



AGENDA FOR THE HEARING EXAMINER

Tuesday, February 5, 2019

9:00 AM

Council Chambers

1. HEARINGS CALLED TO ORDER

2. HEARINGS

- A. Case #SE18-0017*; Applicant: Nelson and Maria Cordero; D R Horton, Inc.; Address: 1825 and 1905 South Gator Circle
- B. Case #VA18-0021*; Address: 1205 SW 10th Terrace; Applicant: Michael and Julie Kayatta
- C. Case #VA18-0023*; Address: 3117 SE 20th Place; Applicant: Marlies Laaper and Uri Aminov

3. DATE AND TIME OF NEXT HEARINGS

- A. Tuesday, February 19, 2019, at 9:00 a.m., in Council Chambers

4. ADJOURNMENT

In accordance with the Americans with Disabilities Act and Florida Statutes 286.26, persons needing a special accommodation to participate in this proceeding should contact the City Clerk's Department whose office is located at Cape Coral City Hall, 1015 Cultural Park Boulevard, Cape Coral, Florida; telephone 1-239-574-0411 for assistance, if hearing impaired, telephone the Florida Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8700 (v) for assistance.

If a person decides to appeal any decision made by the Board/Commission/Committee with respect to any matter considered at such meeting or hearing, he will need a record of the proceedings, and for such purpose, he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based.

PLEDGE OF CIVILITY

We will be respectful of each other even when we disagree.
We will direct all comments to the issues. We will avoid personal attacks.

The hearing shall, to the extent possible, be conducted as follows:

1. The Clerk shall read into the record the Ordinance or Resolution Title and Number, or the Applicant's name, file number, and the subject matter to be decided if there is no ordinance or resolution.
2. The Applicant, staff, and all Participants requesting to speak or present evidence or both the hearing shall be collectively sworn by an oath or affirmation by the Clerk.
3. Staff will testify regarding proper notice of the Hearing in accordance with City requirements.
4. The Applicant may waive the Applicant's right to an evidentiary hearing if Applicant agrees with the staff recommendation and no one from the audience wishes to speak for or against the application. The Hearing Examiner shall rule on the matter or make a recommendation, based upon the staff report and any other materials contained within the official file. Regardless of a waiver by the Applicant, a Public Hearing shall be held for all decisions requiring an ordinance or resolution.
5. If there is an evidentiary hearing, the order of the presentation shall be as follows, unless the Hearing Examiner, determines to proceed in a different order, taking proper consideration of fairness and due process:
 - The Applicant shall make the Applicant's presentation, including offering any documentary evidence, and introduce any witnesses as Applicant desires. The Applicant shall present the Applicant's entire case in thirty (30) minutes.
 - Staff shall present a brief synopsis of the application; introduce any appropriate additional exhibits from the official file that have not already been transmitted to the Hearing Examiner with the agenda materials, as staff desires; summarize issues; and make a recommendation on the application. Staff shall also introduce any witnesses that it wishes to provide testimony at the hearing. Staff shall present its entire case in thirty (30) minutes.
 - Participants in opposition to or support of the application shall make their presentation in any order as determined by the Hearing Examiner. Each Participant shall present their argument in 5 minutes.
 - The Applicant may cross-examine any witness and respond to any testimony presented.
 - Staff may cross-examine any witness and respond to any testimony presented.
 - The Hearing Examiner may choose to allow Participants to respond to any testimony if the Hearing Examiner deems the response to be necessary to ensure fairness and due process.
 - The Hearing Examiner, may ask questions of the staff, Applicant, and Participants.
 - Final argument may be made by the Applicant, related solely to the evidence in the record.
 - Final argument may be made by the staff, related solely to the evidence in the record.
 - For good cause shown, the Hearing Examiner may grant additional time to any of the hereinabove time limitations.
 - The Hearing Examiner's, decisions must be based upon Competent Substantial Evidence in the record.

Item Number: 2.A.
Meeting Date: 2/5/2019
Item Type: HEARINGS

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Case #SE18-0017*; Applicant: Nelson and Maria Cordero; D R Horton, Inc.; Address: 1825 and 1905 South Gator Circle

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? No
2. Is this a Strategic Decision? No
If Yes, Priority Goals Supported are listed below.
If No, will it harm the intent or success of the Strategic Plan? No

Planning & Zoning Recommendations:

SUMMARY EXPLANATION AND BACKGROUND:

The applicant is requesting a Special Exception for a model home use in the Single Family Residential (R-1B) District.

LEGAL REVIEW:

EXHIBITS:

See attached "Backup Material"

PREPARED BY:

Kristin
Kantarze Division- Planning Department- Community Development

SOURCE OF ADDITIONAL INFORMATION:

Justin Heller, Senior Planner, 239-574-0587, jheller@capecoral.net

ATTACHMENTS:

Description	Type
<input type="checkbox"/> Backup Materials	Backup Material



DEPARTMENT OF COMMUNITY DEVELOPMENT

SPECIAL EXCEPTION APPLICATION

Questions: 239-574-0776

Case # SE18-0007

REQUEST FOR A SPECIAL EXCEPTION USE

FEE: \$833.00 first 3 acres plus \$220.00 each additional acre over 3 up to 20 acres; \$22.00 per acre over the first 20 acres. In addition to the application fee, all required advertising costs are to be paid by the applicant (ORD 39-03, Sec. 5.4). Advertising fees will be billed and must be paid prior to hearing.

Following the approval of your request, the applicant shall be responsible for paying the City to electronically record the final signed Resolution or Ordinance with the Lee County Clerk of Court. Until this fee is paid, restrictions on the issuance of any City permits will remain on the affected property that will prevent the city from issuing any applicable building permits, site plans, certificates of use, or certificates of occupancy for any property covered by the Resolution or Ordinance.

If the owner does not own the property in his/her personal name, the owner must sign all applicable forms in his/her corporate capacity.

OWNER OF PROPERTY

Nelson & Maria Cordero (lots 44-45)

Email: NELSDAVID356@AOL.COM

Address: 170 Hadley Avenue

City: Clifton State NJ Zip 07011

Phone: 862-596-9598

APPLICANT (if different from Owner)

D.R. Horton, Inc. (Owner lots 46-47)

Email: jweverett@drhorton.com

Address: 10541 Six Mile Cypress Parkway

City: Fort Myers State FL Zip 33966

Phone: 239-225-2631

AUTHORIZED REPRESENTATIVE

Stacy Ellis Hewitt, AICP - Banks Engineering

Email: shewitt@bankseng.com

Address: 10511 Six Mile Cypress Parkway, Suite 101

City: Fort Myers State FL Zip 33966

Phone: Office: 239-939-5490 / Cell: 239-770-2527

Unit 85 Block 5642 Lot(s) 44-47 Subdivision Cape Coral

Address of Property 1825 & 1905 South Gator Circle

Plat Book 24 Page 55

Current Zoning R-1B Strap Number 20-43-24-C1-05642.0460 & 20-43-24-C1-05642.0440

THIS APPLICATION SHALL ALSO HAVE ANY ADDITIONAL REQUIRED SUPPORTING DOCUMENTS

The owner of this property, or the applicant agrees to conform to all applicable laws of the City of Cape Coral and to all applicable Federal, State, and County laws and certifies that all information supplied is correct to the best of their knowledge.

Jonathan M. Pentecost, SWFL Division President

NAME (PLEASE TYPE OR PRINT)

D. R. Horton, Inc.

CORPORATION/COMPANY NAME

APPLICANT'S SIGNATURE



DEPARTMENT OF COMMUNITY DEVELOPMENT

SPECIAL EXCEPTION APPLICATION

Questions: 239-574-0776

Case # SE18-0017

AUTHORIZATION TO REPRESENT PROPERTY OWNER(s)

PLEASE BE ADVISED THAT

Banks Engineering

(Name of person giving presentation)

IS AUTHORIZED TO REPRESENT ME IN THE REQUEST TO THE HEARING EXAMINER, OR CITY COUNCIL FOR
Special Exception

(Type of Public Hearing – i.e., PDP, Zoning, Special Exception, Variance, etc.)

UNIT 85 BLOCK 5642 LOT(S) 46-47 SUBDIVISION Cape Coral PB 24 PG 55

OR LEGAL DESCRIPTION

LOCATED IN THE CITY OF CAPE CORAL, COUNTY OF LEE, FLORIDA.
D. R. Horton, Inc.

Jonathan M. Pentecost, SWFL Division President

PROPERTY OWNER (Please Print)

PROPERTY OWNER (Please Print)

PROPERTY OWNER (Signature & Title)

PROPERTY OWNER (Signature & Title)

STATE OF FL, COUNTY OF Lee

Subscribed and sworn to (or affirmed) before me this 10 day of December, 2018, by
Jonathan Pentecost who is personally known or produced
as identification.



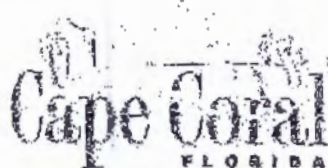
Exp. Date: 12/11/22 Commission Number: GG-280775

Signature of Notary Public:

Printed name of Notary Public:

Ashley K
Ashley Koza

Note: Please list all owners. If a corporation, please supply the Planning Division with a copy of corporation paper.



DEPARTMENT OF COMMUNITY DEVELOPMENT

SPECIAL EXCEPTION APPLICATION

Questions: 239-574-0776

Case # SE18-0007

AUTHORIZATION TO REPRESENT PROPERTY OWNER(s)

PLEASE BE ADVISED THAT

Banks Engineering & D.R. Horton, Inc.

(Name of person giving presentation)

IS AUTHORIZED TO REPRESENT ME IN THE REQUEST TO THE HEARING EXAMINER, OR CITY COUNCIL FOR
Special Exception

(Type of Public Hearing - i.e., PDP, Zoning, Special Exception, Variance, etc.)

UNIT 85

BLOCK 5642

LOT(S) 44-45

SUBDIVISION Cape Coral PB 24 PG 55

OR LEGAL DESCRIPTION

LOCATED IN THE CITY OF CAPE CORAL, COUNTY OF LEE, FLORIDA.

