carports and garages, but must maintain required setbacks.
    - d. Construction trailers and cargo containers are prohibited.
  - (3) Fences or walls, which may be permitted prior to the principal uses and structures.
  - (4) Greenhouses and other horticultural uses, provided no retail sales are made on the premises.
  - (5) Guest suite, detached, consisting of living and sanitary facilities only. Cooking facilities shall not be permitted in a detached guest suite. It must meet all applicable development standards set forth in the zoning district.
  - (6) Keeping of pets, excluding animal breeding, boarding, and training.
  - (7) Swimming pools, tennis court or other similar non-commercial recreational uses and structures.
- (d) *Conditional Uses and Structures (C):* (For rules and regulations for any use designated as a Conditional Use or Structure, see section 3-9-69 Conditional Uses and Structures)
  - (1) Bed and breakfast, one or two bedrooms.
  - (2) Clubhouse.
  - (3) Cluster housing. (see section 3-9-67 Cluster Housing)
  - (4) Guest home.
  - (5) Subdivided lots with 50 foot wide frontage and 5,000 square foot.
- (e) *Prohibited Uses and Structures:* Any use or structure not expressly or by reasonable implication permitted herein or permitted by Special Exception, including but not limited to mobile homes, commercial parking lots and private clubs not otherwise permitted, or permitted by Special Exception, shall be unlawful in this district.
- (f) *Special Exceptions (S):* (For procedure see section 3-9-6.2 Special Exceptions)
  - (1) All conditional uses and structures that cannot meet all conditions set forth in this Code.
  - (2) Assisted living facility or day care center, adult, seven or more. (see section 3-9-62 Assisted Living Facility)

**Section 3-9-33 Residential Single-family (RSF). (continued)**

- (3) Bed and breakfast, three or more bedrooms.
- (4) Cemetery, mausoleum.
- (5) Community garden.
- (6) Day care center, child.
- (7) Elementary, middle, or high school.
- (8) Essential services. (see section 3-9-71 Essential Services)
- (9) Government uses and facilities.
- (10) Major Home Occupation. (see section 3-9-74 Home Occupations)
- (11) Place of Worship. (see section 3.7.82 Places of Worship)
- (12) Private clubs.
- (13) Telecommunications facility, greater than 50 feet in height. (see section 3-9-68 Communication Towers)
- (14) University or college.
- (15) Yacht clubs, country clubs, and other recreational amenities, including but not limited to tennis courts, basketball courts, and golf courses located on a separate parcel.
- (16) Such other uses as determined by the Zoning Official or his/her designee to be:
  - a. Appropriate by reasonable implication and intent of the district.
  - b. Similar to another use either explicitly permitted in that district or allowed by Special Exception.
  - b. Not specifically prohibited in that district.

The BZA shall review a favorable determination of the Zoning Official under this provision at the time the Special Exception application is presented to it. An unfavorable determination of the Zoning Official or his/her designee shall be appealable pursuant to section 3-9-6 Board of Zoning Appeals.

**(g) Development Standards:**

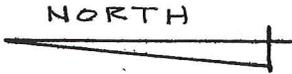
	RSF-2	RSF-3.5	RSF-5
<b>Lot (minimum)</b>	---	---	---
Area (square feet)	20,000	10,000	7,500
Width (feet)	100	80	70
<b>Setbacks (minimum feet)</b>			
Front	25	25	25
Side (interior)	15	7.5	7.5
Side (street)	20	15	15
Rear (interior)	20	20	20
Rear for all accessory structures (interior)	10	10	10
Rear (street)	25	25	25
Abutting a greenbelt	15	15	15
All accessory structures abutting a greenbelt	10	10	10
Abutting water	20	20	20
<b>Bulk (maximum)</b>			
Lot coverage of all buildings	40%	40%	40%
Height (feet)	38	38	38
Density (units/acres)	2	3.5	5

Where properties lie anywhere on a barrier island or within 1,200 feet of the water of Charlotte Harbor, the Gulf of Mexico, Lemon Bay, Gasparilla Sound, Placida Harbor, Red Fish Cove, the Myakka River, the Peace River, or Coral Creek, structures must also be constructed in accordance with section 3-9-88, Waterfront Property.

