

STAFF REPORT
Community Development Department
Petition Number: VAR-16-004

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 7, 2016 **BZA meeting date:** September 14, 2016

Requested Action/General Information:

Luana Kneebone, agent for Roy and Gale Gregory, is requesting a variance to reduce the required 7.5-foot side yard setback by five feet to allow a 2.5-foot side setback for the existing single-family residence in the Residential Single-family-3.5 zoning district. Subject property is located at **3389 Conway Boulevard** in Port Charlotte (see **Location Map**). The attached **Zoning Map** shows the zoning of this property, which is Residential Single-family-3.5 (RSF-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 Port Charlotte Subdivision Section Seven in 1957. This lot meets the minimum lot width requirement of 80 feet and the 10,000 square foot minimum lot size requirement, with 10,000 square feet. The existing single-family residence was constructed in 1976 and Roy and Gale Gregory purchased this property in March of 2014. They would now like to sell the property; however, this nonconforming setback was discovered when a survey was done for the property.

Staff has attached a copy of **Section 3-9-33 Residential Single-family** (Exhibit A) from the current zoning code. Subsection (g) **Development Standards** (Exhibit A-2) lists the development standards, which requires a 7.5-foot setback along interior side yards.

The applicant submitted the attached **Boundary Survey** (Exhibit B), which was done on June 27, 2016, showing the existing single-family residence, screened pool, easements and other improvements located on this lot. The variance requested is "to reduce the 7.5-foot interior side setback by five to allow a 2.5-foot side setback for the existing single-family residence." The applicant is requesting this variance to bring this nonconforming setback into conformity with code.

The applicant has also submitted the attached **Narrative** (Exhibit C) stating that the existing residence was bought and sold numerous times, since its' construction in 1976, without this nonconforming setback being noticed. The applicant's **Narrative** also explains why the applicant has submitted this variance request and why this request should be granted.

An Environmental Specialist has performed a cursory environmental review and their comments are in the attached **Memorandum** (Exhibit D) dated August 31, 2016. This review states that there are no environmental issues regarding the requested variance.

Findings: The five standards for approval of a 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: The existing nonconforming 2.5-foot south side setback was apparently created by mistake when the house was constructed in 1976. The existing building's location and configuration on this regular shaped lot is unique. These existing conditions create peculiar conditions 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 strict and literal enforcement of the 7.5-foot side yard setback for the existing single-family residence would require the relocation of the existing home on the lot or its demolition and reconstruction. This would be 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 an existing single-family residence to remain "as is" with a 2.5-foot side setback. Staff believes that allowing the existing nonconforming setback to continue "as is" would not be injurious to or incompatible with the surrounding residences.

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 March of 2014 with all of the existing structures and conditions already in place. These conditions cannot reasonably be corrected by the applicant and were apparently created in 1976 when the existing residence 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 because the existing single-family residence has an existing setback of 2.5 feet.

ANALYSIS AND CONCLUSIONS:

After review of the site and the application requesting a variance staff believes that the requested variance does meet all five criteria for granting a variance.

If the Board of Zoning Appeals decides to approve the requested variances 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 reduce the 7.5-foot interior side setback by five feet to allow a 2.5-foot side setback along the south side lot line.
2. This variance applies only to the existing single-family residence as shown on the Boundary Survey in the documents submitted with this application.
3. If the existing single-family residence is ever removed or replaced 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.

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.