Nelson Cordero

PROPERTY OWNER (Please Print)

Nelson D. Cordero

PROPERTY OWNER (Signature & Title)

Maria Cordero

PROPERTY OWNER (Please Print)

Maria Cordero

PROPERTY OWNER (Signature & Title)

STATE OF

FL

COUNTY OF

Lee

Subscribed and sworn to (or affirmed) before me this

14

day of

Dec, 2018, byNelson D. Cordero who is personally known or produced
as identification.

Exp. Date:

Commission Number:

Signature of Notary Public:

Printed name of Notary Public:

Rina Patel

Note: Please list all owners. If a corporation, please supply the Planning Division with a copy of corporation paper

Special_exception_application 11 21 16





DEPARTMENT OF COMMUNITY DEVELOPMENT

SPECIAL EXCEPTION APPLICATION

Questions: 239-574-0776

Case # SE18-0017

ACKNOWLEDGEMENT FORM

I acknowledge that I, or my representative, must attend any applicable meetings scheduled for the Hearing Examiner, or City Council.

I will have the opportunity, at the hearing, to present verbal information pertaining to my request that may not be included in my application.

I understand any decision rendered by the CITY shall be subject to a thirty (30) day appeal period. Any work performed within the thirty (30) day time frame or during the APPEAL process will be completed at the applicant's risk.

I understand I am responsible for all fees, including advertising costs. All fees are to be submitted to the City of Cape Coral with the application or the item may be pulled from the agenda and continued to future date after fees are paid.

Please obtain all necessary permits prior to commencing any phase of construction.

Please indicate on a separate sheet those persons to whom you wish a copy of the Public Hearing Notice sent.

By submitting this application, I acknowledge and agree that I am authorizing the City of Cape Coral to inspect the subject property and to gain access to the subject property for inspection purposes reasonably related to this application and/or the permit for which I am applying.

I hereby acknowledge that I have read and understood the above affidavit on the

10

day of

December

, 20

18

D.R. Horton, Inc.

Jonathan M. Pentecost, SWFL Division President

PRINT APPLICANT'S NAME

APPLICANT'S SIGNATURE

STATE OF

FL

COUNTY OF

Lee

Subscribed and sworn to (or affirmed) before me this

10

day of

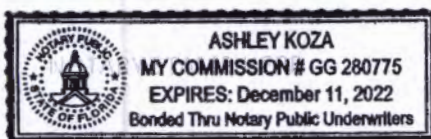
December, 20

18 by

Jonathan Pentecost

who is personally known or produced

as identification.



Exp. Date:

12/11/22

Commission Number:

GG280775

Signature of Notary Public:

Ashley Koza

Printed name of Notary Public:

Ashley Koza



DEPARTMENT OF COMMUNITY DEVELOPMENT
SPECIAL EXCEPTION APPLICATION
Questions: 239-574-0776

Case # 2E18-0017

(SIGNATURE MUST BE NOTARIZED)

I have read and understand the above instructions. Hearing date(s) will be confirmed when I receive a copy of the Notice of Public Hearing stipulating the day and time of any applicable hearings.

STATE OF Florida, COUNTY OF Lee

Sworn to (or affirmed) and subscribed before me this 10 day of Dec, 2018, by
Jonathan Patecost who is personally known or produced
as identification.

Exp. Date: 12/11/22 Commission Number: GG280775

Signature of Notary Public:

Printed name of Notary Public:

Ashley K
Ashley Koza

NOTARY STAMP HERE





DEPARTMENT OF COMMUNITY DEVELOPMENT

SPECIAL EXCEPTION APPLICATION

Questions: 239-574-0776

Case # SE18-0017

DOCUMENTARY EVIDENCE (LUDR, Section 8.3.1.C.6.f)

A copy of all documentary evidence shall be made available to the decision-making body or the Hearing Examiner and to staff no later than two business days prior to the hearing of the application. This requirement includes information that the applicant intends to present at public hearing.

I have read the above requirement and agree to comply with this provision.

D.R. Horton, Inc.

Jonathan M. Pentecost, SWFL Division President

OWNER/APPLICANT (PLEASE TYPE OR PRINT)

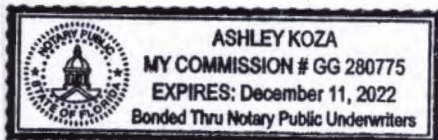
OWNER/APPLICANT SIGNATURE

(SIGNATURE MUST BE NOTARIZED)

STATE OF FL COUNTY OF Lee

Sworn to (or affirmed) and subscribed before me on this 10 day of December, 2018 by Jonathan Pentecost who is personally known or who has produced _____ as identification.

Exp. Date 12/11/22
Commission # GG 280775

Signature of Notary Public
Ashley Koza
Print Name of Notary Public

BANKS ENGINEERING

Professional Engineers, Planners & Land Surveyors



December 17, 2018

City of Cape Coral
Department of Community Development
1015 Cultural Park Boulevard
Cape Coral, Florida 33990

Reference: **South Gator Circle Model Home Center**
SPECIAL EXCEPTION - LETTER OF INTENT
1825 & 1905 S. Gator Circle
Strap No.: 20-43-24-C1-05642.0460 & 20-43-24-C1-05642.0440

To Whom It May Concern:

It is the intent of our client, D.R. Horton, Inc., to request a Special Exception in order to operate a model home center in the Single-Family Residential (R-1B) zoning district for the location of one (1) model home site and one (1) temporary parking lot.

The subject parcel consists of four unimproved lots identified as lots 44 through 47, Block 5642, Cape Coral Unit 85, Plat Book 24, Page 55. The total area of the site is 20,055 \pm square feet. The property is located in northeastern Cape Coral at the NE corner of South Gator Circle (collector roadway) and NE 19th Avenue (local roadway); approximately 1/4 mile east of the intersection of Averill Boulevard (collector roadway).

The surrounding area consists of single-family residential and model home center uses. The parcel has a future land use classification of Single Family and Multi-Family by PDP (SM) and is zoned Single-Family Residential (R-1B). Adjacent properties to the north, west, south, and east from the subject parcel also share the same future land use classification and zoning designation. All the surrounding lots are a mixture of vacant and developed single-family residences.

Lots 46 and 47 are proposed for a model home with a temporary parking lot on lots 44 and 45. The parking lot is accessed from South Gator Circle and contains 9 spaces. Landscaping is proposed in compliance with model home parking lot screening and single-family lot planting requirements, as noted on the attached site plan.

It should be noted that the proposed Land Use Development Regulations Code Rewrite proposes to remove the special exception requirement for model homes so that they will be allowed as a permitted use subject to special regulations.

The applicant offers the following analysis of the City's Land Use and Development Regulations (LUDR), Section 2.7.1.D.1, which states, "Model home site(s) may be permitted as a special exception, subject to the following requirements:

a. Minimum site area of 15,000 square feet for the first model home site and a minimum of 10,000

• **SERVING THE STATE OF FLORIDA** •

10511 Six Mile Cypress Parkway • Suite 101 • Fort Myers, Florida 33966
Phone 239-939-5490 • www.bankseng.com • Fax 239-939-2523
Engineering License No. EB 6469 • Surveying License No. LB 6690

permitted use and not converted to a residence or other permitted use, or if the structure is abandoned as a model home for 30 consecutive days. Conversion of the model home site must be completed within 60 days of the expiration of the time limit for the model home, or within 60 days of the structure being abandoned as a model home site, or prior to sale of the model home site for a residential or other permitted use. Any funds and interest resulting from these funds shall be returned to the party who made the deposit upon conversion of the model home site to a residential or other permitted use if such conversion is done by parties other than the city. Should the city be required to perform the conversion, all unused monies, including interest accrued, shall be refunded to the party making the deposit.

The applicant acknowledges the deposit will be required prior to issuance of a certificate of use. The project meets this standard.

h. Model home sites may be open for business between 9:00 a.m. and 9:00 p.m. daily.

The applicant acknowledges that the Special Exception will be limited to the hours of 9:00 a.m. to 9:00 p.m. daily. The project meets this standard.

i. Outside lighting permitted, except from 10:00 p.m. to 7:00 a.m.

The applicant acknowledges that the Special Exception will allow outside lighting, except from 10:00 p.m. to 7:00 p.m. daily. The project meets this standard.

j. Security lighting: two security lights permitted, one at the front and one at the rear of building.

The applicant acknowledges that the Special Exception will allow one security light in the front and one in the rear of the building. The project meets this standard.

k. Model homes must be used exclusively for the display and sale of model homes. No construction office or other real estate uses permitted.

The applicant acknowledges that the Special Exception will be limited exclusively for the display and sale of model homes and that no construction office or other real estate uses are permitted. The project meets this standard.

The requested application meets the five standards outlined within LUDR, Section 8.8.5a-e which covers Special Exception Standards as follows:

a. Generally. The proposal shall comply with all requirements of the zoning districts in which the property is located, the Land Use and Development Regulations, and all other applicable law.

The subject property has a Single Family and Multi-Family by PDP (SM) Future Land Use Classification and has R-1B Zoning. Model home uses are allowed as a Special Exception within the R-1B Zoning District, if the project complies with the requirements contained in LUDR Section 2.7.1.D.1. Compliance with this Section is outlined above demonstrating that all standards are met. The project is consistent with the following policies of the Future Land Use Element of the Comprehensive Plan:

Policy 1.5: The City will regulate signage to prevent visual blight.

properly maintained landscaped area may, however, be allowed to contain walkway(s) and driveway entrances. The Hearing Examiner shall also require that the premises be permanently screened from adjoining and contiguous properties by a fence, evergreen hedge and/or other approved enclosure when deemed appropriate to buffer the special exception use from surrounding uses.

Landscaping for home sites consistent with LUDR Section 5.2.12 will be provided as well as the perimeter 5' landscaping buffer consisting of a hedge required for the temporary parking lot as noted on the site plan.