Landscape buffers and screening shall be required in this district in accordance with the provisions of Article XXII, Chapter 3-5, of the Code, as the same shall be amended.

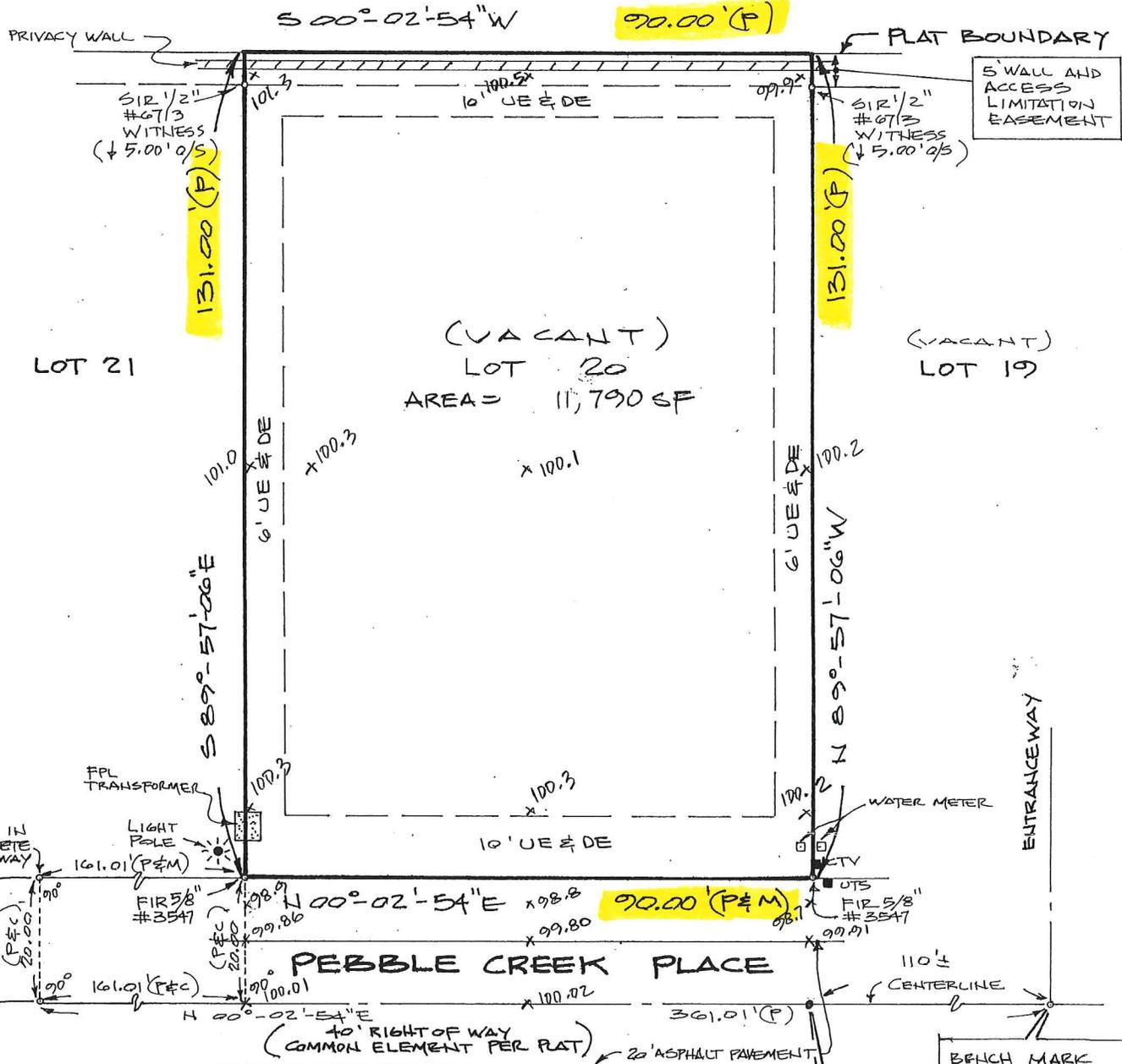
- (h) *Signs.* Signs shall be in accordance with section 3-9-85.
- (i) *Off-street parking.* Off-street parking shall be in accordance with section 3-9-79.