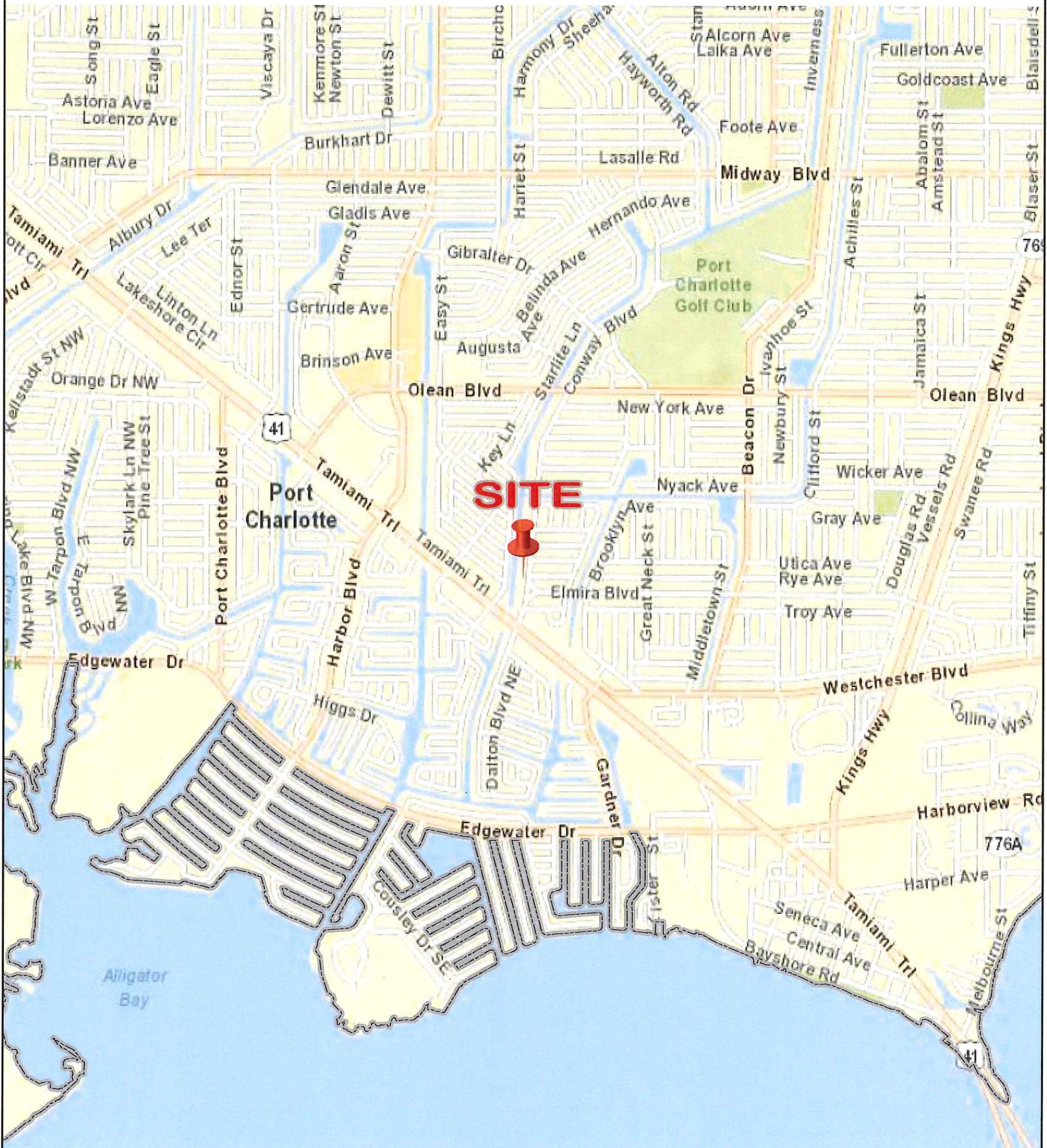
Attachments: Staff Report (3), Location Map, Zoning Map, Aerial Photo, Section 3-9-33 (2), Boundary Survey, Narrative and Environmental Specialist Memorandum



Community Development

CHARLOTTE COUNTY

Location Map for VAR-16-004



23/40/22 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 - D. Vance -8274 Date Saved: 8/15/2016 11:28:28 AM