Attached for your review is the following information:

1. One (1) Completed Special Exception Application
2. One (1) Original Acknowledgement Form
3. One (1) Original Authorization to Represent for Nelson & Maria Cordero (lots 44-45)
4. One (1) Original Authorization to Represent for D.R. Horton, Inc. (lots 46 & 47)
5. One (1) Check in the amount of \$833.00 for the Application Fee
6. One (1) Statement of Model Home Trip Generation
7. One (1) Special Exception Site Plan (Full-size and reduced to 8 1/2" x 11")
8. One (1) Survey Plat Plan

Should you or your staff have any questions, or require additional information, please feel free to contact me at (239) 770-2527.

Sincerely,
BANKS ENGINEERING



Stacy Ellis Hewitt, AICP
Director of Planning



Professional Engineers, Planners & Land Surveyors

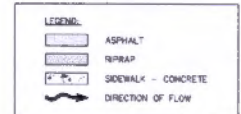


Statement of Model Home Trip Generation

The subject application is for a model home and a temporary parking lot. Model homes typically do not generate large numbers of trips, with the majority of these trips occurring during the daytime. Since model homes cannot open until 9:00 am, the hours of operation of this use should not conflict with weekday commuters. Due to the anticipated small number of trips generated by this use, and the timing of the trips, the applicant submits that no further analysis be necessary.

SERVING THE STATE OF FLORIDA

*SHRUBS A MINIMUM OF 32" AND A MINIMUM SIZE OF A 7 GALLON CONTAINER SPACED NO GREATER THAN 5' APART AND SHALL BE MAINTAINED AT A MINIMUM HEIGHT OF 42" FOR THE LIFE OF THE PROJECT.

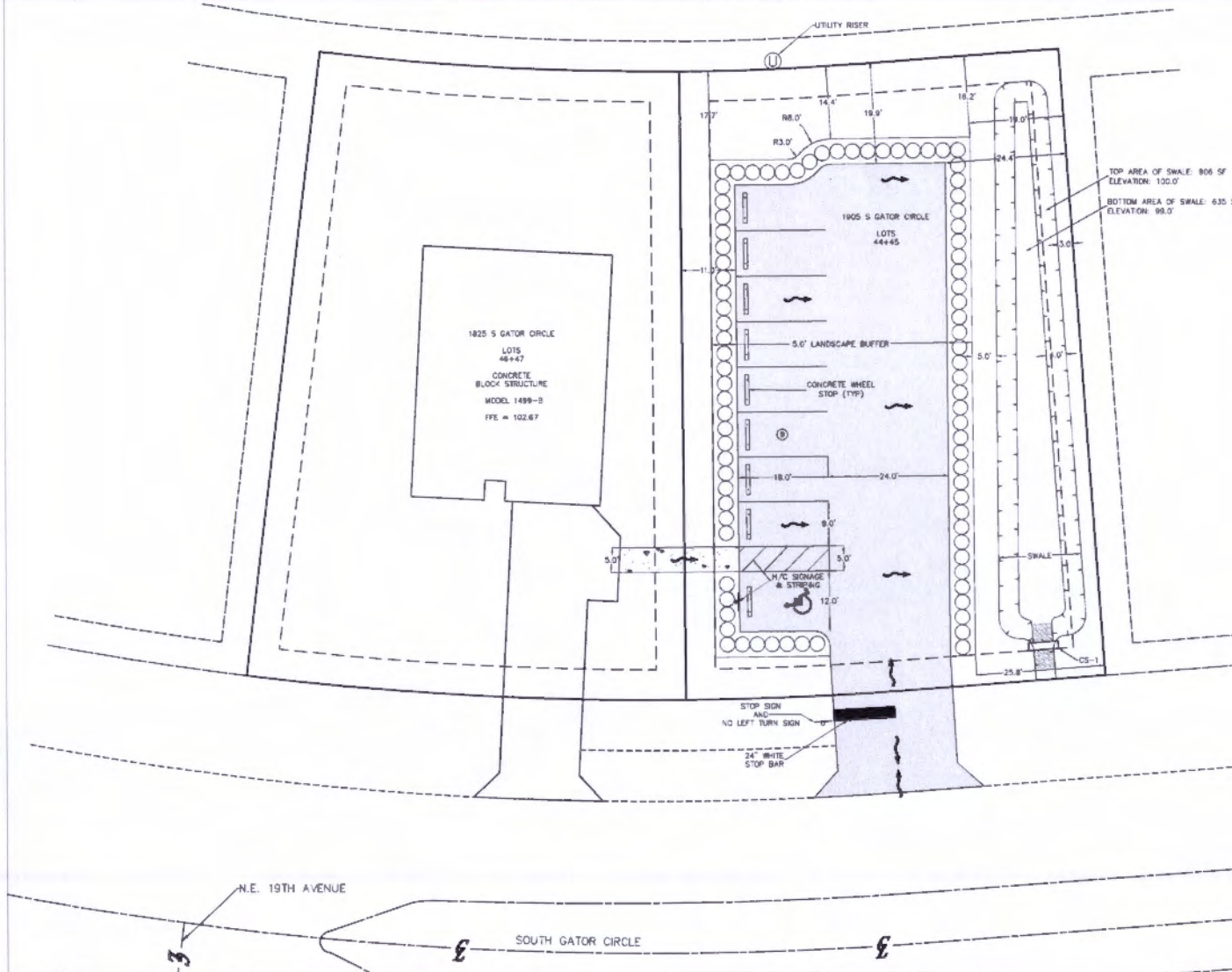


PARCEL DESCRIPTION:

LOTS 44-45 - 1805 SOUTH GATOR CIRCLE - 20-43-24-C1-05842.0440
 LOTS 46-47 - 1825 SOUTH GATOR CIRCLE - 20-43-24-C1-05842.0460

NOTES:

1. **PARKING:**
 MODEL HOMES: FIVE (5) PAVED SPACES FOR THE FIRST MODEL HOME SITE. FOUR (4) ADDITIONAL PAVED SPACES FOR EACH ADDITIONAL ADJOINING MODEL.
 PARKING SPACES REQUIRED: 5
 PARKING SPACES PROVIDED: 9 (INCLUDED HANDICAP)
2. **LANDSCAPE:**
 THE PARKING LOT FOR MODEL SHALL BE SET BACK A MINIMUM OF FIVE (5) FEET FROM THE SIDE PROPERTY LINE AND FIFTEEN (15) FEET FROM THE REAR PROPERTY LINE. THE SETBACK AREAS SHALL CONTAIN AT LEAST A FIVE (5) FOOT LANDSCAPE BUFFER TO THE ADJOINING REAR AND SIDE PROPERTIES.
 THE MODEL HOME SHALL COMPLY WITH THE SINGLE-FAMILY LANDSCAPING REQUIREMENTS AS INDICATED IN SECTION 5.2.12.
3. IRRIGATION WILL BE PROVIDED VIA WELL.



PREPARED FOR:

D.R. HORTON

10541 BEN C PRATT SIX MILE CYPRESS PKWY
 FORT MYERS, FLORIDA 33904
 (239) 335-0800

NO.	DATE	REVISION DESCRIPTION	BY

BANKS ENGINEERING
 Professional Engineers, Planners, & Land Surveyors
 Serving The State Of Florida

1701 SIX MILE CYPRESS PARKWAY
 FORT MYERS, FLORIDA 33904
 PHONE: (239) 438-5443 FAX: (239) 438-1013
 CREDIT/DEBIT, CREDIT & DEBIT
 SURVEY LICENSE # 014600
 WWW.BANKSENG.COM

**SITE PLAN
 SOUTH GATOR CIRCLE
 CAPE CORAL, FLORIDA**

DATE	PROJECT	DRAWING	DESIGN	DRAWN	CHECKED	SCALE	SHEET
15NOV2018	8356		DBA	RJV		1"=10'	01

Planning Division Case Report
SE18-0017

Review Date:	January 16, 2019
Property Owners	Nelson and Maria Cordero; D R Horton, Inc.
Applicant:	D.R. Horton, Inc.
Representative:	Stacey Ellis Hewitt, Banks Engineering; Jonathan Pentecost, D R Horton, Inc.
Request:	The applicant is requesting a Special Exception for a model home use in the Single Family Residential (R-1B) District.
Location:	1825 and 1905 South Gator Circle Unit 85, Block 5642, Lots 44-47
Prepared By:	Justin Heller, Senior Planner
Reviewed By:	Mike Struve, AICP, Planning Team Coordinator
Approved By:	Robert Pederson, AICP, Planning Manager
Recommendation:	Approval with Conditions

Background:

The site is in northeast Cape Coral with frontage on South Gator Circle. The surrounding area is sporadically developed with single-family homes. The site and all surrounding properties have R-1B Zoning and a Single-Family/ Multi-Family (SM) Future Land Use (FLU) Classification. One model home is proposed with nine parking spaces. Landscaping is proposed along the perimeter of the parking lot. A preliminary site plan can be found in Exhibit A.

Analysis:

The Planning Division reviewed this application based on the Land Use and Development Regulations (LUDR), Section 2.7.1 the R-1B District, and the five standards in Section 8.8.5a-e, and offers the following analysis.

a) Generally:

The site has R-1B Zoning and a SM FLU Classification. Model homes are allowed as a Special Exception with a minimum area of 15,000 square feet for the first model home

site, and 10,000 square feet for each additional model home. One model home is proposed and the 20,055 ± -square foot site exceeds the minimum area requirement.

b) Compatibility:

All surrounding parcels have a SM FLU Classification and R-1B Zoning. The R1-B District has special regulations for model homes including hours of operation, lighting, and prohibiting real estate sales. These regulations are intended to enhance the compatibility of this use with neighboring residential properties. At the conclusion of the five-year term for this use, the model home will be converted to a single-family home; a permitted use in the R-1B District. This use will be compatible with the surrounding area that is primarily residential in nature.

c) Minimum Lot Frontage; Access:

The site meets all minimum dimensional requirements for the R-1B District including lot depth and width. Access to the parking lot will be from South Gator Circle. Model homes typically do not generate large numbers of trips, with most trips occurring during the daytime (9:00 a.m. to 5:00 p.m.). Since model homes cannot open until 9:00 a.m., the hours of operation should not conflict with most weekday commuters. Because of the low number of trips, along with the timing of these trips, this use should not have a detrimental effect on the neighborhood.

d) Building Location; Setbacks:

The model home complies with the setbacks for the R-1B District.

e) Screening and Buffering:

The site plan shows a continuous row of shrubs screening the perimeter of the parking lot. Other plantings that are required for single-family homes will be provided.