(Minutes of 12-08-1981, § 7; Res. No. 85-286, § 1, 10-05-1985; Res. No. 87-78, §§ 9, 10, 05-19-1987; Res. No. 87-254, § 17, 10-20-1987; Ord. No. 89-34, § 6, 05-31-1989; Ord. No. 92-40, §§ 1-4, 06-02-1992; Ord. No. 92-65, § 1, 08-18-1992; Ord. No. 94-55, § 14, 11-03-1994; Ord. No. 2001-031, § 1(a), 06-12-2001; Ord. No. 2002-008, § 1, 01-28-2002; Ord. No. 2003-061, §§ 6, 7, 08-26-2003; Ord. No. 2014-053, § 1, 11-25-2014)



# HIAWATHA STREET (50' RIGHT OF WAY)

ASPHALT PAVEMENT



5' WALL AND ACCESS LIMITATION EASEMENT

BENCH MARK  
N/D #6713  
ELEV = 100.00  
ASSUMED DATUM

BENCH MARK  
NAIL  
ELEV = 100.08  
ASSUMED DATUM

## Boundary Survey (Exhibit B-1)

BOUNDARY SURVEY  
LOT 20  
PEBBLE CREEK SUBDIVISION

FAIRHOMES

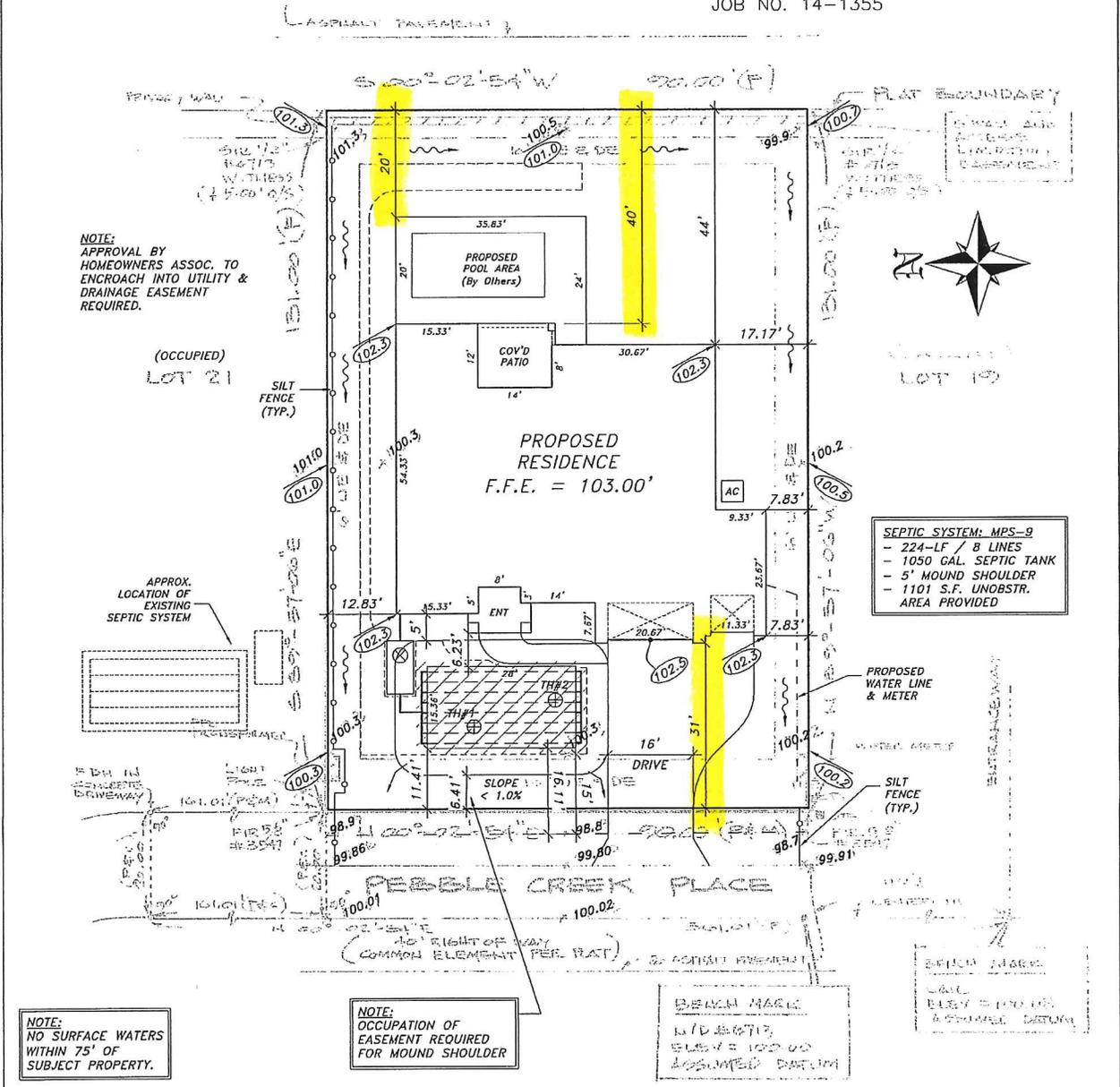
CHARLOTTE COUNTY, FLORIDA  
PLAT BOOK 17, PAGE 90C  
INCLUSIVE PAGES 9A-9C

11-24-2014

1. UNDERGROUND FEATURES ARE SHOWN FOR INFORMATIONAL PURPOSES ONLY.	FIELD: JM/BP	COMPS: BP	DRAFTING: JM
2. TITLE SEARCH PROVIDED BY OTHERS.	SCALE: 0 = 20		
BEARING BASIS:	DATE: 11-24-2014		

NO WELLS OR SEPTIC SYSTEMS EXIST WITHIN 100' OF SUBJECT PROPERTY UNLESS SHOWN

BOUNDARY AND TOPOGRAPHIC SURVEY BY: MELILLO & PLATT LAND SURVEYING, INC. JOB NO. 14-1355



NOTE: THE "O" HORIZON MUST BE REMOVED FROM DRAINFIELD, SHOULDER, & SLOPE AREA PER CH. 64E-6.009 FAC.