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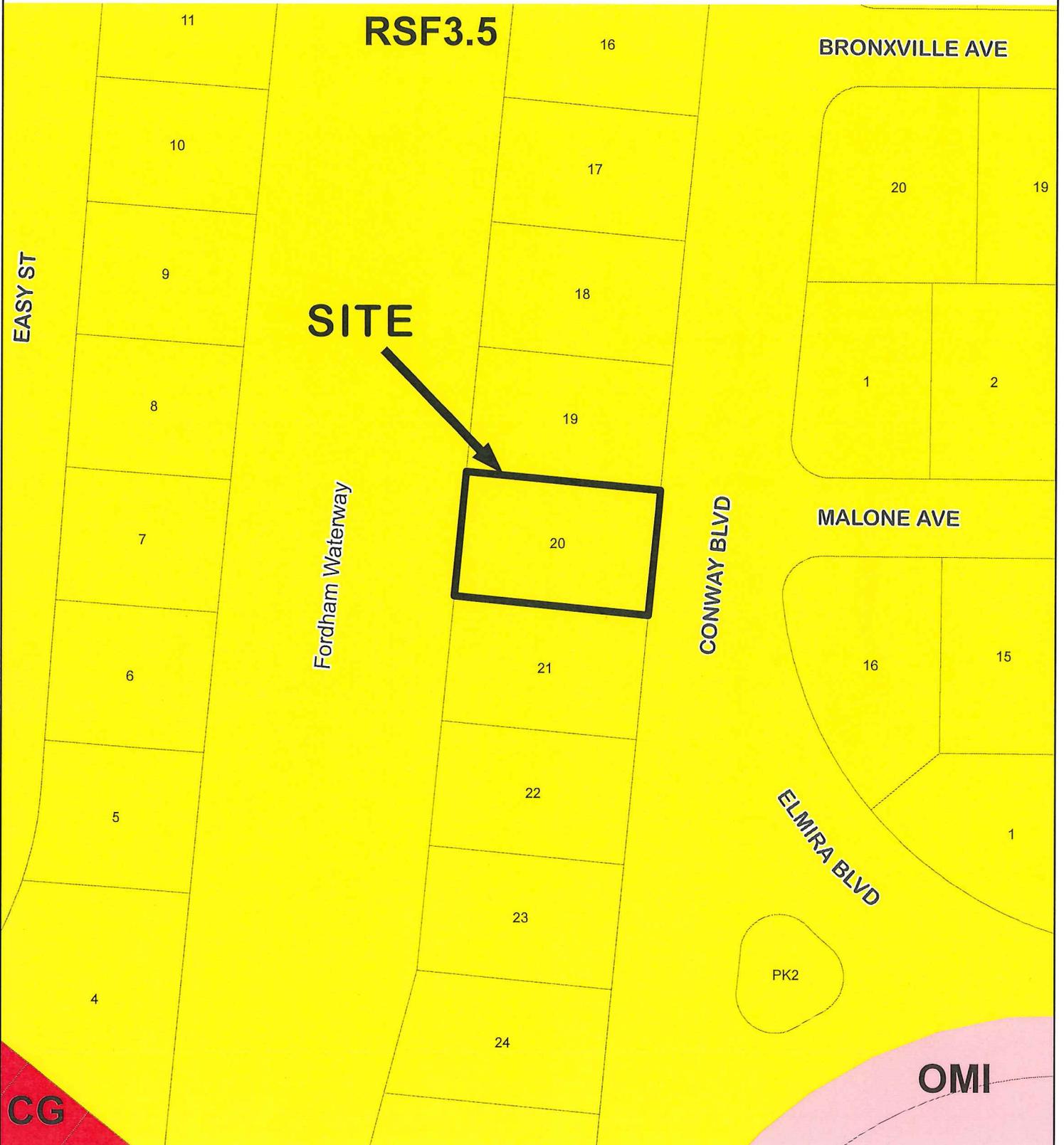


(NOT TO SCALE)



CHARLOTTE COUNTY

Zoning Map for VAR-16-004



23/40/22 Mid-County

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Community Development

CHARLOTTE COUNTY

2014 Aerial View for VAR-16-004

Charlotte County Government

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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 ~~3-9-75~~ 3-9-74, Home Occupations)
 - (5) Model home. (see section ~~3-9-79~~ 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 sec. ~~3-9-69~~ 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.
 - (6) 4H, FFA and similar uses and activities.
- (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 (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 3-9-82, 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
Lot (minimum)	---	---	---
Area (square feet)	20,000	10,000	7,500
Width (feet)	100	80	70
Setbacks (minimum feet)			
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
Bulk (maximum)			
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 section 3-9-100, of the Code, as the same shall be amended.