Analysis of the requirements per LUDR, Section 2.7.1D.2a-k:

a. Minimum site area of 15,000 square feet for the first model home site and a minimum of 10,000 square feet for each additional model home site adjoining. ***The site has a combined area of 20,055 square feet and involves a single model home, thus the minimum land area criterion has been met.***

b. The parking lot for a model home sites shall be set back a minimum of five feet from the side property line and 15 feet from the rear property line. The setback area shall contain at least a five-foot landscaped buffer to the adjoining rear and side property lines. ***The parking lot meets the minimum setbacks.***

c. No parking directly to the rear of the model home site on one building site. ***The parking lot will be on the east side of the model home with access from South Gator Circle.***

d. Parking: five paved spaces on site for the first model home site, three additional paved spaces for each additional model home site. ***Nine parking spaces are proposed. Staff finds that the large parking lot is not in character with the residential neighborhood and recommends limiting the parking to five spaces for the one model home.***

e. Vehicle parking entrance to the model home site shall be from the street which faces the front entrance to the model home unless this condition conflicts with Department of Transportation standards or *City of Cape Coral Engineering Design Standards*. On corner sites where the garage is on the side of the structure, the entrance to the parking area may be located on the same side as the driveway to the garage. ***Access to the parking lot is from South Gator Circle which is consistent with City of Cape Coral Engineering Design Standards.***

f. Time limit: five years maximum unless conforms to all provisions of this ordinance. ***This use is limited to five years beginning from the date of Special Exception approval. An extension to this five-year period would require an amendment to the Special Exception.***

g. Deposit required: ***This will be required prior to the approval of a site plan for the parking lot.***

h. Model home sites may be open for business between 9:00 a.m. and 9:00 p.m. daily. ***This will be monitored by staff.***

i. Outside lighting permitted, except from 10:00 p.m. to 7:00 a.m. ***This will be monitored by staff.***

j. Security lighting: two security lights, one in front and one at rear of building. ***A maximum of two security lights may be installed; one each at the front and rear of the building.***

k. Model homes must be used exclusively for the display and sale of model homes. No construction office or other real estate uses permitted. ***This will be monitored by staff.***

Comprehensive Plan:

This project is consistent with the following policies of the Future Land Use Element of the Comprehensive Plan.

Policy 1.15.g: The SM FLU Classification.

Staff Comment: The zoning is consistent with the FLU, and the site, when the model home is converted, will have a density under 4.4 DU/acre.

Policy 1.5: The City will regulate signage to prevent visual blight.

Staff Comment: The City has regulations restricting the type and number of signs allowed on model home sites.

Policy 1.8: The City will maintain regulations ensuring safe and convenient on-site traffic flow and vehicle parking needs for all developed lands.

Staff Comment: The City has parking standards for model home sites which this project will meet.

Recommendation:

The Planning Division recommends **approval** with the following conditions:

1. The developer shall screen the entire perimeter of the parking lot with a continuous hedge, consisting of shrubs spaced no greater than three feet on center. The hedge shall be installed at a minimum height of 32 inches and be in at least a seven seven-gallon container. The shrubs shall be maintained at a minimum height of 42 inches at maturity.
2. The driveway to the garage of the model home shall be blocked or roped off to prevent its use during the term of the Special Exception Use.
3. The parking lot shall be limited to 5 parking spaces.
4. Prior to site plan approval for the parking lot, the developer shall provide a deposit payable to the City for the removal of the parking lot. A similar deposit shall be provided by the developer to the City for the installation of a driveway to the garage in the event the driveway is not constructed by the developer as part of the model home.

EXHIBIT A



NOTICE TO SURROUNDING PROPERTY OWNERS

CASE NUMBER: SE18-0017

REQUEST: The applicant is requesting a Special Exception for a model home use in the Single Family Residential (R-1B) District.

LOCATION: 1825 and 1905 South Gator Circle

CAPE CORAL STAFF CONTACT: Justin Heller, Senior Planner, 239-574-0587, jheller@capecoral.net

PROPERTY OWNER(S): Nelson and Maria Cordero; D R Horton, Inc.

AUTHORIZED REPRESENTATIVE: Stacey Ellis Hewitt, Banks Engineering; Jonathan Pentecost, D R Horton, Inc.

UPCOMING PUBLIC HEARING: Notice is hereby given that the City of Cape Coral Hearing Examiner will hold a public hearing at 9:00 A.M. on Tuesday, February 5, 2019 on the above mentioned case. The public hearing will be held in the City of Cape Coral Council Chambers, 1015 Cultural Park Boulevard, Cape Coral, FL.

All interested parties are invited to appear and be heard. All materials presented before the Hearing Examiner will become a permanent part of the record. The public hearing may be continued to a time and date certain by announcement at this public hearing without any further published notice. Copies of the staff report will be available 5 days prior to the hearing. The file can be reviewed at the Cape Coral Community Development Department, Planning Division, 1015 Cultural Park Blvd., Cape Coral, FL.

DETAILED INFORMATION: The case report and colored maps for this application are available at the City of Cape Coral website, www.capecoral.net/publichearing (Click on 'Public Hearing Information', use the case number referenced above to access the information); or, at the Planning Division counter at City Hall, between the hours of 7:30 AM and 4:30 PM. The public hearing may be continued to a time and date certain by announcement at this public hearing without any further published notice.

HOW TO CONTACT: Any person may appear at the public hearing and be heard, subject to proper rules of conduct. You are allowed sufficient time to write or appear at the public hearing to voice your objections or approval. Written comments filed with the Director will be entered into the record. Please reference the case number above within your correspondence and mail to: Department of Community Development, Planning Division, P.O. Box 150027, Cape Coral, FL 33915-0027. The hearings may be continued from time to time as necessary.

ADA PROVISIONS: In accordance with the Americans With Disabilities Act, persons needing a special accommodation to participate in this proceeding should contact the Human Resources Department whose office is located at Cape Coral City Hall, 1015 Cultural Park Boulevard, Cape Coral, Florida; telephone 1-239-574-0530 for assistance; if hearing impaired, telephone the Florida Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8770 (v) for assistance.

APPEALS: If a person decides to appeal any decision made by the Hearing Examiner with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

The News-Press media group

news-press.com A GANNETT COMPANY

Please contact us with changes or cancellations as soon as possible, otherwise no further action needed.

TOLL-FREE
888-516-9220

Local #
239-335-0258

Email
FNPLegals@gannett.com

Customer: CITY OF CAPE CORAL_DEPT OF COM

Ad No.: 0003357066

Address: 1015 CULTURAL PARK BLVD
CAPE CORAL FL 33990
USA

Net Amt: \$

Run Times: 1

No. of Affidavits: 1

Run Dates: 01/26/19

Text of Ad:

NOTICE OF PUBLIC HEARING

CASE NUMBER: SE18-0017

REQUEST: The applicant is requesting a Special Exception for a model home use in the Single Family Residential (R-1B) District.

LOCATION: 1825 and 1905 South Gator Circle

CAPE CORAL STAFF CONTACT: Justin Heller, Senior Planner, 239-574-0587, jheller@capecoral.net

PROPERTY OWNER(S): Nelson and Maria Cordero; D R Horton, Inc.

AUTHORIZED REPRESENTATIVE: Stacey Ellis Hewitt, Banks Engineering; Jonathan Pentecost, D R Horton, Inc.

UPCOMING PUBLIC HEARING: Notice is hereby given that the City of Cape Coral Hearing Examiner will hold a public hearing at 9:00 A.M. on Tuesday, February 5, 2019 on the above mentioned case. The public hearing will be held in the City of Cape Coral Council Chambers, 1015 Cultural Park Boulevard, Cape Coral, FL.

All interested parties are invited to appear and be heard. All materials presented before the Hearing Examiner will become a permanent part of the record. The public hearing may be continued to a time and date certain by announcement at this public hearing without any further published notice. Copies of the staff report will be available 5 days prior to the hearing. The file can be reviewed at the Cape Coral Community Development Department, Planning Division, 1015 Cultural Park Blvd., Cape Coral, FL.

DETAILED INFORMATION: The case report and colored maps for this application are available at the City of Cape Coral website, www.capecoral.net/publ ichearing (Click on 'Public Hearing Information', use the case number referenced above to access the information); or, at the Planning Division counter at City Hall, between the hours of 7:30 AM and 4:30 PM

HOW TO CONTACT: Any person may appear at the public hearing and be heard, subject to proper rules of conduct. You are allowed sufficient time to write or appear at the public hearing to voice your objections or approval. Written comments filed with the Director will be entered into the record. Please reference the case number above within your correspondence and mail to: Department of Community Development, Planning Division, P.O. Box 150027, Cape Coral, FL 33915-0027. The hearings may be continued from time to time as necessary.

ADA PROVISIONS: In accordance with the Americans With Disabilities Act,

persons needing a special accommodation to participate in this proceeding should contact the Human Resources Department whose office is located at Cape Coral City Hall, 1015 Cultural Park Boulevard, Cape Coral, Florida; telephone 1-239-574-0530 for assistance; if hearing impaired, telephone the Florida Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8770 (v) for assistance.

by order of
Kimberly Bruns, CMC
Interim City Clerk
REF # SE18-0017
AD# 3357066 Jan. 26, 2019

Department of Community Development
Planning Division

AFFIDAVIT

IN RE: APPLICATION OF: D R HORTON INC

APPLICATION NO: SE18-0017

STATE OF FLORIDA)
)
COUNTY OF LEE)

I, Vincent A. Caution, AICP having first been duly sworn according to law, state on my oath the following:

That I am the Director of the Department of Community Development and responsible in performing duties as required for the City of Cape Coral.