ALL ELEVATIONS: REFERENCED TO BM EL 100.00' (ASSUMED)

- NOTES:**
- 1) AT TIME OF INSTALLATION, ANY UNSATISFACTORY SOILS FOUND IN AREA OF DRAINFIELD SHALL BE REMOVED AND REPLACED WITH CLEAN FINE SAND TO A DEPTH BELOW DRAINFIELD IN ACCORDANCE WITH CHAP. 64-E-6 FAC.
  - 2) DIRECT ALL SURFACE DRAINAGE AWAY FROM UNOBSTRUCTED AREA.
  - 3) IF WATER LINE FALLS WITHIN 10' OF SYSTEM, IT MUST BE ENCASED WITHIN A SLEEVE OF SIMILAR MATERIAL PIPE AND SEALED AT BOTH ENDS WITH A WATERPROOF SEALANT. AT NO TIME SHALL THE WATER LINE BE WITHIN 2.0' OF THE SYSTEM OR BELOW THE BOTTOM OF THE BED.
  - 4) FINISHED FLOOR ELEVATION DOES NOT ACCOUNT FOR RECESSED SHOWERS.
  - 5) CONTRACTOR TO VERIFY HOUSE PLANS WITH SITE PLAN.

RISER: 102.55	HIGH END: 100.95 (PERF. PIPE)
HIGH END: 102.10 (MOUND)	LOW END: 100.85 (PERF. PIPE)
LOW END: 102.00 (MOUND)	BED BOT.: 100.50
FIN. FL.: 103.00	DIGOUT DEPTH: 60" B.G. MINIMUM
STUBOUT: 101.40	BED SIZE: 224-LF MPS-9
TANK IN: 101.30	FLOOD ZONE: 'X' EL.: N/A
TANK OUT: 101.05	

APPROVED BY: \_\_\_\_\_ CPHU

12.84	- DENOTES EXISTING ELEVATION	////	DENOTES SOIL REPLACEMENT AREA
0.00	- DENOTES PROPOSED ELEVATION	----	DENOTES UNOBSTRUCTED AREA
~	- FLOW DIRECTION	- - - -	DENOTES PERFORATED DRAIN LINES
D.U.E.	- DRAINAGE & UTILITY EASEMENT	—	DENOTES NON-PERFORATED PIPE, ED TOP OF MOUND