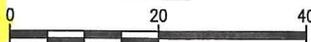
- (h) *Signs.* Signs shall be in accordance with section 3-9-85.
- (i) *Off-street parking.* Off-street parking shall be in accordance with section 3-9-79.

(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; Ord. No. 2015-054 § 1, 12-08-2015)

**Section 3-9-33
(Exhibit A-2)**

SURVEY SKETCH

SCALE



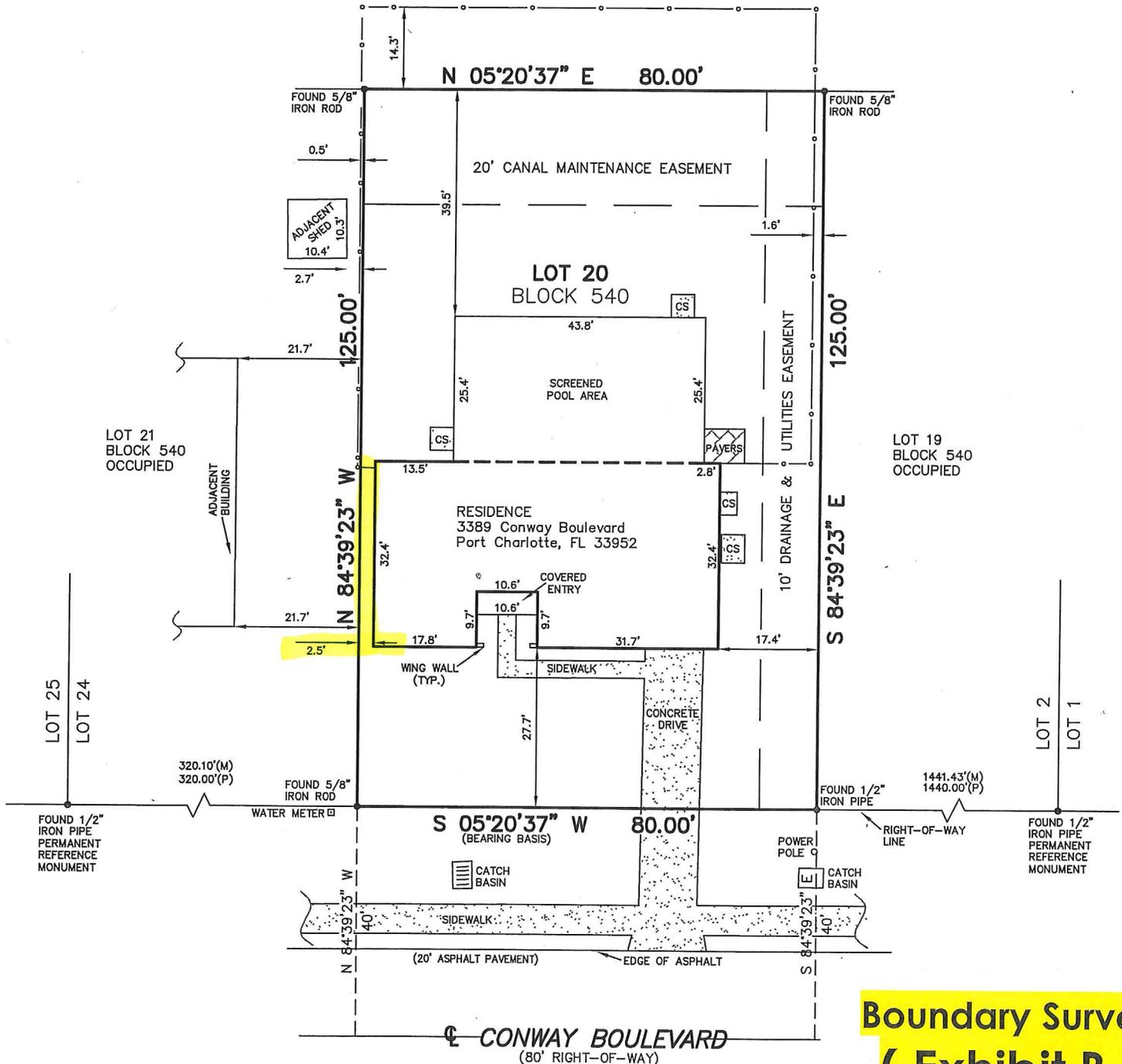
1" = 20'