That pursuant to City of Cape Coral Code. Section 8.3.2A and Section 8.11.3.A all required written notice and publication has been provided. Also, posting of a sign has been done when applicable per Section 8.3.2A.

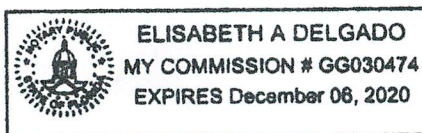
DATED this 28th day of January, 2019.

Vincent A. Caution, AICP

STATE OF FLORIDA
COUNTY OF LEE

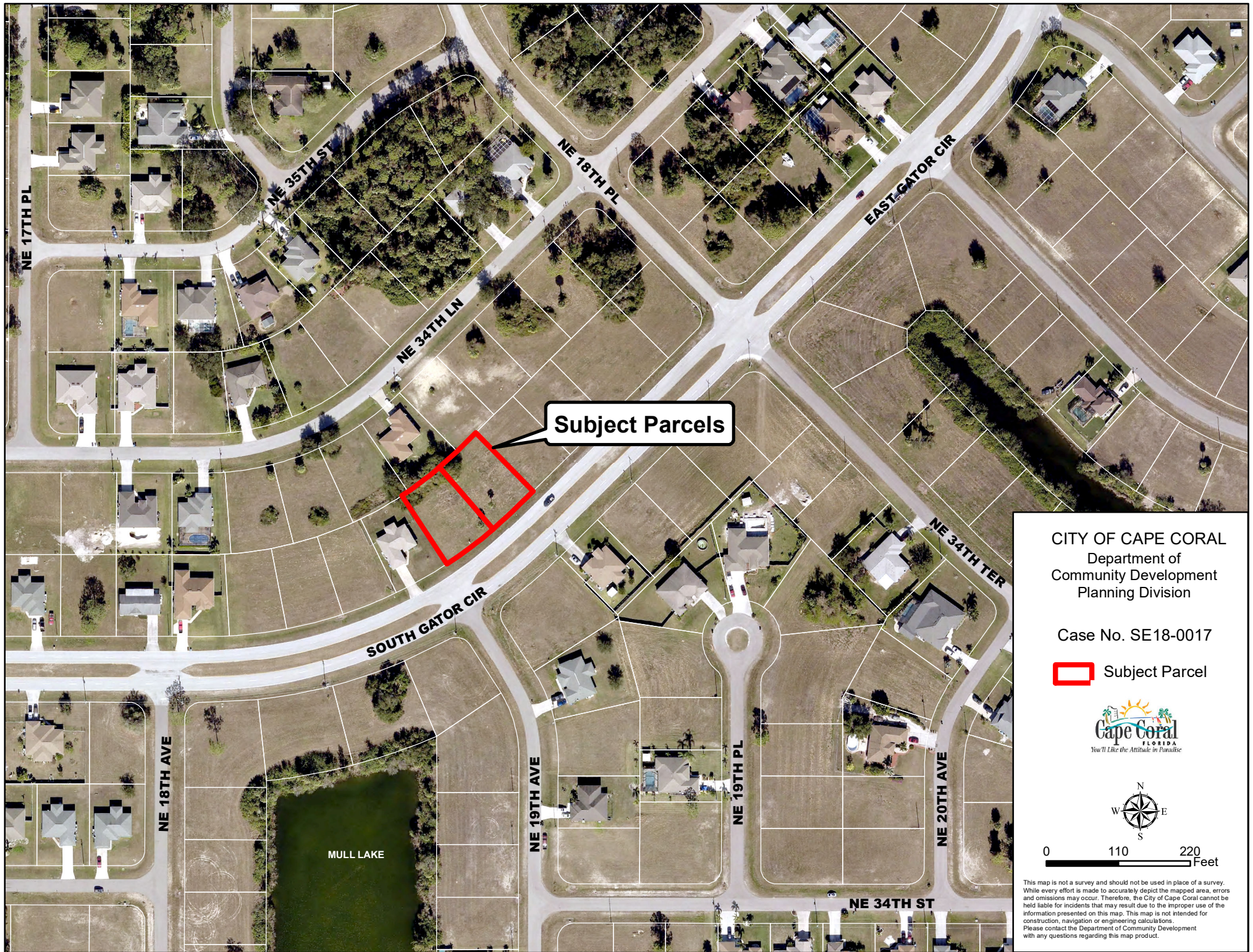
The foregoing instrument was acknowledged before me this 28th day of January, 2019, by Vincent A. Caution, AICP, who is personally known to me and who did not take an oath.

Exp. Date 12/6/20 Commission # 66030774




Elisabeth A. Delgado
Signature of Notary Public

Elisabeth A. Delgado
Print Name of Notary Public



CITY OF CAPE CORAL
Department of
Community Development
Planning Division

Case No. SE18-0017

 Subject Parcel



0 110 220
Feet

This map is not a survey and should not be used in place of a survey. While every effort is made to accurately depict the mapped area, errors and omissions may occur. Therefore, the City of Cape Coral cannot be held liable for incidents that may result due to the improper use of the information presented on this map. This map is not intended for construction, navigation or engineering calculations. Please contact the Department of Community Development with any questions regarding this map product.



CITY OF CAPE CORAL

Department of
Community Development
Planning Division

CURRENT ZONING MAP
500 Proximity Boundary

Case No. SE18-0017

LEGEND

-  500' Proximity Boundary
-  Subject Parcels



JANUARY 16, 2019

0 60 120 180 240 Feet

This map is not a survey and should not be used in place of a survey. While every effort is made to accurately depict the mapped area, errors and omissions may occur. Therefore, the City of Cape Coral cannot be held liable for incidents that may result due to the improper use of the information presented on this map. This map is not intended for construction, navigation or engineering calculations. Please contact the Department of Community Development with any questions regarding this map product.

KRKA

500' PROXIMITY BOUNDARY

SUBJECT PARCELS

NE 18TH AVE

NE 35TH ST

NE 34TH LN

NE 18TH PL

EAST GATOR CIR

NE 34TH TER

SOUTH GATOR CIR

NE 19TH AVE

NE 19TH PL

NE 19TH PL

NE 34TH ST

MULL LAKE

Item Number: 2.B.
Meeting Date: 2/5/2019
Item Type: HEARINGS

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Case #VA18-0021*; Address: 1205 SW 10th Terrace; Applicant: Michael and Julie Kayatta

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? No
2. Is this a Strategic Decision? No
If Yes, Priority Goals Supported are listed below.
If No, will it harm the intent or success of the Strategic Plan? No

Planning & Zoning Recommendations:

SUMMARY EXPLANATION AND BACKGROUND:

The applicant requests a variance from City of Cape Coral Land Use and Development Regulations, Section 3.10 "Swimming Pools" which requires that all swimming pools be constructed behind a single-family home.

LEGAL REVIEW:

EXHIBITS:

See attached "Backup Materials"

PREPARED BY:

Kristin Division- Planning Department- Community
Kantarze Development

SOURCE OF ADDITIONAL INFORMATION:

Chad Boyko, AICP, Principal Planner, 239-573-3162, cboyko@capecoral.net

ATTACHMENTS:

Description	Type
<input type="checkbox"/> Backup Materials	Backup Material



DEPARTMENT OF COMMUNITY DEVELOPMENT

APPLICATION FOR VARIANCE

Questions: 239-574-0776

CASE # VA 18-0021

REQUEST TO HEARING EXAMINER FOR A VARIANCE

FEE: SINGLE-FAMILY RESIDENTIAL USE \$150.00 (\$150.00 PER EACH ADDITIONAL REQUEST) ALL OTHER USES \$673.00. In addition to the application fee, all required advertising costs are to be paid by the applicant (ORD 39-03, Sec. 5.4). Advertising costs will be billed and must be paid prior to hearing.

Following the approval of your request, the applicant shall be responsible for paying the City to electronically record the final signed Resolution or Ordinance with the Lee County Clerk of Court. Until this fee is paid, restrictions on the issuance of any City permits will remain on the affected property that will prevent the city from issuing any applicable building permits, site plans, certificates of use, or certificates of occupancy for any property covered by the Resolution or Ordinance.

OWNER OF PROPERTY
Julie Kayatta

Address: 1205 SW 10th Terr
City: Cape Coral State: FL Zip 33991
Phone: 239-621-2639

APPLICANT
Same

Address: _____

EMAIL
Julie@body-as-one.com

City: _____ State: _____ Zip _____
Phone: _____

AUTHORIZED REPRESENTATIVE
Gary Ketter

Address: _____

EMAIL
Gary@ketterbois.com

City: _____ State: _____ Zip _____
Phone: _____

Unit W3 Block 4464 Lot(s) 34-37 Subdivision N/A
Address of Property 1205 SW 10th Terr Cape Coral FL 33991
Current Zoning SF Plat Book 21, Page 74
Strap Number 224423C1044040360

THIS APPLICATION SHALL ALSO HAVE ANY ADDITIONAL REQUIRED SUPPORTING DOCUMENTS

The owner of this property, or the applicant, agrees to conform to all applicable laws of the City of Cape Coral and to all applicable Federal, State, and County laws and certifies that all information supplied is correct to the best of their knowledge.

If the owner does not own the property in his/her personal name, the owner must sign all applicable forms in his/her corporate capacity.



DEPARTMENT OF COMMUNITY DEVELOPMENT

CASE # _____

APPLICATION FOR VARIANCE

Questions: 239-574-0776

JULIE KAYATTA

APPLICANT NAME (PLEASE TYPE OR PRINT)

Julie Kayatta

APPLICANT'S SIGNATURE

(SIGNATURE MUST BE NOTARIZED)

STATE OF FLORIDA, COUNTY OF

LEE

Sworn to (or affirmed) and subscribed before me this 20th day of August, 2018, by

Julie Kayatta

who is personally known or produced

as identification.