LOT(S): 20      BLOCK: N/A      SEC: 13    TNSHP: 40    RANGE: 21

# Proposed Site Plan ( Exhibit B-2 )

SEPTIC SITE PLAN FOR:				DRAWN BY	
FAIRHOMES PEARSON PROPERTIES LLC				CAS	
				APPROVED BY LAL	
No.:	Revisions:	Date:	By:	Scale:	1" = 20'
1	ADDED POOL	6/3/2015	CAS	LTE Job No.:	15-437-001
2	FULL-LOT CULVERT	6/26/2015	CAS	Date Issued:	5/20/2015
3	SEPTIC CONFIGURATION	7/15/2015	CAS	Sheet No.:	1 of 2

**L & T Engineering Group, Inc.**  
 14868 S. Tamiami Trail, Unit A-203 | North Port, Florida 34287-2701  
 PH (941) 426-6336 | FX (941) 426-6465 | lteengineering@verizon.net  
SITE DEVELOPMENT ENGINEERING - LANDSCAPE ARCHITECTURE - LAND PLANNING  
 STRUCTURAL ENGINEERING - RESIDENTIAL & COMMERCIAL BUILDING DESIGN  
 WATER RESOURCES & STORMWATER - WATER & WASTEWATER - CONSTRUCTION ADMINISTRATION

July 28, 2015

To: Charlotte County Community Development Dept

From: Fairhomes Pearson Prop LLC  
C/o Sunia Piermont

RE: 2410 Pebble Creek Place Variance

To Whom It May Concern:

The Charlotte County Health Dept requires a drain-field size to accommodate a 4 bedroom residence. As a consequence, the front setback to the house is placed at 31ft. Due to the house being over 2,250 sqft, the home requires a larger tank and drain field. We need a 1050 size tank and 225 linear feet of drain field. The previous plans allowed a 20ft setback for the pool on lot numbers 21 (2420) and 22 (2430) and other homes adjacent to Hiawatha Street.

Pebble Creek Place is a gated community and has a six foot (6') privacy wall along Hiawatha Street. The lot size is a standard 90ft x 131ft lot serviced by public water and a septic system.

We are requesting a variance and feel that we do meet the criteria for the variances as follows:

1. *Unique or peculiar conditions or circumstance 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...*
  - a. **The lot is bordered by 2 roads. As a condition; a pool or accessory structure must be twenty-five (25') from the rear property-line.**
  
2. *The strict and literal enforcement of the zoning section of the Land Development 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...*
  - a. **Previously, Charlotte County Zoning has erroneously approved pool setbacks of twenty feet (20'). The requested setback for the proposed pool is also the same. The builder desires to maintain the pool placement in line with the other adjacent properties.**
  
3. *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...*
  - a. **The requested variance of five feet (5') represents a deviation of only 20% and would be compatible with the other neighbor's pools.**

**Narrative  
( Exhibit C-1 )**

4. *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...*
  - a. **It is difficult to meet the requirements of both the Charlotte County Health Department and Building Department without requesting the variance. The site conditions for this property are more restrictive than others.**
  
5. *The requested variance is the minimum modification of the regulation at issue that will afford relief...*
  - a. **The builder is asking for only what other property owners have been granted.**

Accordingly,



Ms. Sunia Piermont  
Agent

**Narrative  
( Exhibit C-2 )**



## MEMORANDUM

**Date:** August 20, 2015  
**To:** Ken Quillen, Planner III  
**From:** Jamie Scudera, Environmental Specialist  
**Subject:** VAR-15-006, 2410 Pebble Creek Place

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 site inspection was conducted by staff through the building permit application. No listed species or sensitive habitats were documented on site by environmental staff.

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.
- ❖ If this proposal moves forward, it will be reviewed for compliance with:

Chapter 3-5:

Article IV CLEARING, FILLING AND SOIL CONSERVATION,

Chapter 3-9-100:

BUFFERS, LANDSCAPING, and TREE REQUIREMENTS

If there are any questions pertaining to this review please feel free to contact me at (941) 743-1290.

JS

**( Exhibit D )**