Client Gold Crest Title/ Ochoa
 CERTIFIED TO: (FOR THE EXCLUSIVE USE OF)
 Troy Dean Ochoa
 Christensen Financial, Inc.
 Gold Crest Title Services
 Stewart Title Guaranty Company

THE SURVEY SHOWN HEREON WAS MADE WITHOUT BENEFIT OF AN ABSTRACT OF TITLE, UNLESS OTHERWISE NOTED BEARINGS REFERRED TO RECORD PLAT AND ELEVATIONS N.G.V.D. 1929. UNDERGROUND IMPROVEMENTS AND ENCROACHMENTS WERE NOT LOCATED. UNLESS OTHERWISE SHOWN ALL MEASUREMENTS (BEARINGS AND DISTANCES) ARE PLAT AND MEASURED. THIS SURVEY IS INTENDED FOR THE EXCLUSIVE USE BY THOSE CERTIFIED TO. WETLANDS, HAZARDOUS MATERIALS OR JURISDICTIONAL LINES, IF ANY, WERE NOT LOCATED.

BOUNDARY SURVEY (WITH IMPROVEMENTS)

FORDHAM WATERWAY



Boundary Survey (Exhibit B)

LEGEND

- CONCRETE
- RECORD PLAT DATA
- MEASURED DATA
- PARKER KALON

DESCRIPTION:

Lot 20, Block 540, PORT CHARLOTTE SUBDIVISION SECTION SEVEN as recorded in Plat Book 4. Pages 11A thru 11G (11B) of the Public Records of Charlotte County, Florida

GOLD CREST

Title Services

19700 Cochran Blvd Unit B
Port Charlotte FL 33948
941-624-4115 941-629-1274 (Fax)
E Mail Address: valerie@goldcresttitle.com



Community Development Department
Planning and Zoning Division

RE: 3389 Conway Boulevard, Port Charlotte, FL
Gregory sale to Ochoa
Our File No. GC16-321

Please be advised my office is handling a real estate transaction on the above property. Upon completion of our title search and receipt of a survey prepared by Meridian Group of South Florida, we have become aware that the house encroaches onto the setback.

By way of review, Roy and Gale Gregory are the current owners and they bought the property in 2014. No mortgage at that time and they purchased it from the heirs of the Estate of Barbara J. Fish. Barbara J. Fish purchased the property in 2008 and no mortgage at that time. She purchased the property from Joseph and Linda Albanese in 1989 and there was a mortgage at that time. Mr. and Mrs. Albanese purchased it in 1989 from Jessie L. Webb.

The new owners are purchasing this property and obtaining financing. This is how we have all become aware of the setback violation. Survey provided to disclose the encroachment violation. The lender financing the transaction will not accept any violations on the survey knowing that if this was enforced, the house would have to be torn down and rebuilt.

Approval of this variance would not be detrimental or injurious to any neighboring properties or to the public welfare of anyone. The house was built in 1976 and we believe this violation has been in existence the whole time.

We further believe this violation was not just created and in fact existed when the home was originally constructed. The parties involved in this transaction are now all aware of the situation and have extended the closing date to accommodate the board for approval.

The requested variance of five feet is the minimum modification of the regulation at issue that will afford relief because this is the existing location of the home on this lot.

Narrative
(Exhibit C)



MEMORANDUM

DATE: August 31, 2016
TO: Ken Quillen, Planner III
FROM: Suzie Derheimer, Environmental Specialist
SUBJECT: VAR-16-004, 3389 Conway Boulevard, Port Charlotte

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 GIS aerial review was conducted by staff. The site consists of an existing single family residence and pool within a developed residential lot.

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.

SD

(Exhibit D)