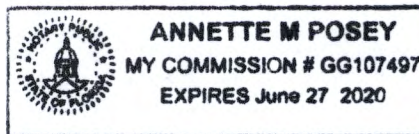
Exp. Date: June 27, 2020 Commission Number: GG107 497

NOTARY STAMP HERE

Signature of Notary Public:

Printed name of Notary Public:

Annette M. Posey
Annette M. Posey





DEPARTMENT OF COMMUNITY DEVELOPMENT

CASE # _____

APPLICATION FOR VARIANCE

Questions: 239-574-0776

AUTHORIZATION TO REPRESENT PROPERTY OWNER(S)

PLEASE BE ADVISED THAT

Gary Heller Heller Pools Construction
(Name of person giving presentation)

IS AUTHORIZED TO REPRESENT ME IN THE REQUEST TO THE HEARING EXAMINER, OR CITY COUNCIL FOR

Variance
(Type of Public Hearing – i.e., PDP, Zoning, Special Exception, Variance, etc.)

UNIT

BLOCK

LOT(S)

SUBDIVISION

OR LEGAL DESCRIPTION

Cape Coral Unit 63, BIK 4464, PB 21
PG 74, LOTS 34 Thru 37

LOCATED IN THE CITY OF CAPE CORAL, COUNTY OF LEE, FLORIDA.

MICHAEL KAYATTA

PROPERTY OWNER (Please Print)

Michael Kayatta
PROPERTY OWNER (Signature & Title)

JULIE KAYATTA

PROPERTY OWNER (Please Print)

Julie Kayatta
PROPERTY OWNER (Signature & Title)

STATE OF FLORIDA, COUNTY OF

LEE

Subscribed and sworn to (or affirmed) before me this

20th

day of

August

, 2019, by

Michael Kayatta
as identification.

who is personally known or produced

Julie Kayatta

Exp. Date: June 27, 2020 Commission Number:

GG107497

Signature of Notary Public:

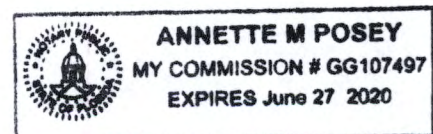
Annette M. Posey

Printed name of Notary Public:

Annette M. Posey

NOTARY STAMP HERE

Note: Please list all owners. If a corporation, please supply the Planning Division with a copy of corporation paper.





DEPARTMENT OF COMMUNITY DEVELOPMENT
APPLICATION FOR VARIANCE
Questions: 239-574-0776

CASE # _____

ACKNOWLEDGEMENT FORM

I have read and understand the above instructions. Hearing date(s) will be confirmed when I receive a copy of the Notice of Public Hearing stipulating the day and time of any applicable hearings.

I acknowledge that I or my representative must attend any applicable meetings scheduled for the Hearing Examiner, and City Council.

I will have the opportunity, at the hearing, to present verbal information pertaining to my request that may not be included in my application.

I understand any decision rendered by the CITY shall be subject to a thirty (30) day appeal period. Any work performed within the thirty (30) day time frame or during the APPEAL process will be completed at the applicant's risk.

I understand I am responsible for all fees, including advertising costs. All fees are to be submitted to the City of Cape Coral with the application or the item may be pulled from the agenda and continued to future date after fees are paid.

Please obtain all necessary permits prior to commencing any phase of construction.

Please indicate on a separate sheet those persons to whom you wish a copy of the Public Hearing Notice sent.

By submitting this application, I acknowledge and agree that I am authorizing the City of Cape Coral to inspect the subject property and to gain access to the subject property for inspection purposes reasonably related to this application and/or the permit for which I am applying.

(SIGNATURE MUST BE NOTARIZED)

CORPORATION/COMPANY NAME

JULIE KAYATTA

PROPERTY OWNER (PLEASE TYPE OR PRINT)

Julie Kayatta
PROPERTY OWNER'S SIGNATURE

STATE OF FLORIDA, COUNTY OF LEE

Sworn to (or affirmed) and subscribed before me this 20th day of August, 2018, by
Julie Kayatta who is personally known or produced
as identification

Exp. Date: June 27, 2022 Commission Number: GG-107497

NOTARY STAMP HERE

Signature of Notary Public:

Printed name of Notary Public:

Annette M. Posey
Annette M. Posey



DEPARTMENT OF COMMUNITY DEVELOPMENT
APPLICATION FOR VARIANCE
Questions: 239-574-0776

CASE # _____

DOCUMENTARY EVIDENCE (LUDR, Section 8.3.1.C.6.f)

A copy of all documentary evidence shall be made available to the decision-making body or the Hearing Examiner and to staff no later than two business days prior to the hearing of the application. This requirement includes information that the applicant intends to present at public hearing.

I have read the above requirement and agree to comply with this provision.

JULIE KAYATTA
OWNER/APPLICANT (PLEASE TYPE OR PRINT)

Julie Kayatta
OWNER/APPLICANT SIGNATURE

(SIGNATURE MUST BE NOTARIZED)

STATE OF FLORIDA COUNTY OF LEE

Sworn to (or affirmed) and subscribed before me on this 20th day of August,
2018 by Julie Kayatta, who is personally known or who has produced _____ as
Identification.

Exp. Date June 27, 2020
Commission # GG107497

Annette M. Posey
Signature of Notary Public
Annette M. Posey
Print Name of Notary Public



City of Cape Coral Variance Request Letter of Intent

We, Michael and Julie Kayatta, are requesting a zoning variance in the matter of the non-conforming pool in our adjacent lot on the east side of our home. Our property is at 1205 SW 10th Terrace, Cape Coral, FL. 33991 and the Code Case # is VA18-0021. We purchased our home in 1995 and married the adjacent corner lot in 2010, with a future plan to build a beautiful pool project. We also planted a hedge around the entire additional property that exceeds 9 foot height for privacy with the intent of our pool project not impacting our neighborhood. We have contracted Keller Pools Construction Inc. to design and build a pool and spa at our home.

We request that a variance be approved that would allow the pool to be built on the side of our home on our married adjacent lot.

The special condition that exists is that the two oak trees were planed in accordance with ordnance and in memory of past family members. Over the years, our children have climbed and played in these trees, we look forward to our grandchildren having the same opportunity. The oak trees grew to be quite large and have extreme sentimental value and would be extremely costly to remove. Also, in addition to that, the space provided in our backyard would not allow this project to be completed.

We feel that applying for the zoning variance we are using the legal option that is available to many people who have used this avenue to clear similar problems. We have seen other properties in the City of Cape Coral that have their pools on the side of their homes. We an provide those addresses for you, if requested.

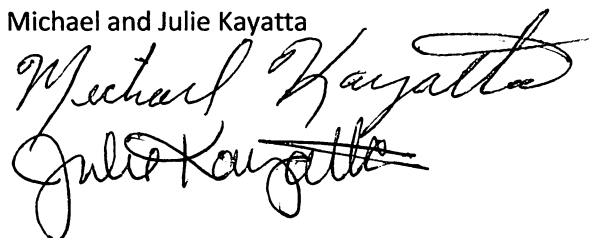
The hardship that would result from a denial of the variance request for us may sound small, be we have always wanted at pool to enjoy with our family and now to watch our grandchildren enjoy, making priceless memories. The hedge encloses the area and allows our neighbors to be unburned by the pool on the side of the house. The significant price of removing the very large sentimental oak trees would be financially detrimental.

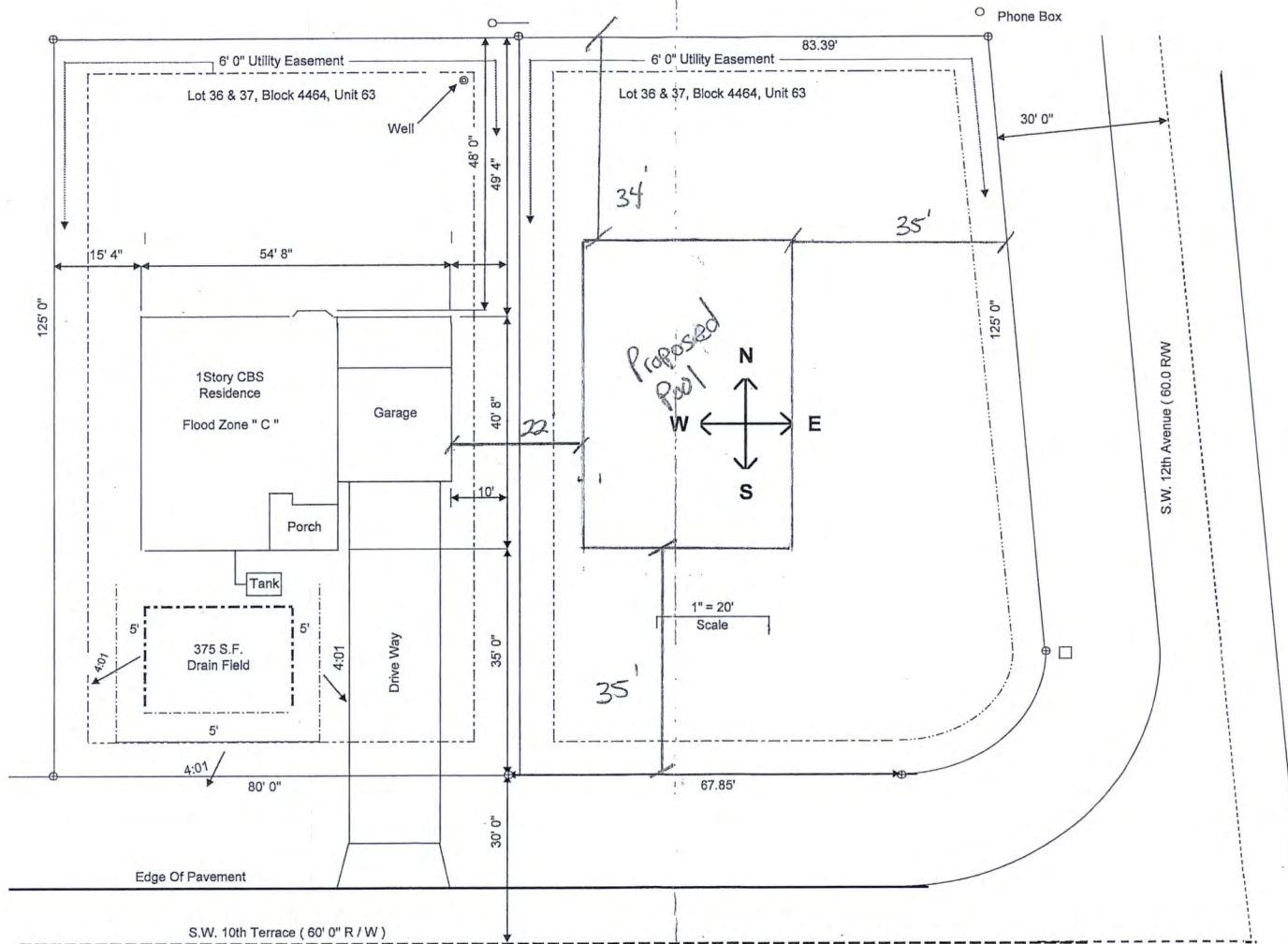
The minimum variance we are requesting is to allow the pool and spa to be built on our married adjacent corner lot.

The granting of this variance will not be injurious to the area and as you can see by signed letter from our closest neighbors, they have no objections to the building of our dream pool and spa.

Thank you for considering our request,

Michael and Julie Kayatta

Handwritten signatures of Michael and Julie Kayatta. The signature of Michael Kayatta is written in a cursive script, and the signature of Julie Kayatta is written below it, also in cursive.



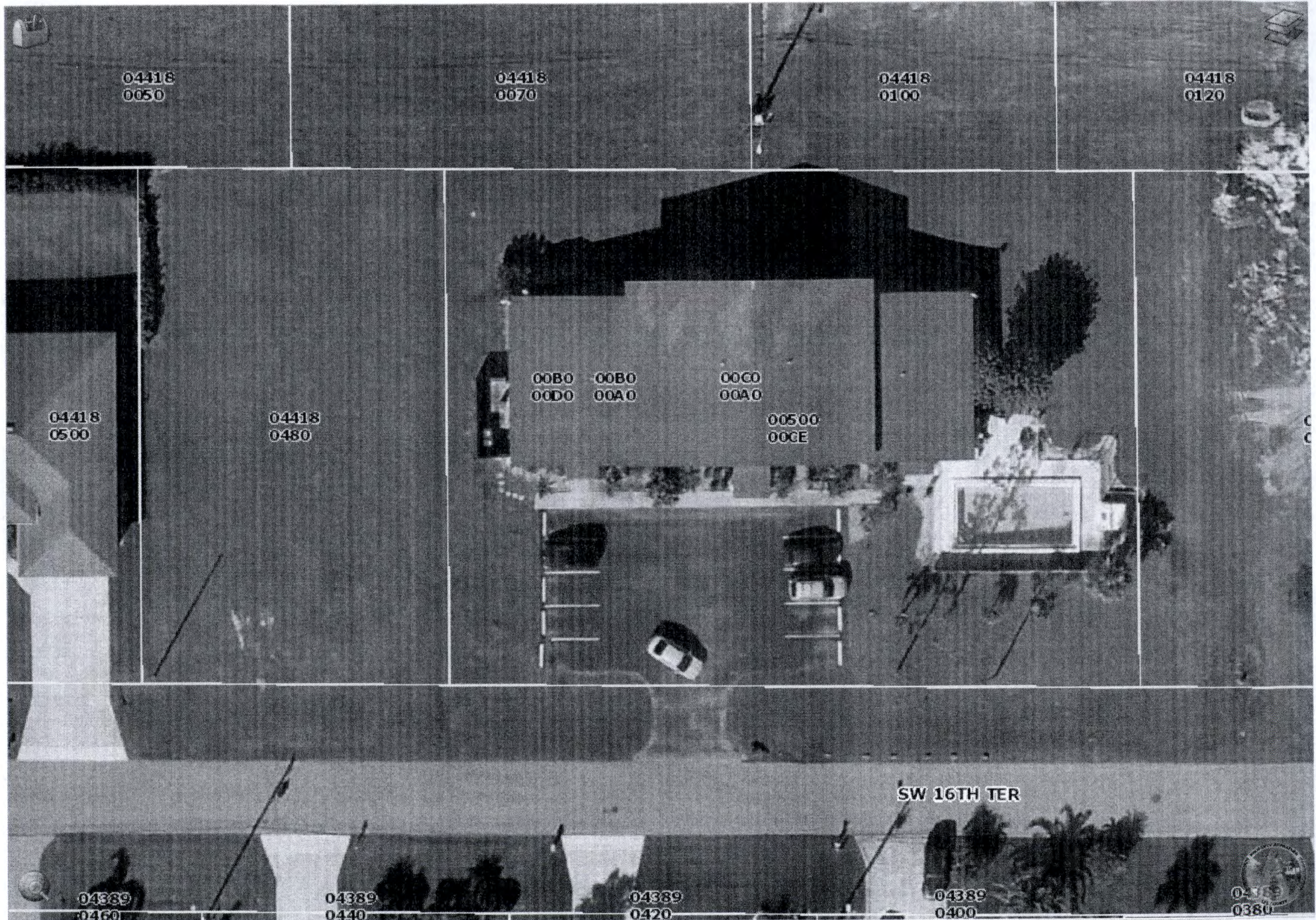








✕	STRAP	Folio	Owner Name	Site Address	Last Trans. Date	Last Trans.
			Steven & Maria Mullins	1422 SW 4th Ave		



STRAP

Folio

Owner Name

Site Address

Last Trans. Date

Last Trans.

SW 16TH TER

Review Date: December 18, 2018

**Applicant/
Property Owner:** Michael and Julie Kayatta
1205 SW 10th Terrace
Cape Coral, FL 33991

Authorized Rep: Gary Keller, Keller Pools Construction

Request: The applicant requests a variance from City of Cape Coral Land Use and Development Regulations, Section 3.10 "Swimming Pools" which requires that all swimming pools be constructed behind a single-family home.

Location: 1205 SW 10th Terrace
Cape Coral, FL 33991
Strap number: 22-44-23-C1-04464.0360
Unit 63, Block 4464, Lots 34-37

Prepared By: Chad Boyko, AICP, Principal Planner

Approved By: Robert H. Pederson, AICP, Planning Division Manager

Recommendation: Denial

Findings of Fact/Background:

The site is a 21,019 sq. ft. parcel in the southwest quadrant of the City. The site improved with a single-family home and is at the intersection of SW 10th Terrace and SW 12th Avenue¹. The site is four lots and the single-family home is on western side of the property. The site has a Single-Family (SF) future land use designation and a Single-Family Residential (R-1B) zoning designation. The surrounding area is single-family homes and scattered, undeveloped lots in all directions.

Similar Variances Cases within Block 4464

City records show there have been no variances awarded to properties in Block 4464 or within 500 feet of the site.

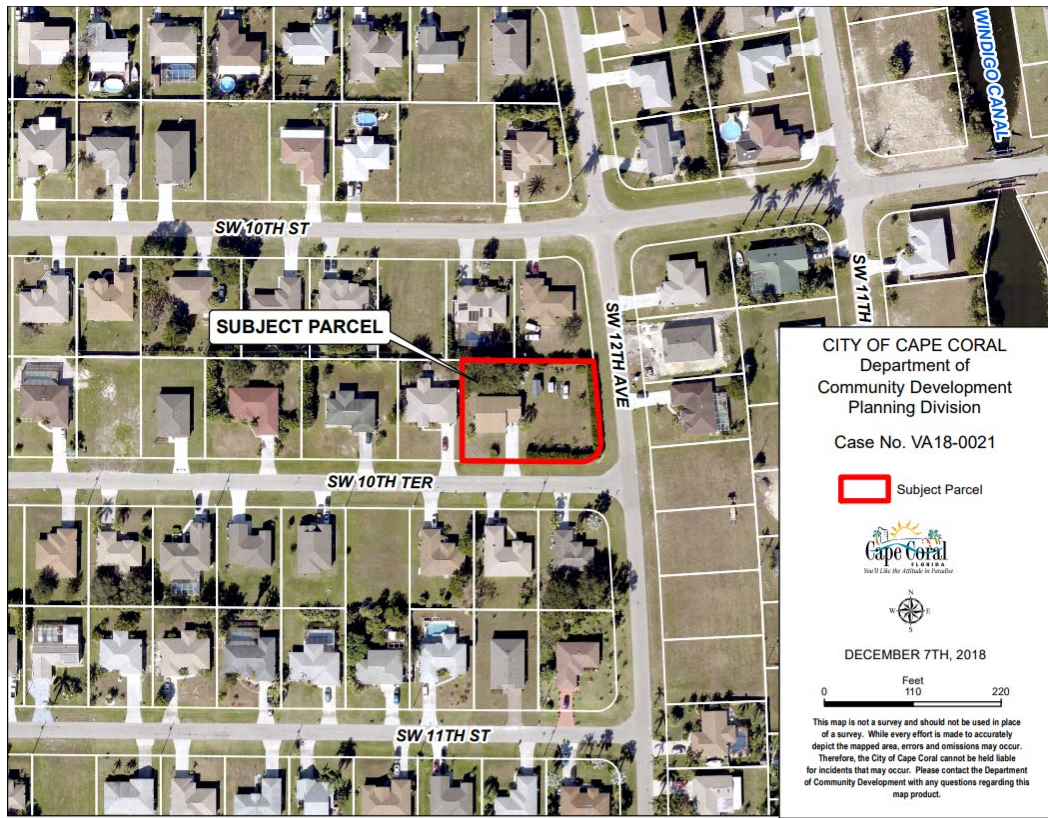
Applicable Regulation:

LUDR, Section 3.10.1.A: *Location of pools; fencing, safety rails; solar screens*

"The construction of a swimming pool/spa/hot tub is prohibited in the front or side of any single-family or duplex residential structure except as permitted in the RE district."

The applicant is requesting the variance to construct a swimming pool in the side yard of the site. The swimming pool would be approximately 22 feet away from the house. The applicant has provided a site plan that is attached to this report as "Exhibit A".

¹ Both local streets.

Site Aerial:**Analysis:**

A variance is defined as a modification of the requirements of the City ordinance when such modification will not be contrary to the public interest where, because of conditions peculiar to the property involved and not the result of the actions of the applicant which occurred after the effective date of the ordinance, a literal interpretation of the ordinance would result in unnecessary and undue hardship.

Staff has reviewed this application based on the regulations regarding swimming pools in LUDR, Section 3.10, and the five standards for variances in LUDR, Section 8.10.3a-e and offers the following analysis:

1. *Special Conditions: The special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other land, structure or buildings in the same zoning district; that the special conditions and circumstances do not result from the actions of the applicant.*

Staff determination and analysis: Standard NOT MET by the applicant.

The 20,019-sq. ft. site is flat and primarily rectangular, typical of most platted home sites in the City. The site is at the corner of two local streets and the corner portion of the site is

slightly widened due to a curve in the street. The applicants states that a special condition exists due to two large oak trees in the rear of the property that are sentimental and would be costly to remove. Staff acknowledges that the location and size of the oak trees would make construction of a pool in the rear yard difficult. The applicant has indicated that 18-20 feet of space is between the home and the two trees. While it may be possible to construct a small pool in the space available, other factors such as roots and tree canopy could make the construction difficult or impractical. While the trees would make placement of a pool difficult, the trees were planted by the applicant, therefore this condition is a result of the applicant's actions. Additionally, while staff acknowledges that the trees are sentimental to the applicant, the trees could be removed for construction of a pool that meets all applicable location requirements.

2. *No Special Privilege: The granting of the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, buildings or structures in the same zoning district.*

Staff determination and analysis: Standard NOT MET by the applicant.

Swimming pools are not allowed in the side yards of any single-family residential property in Cape Coral. The granting of the variance to allow a swimming pool would grant a special privilege to the applicant by allowing for the construction of a pool that is in the side yard of the site. The applicant provided a few examples where swimming pools have been constructed in a property's side yard. These examples are outliers and the vast majority of swimming pools in Cape Coral are built to the applicable regulations.

3. *Hardship: That literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this ordinance and would work unnecessary and undue hardships on the applicant.*

Staff determination and analysis: Standard NOT MET by the applicant.

The applicant would not be denied reasonable use of the site if the variance is not granted. The applicant built and has lived in a single-family home on the site for over 20 years. The applicant is requesting the variance to build a swimming pool which is an accessory feature to a single-family. While many single-family homes include swimming pools, the pools are not a requirement for reasonable use. Additionally, the applicant has the space available for construction of a swimming pool if the trees were removed. Developing a swimming pool in the side yard of a property is not a right that is commonly enjoyed by sites in the R-1B zoning district.

4. *Minimum Variance: That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.*

Staff determination and analysis: Standard NOT MET by the applicant.

The variance sought by the applicant is the not minimum variance necessary to allow construction of a swimming pool. The plan submitted by the applicant shows a swimming

pool that is completely detached from the single-family home. The applicant could reduce the scale of their variance request by tying the swimming pool in with the single-family home or placing a portion of the pool behind the home. Staff also finds that the applicant currently has reasonable use of the site with the construction of the single-family home.

5. *Purpose and Intent; Public Interest: That the granting of the variance will be in harmony with the general intent and purpose of this ordinance, and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.*

Staff determination and analysis: Standard PARTIALLY MET by the applicant.

Accessory structures and features such as swimming pools have setbacks to ensure separation and compatibility with surrounding residences. Swimming pools are required to be constructed behind a single-family home to create a consistent look within single-family neighborhoods. The site does include some unique features that would make the pool more compatible with the surrounding area. The proposed location of the swimming pool is buffered on three sides by an opaque hedge row that is between eight and 10 feet tall. The hedge would screen most of the pool from the view of surrounding properties. The site is also on a corner which increases separation from neighboring homes. Staff notes that while the hedge row currently provides adequate screening, the hedges could be removed at any time by the current or future owner of the site. If the hedges were removed, the swimming pool would be in plain sight from all directions. Staff finds that with the hedge row in place, the pool would be adequately screened and would not be injurious or detrimental to the public welfare.

Consistency with the Comprehensive Plan

This request is consistent with the following objective and policy.

Future Land Use Element

Policy 1.15a:

Single Family Residential: Sites of 10,000 square feet and greater, with densities not to exceed 4.4 units per acre.

Staff comment: The site has R-1B Zoning that is consistent with the Single Family Future Land Use Classification of the site. The site is 20,019 sq. ft. and has a single-family home. The site is well under the maximum density of 4.4 units per acre. The project is consistent with this policy.

Recommendation:

Staff finds that this variance meets one of the five standards established for variances. Since this request does not meet all five standards, staff recommends **denial**.

Staff Contact Information

Chad Boyko, AICP, Principal Planner

PH: 239-573-3162/Email: cboyko@capecoral.net

Site plan for Lot 36 & 37, Block 4464, Unit 63. The plan shows two lots separated by a 6' utility easement.

Lot 36 (Left):

- Dimensions: 15' 4" (width), 54' 8" (width), 125' 0" (depth).
- Features: 1Story CBS Residence, Flood Zone "C", Garage, Porch, Tank, 375 S.F. Drain Field.
- Easements: 6' 0" Utility Easement (top), 4:01 slope (bottom left), 4:01 slope (bottom right).
- Other: Well, Drive Way.

Lot 37 (Right):

- Dimensions: 83.39' (width), 30' 0" (width), 125' 0" (depth).
- Features: Proposed Pool, Compass Rose (N, S, E, W).
- Easements: 6' 0" Utility Easement (top), 67.85' (bottom).
- Other: Phone Box, 30' 0" (right side), 34' (left side), 35' (right side).

Boundaries and Easements:

- Top: 6' 0" Utility Easement.
- Bottom: S.W. 10th Terrace (60' 0" R/W).
- Right: S.W. 12th Avenue (60.0' R/W).
- Left: 125' 0" (depth).

Scale: 1" = 20' Scale.



NOTICE TO SURROUNDING PROPERTY OWNERS

CASE NUMBER: VA18-0021

REQUEST: The applicant requests a variance from City of Cape Coral Land Use and Development Regulations, Section 3.10 "Swimming Pools" which requires that all swimming pools be constructed behind a single-family home.

LOCATION: 1205 SW 10th Terrace

CAPE CORAL STAFF CONTACT: Chad Boyko, AICP, Principal Planner, 239-573-3162, cboyko@capecoral.net

PROPERTY OWNER(S): Michael and Julie Kayatta

AUTHORIZED REPRESENTATIVE: Gary Keller, Keller Pools Construction

UPCOMING PUBLIC HEARING: Notice is hereby given that the City of Cape Coral Hearing Examiner will hold a public hearing at 9:00 A.M. on Tuesday, February 5, 2019 on the above mentioned case. The public hearing will be held in the City of Cape Coral Council Chambers, 1015 Cultural Park Boulevard, Cape Coral, FL.

All interested parties are invited to appear and be heard. All materials presented before the Hearing Examiner will become a permanent part of the record. The public hearing may be continued to a time and date certain by announcement at this public hearing without any further published notice. Copies of the staff report will be available 5 days prior to the hearing. The file can be reviewed at the Cape Coral Community Development Department, Planning Division, 1015 Cultural Park Blvd., Cape Coral, FL.

DETAILED INFORMATION: The case report and colored maps for this application are available at the City of Cape Coral website, www.capecoral.net/publichearing (Click on 'Public Hearing Information', use the case number referenced above to access the information); or, at the Planning Division counter at City Hall, between the hours of 7:30 AM and 4:30 PM. The public hearing may be continued to a time and date certain by announcement at this public hearing without any further published notice.

HOW TO CONTACT: Any person may appear at the public hearing and be heard, subject to proper rules of conduct. You are allowed sufficient time to write or appear at the public hearing to voice your objections or approval. Written comments filed with the Director will be entered into the record. Please reference the case number above within your correspondence and mail to: Department of Community Development, Planning Division, P.O. Box 150027, Cape Coral, FL 33915-0027. The hearings may be continued from time to time as necessary.

ADA PROVISIONS: In accordance with the Americans With Disabilities Act, persons needing a special accommodation to participate in this proceeding should contact the Human Resources Department whose office is located at Cape Coral City Hall, 1015 Cultural Park Boulevard, Cape Coral, Florida; telephone 1-239-574-0530 for assistance; if hearing impaired, telephone the Florida Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8770 (v) for assistance.

APPEALS: If a person decides to appeal any decision made by the Hearing Examiner with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

The News-Press media group

news-press.com A GANNETT COMPANY

Please contact us with changes or cancellations as soon as possible, otherwise no further action needed.

TOLL-FREE
888-516-9220

Local #
239-335-0258

Email
FNPLegals@gannett.com

Customer: CITY OF CAPE CORAL_DEPT OF COM

Ad No.: 0003357057

Address: 1015 CULTURAL PARK BLVD
CAPE CORAL FL 33990
USA

Net Amt: \$

Run Times: 1

No. of Affidavits: 1

Run Dates: 01/26/19

Text of Ad:

NOTICE OF PUBLIC HEARING

CASE NUMBER: VA18-0021

REQUEST: The applicant requests a variance from City of Cape Coral Land Use and Development Regulations, Section 3.10 "Swimming Pools" which requires that all swimming pools be constructed behind a single-family home.

LOCATION: 1205 SW 10th Terrace

CAPE CORAL STAFF CONTACT: Chad Boyko, AICP, Principal Planner, 239-573-3162, cboyko@capecoral.net

PROPERTY OWNER(S): Michael and Julie Kayatta

AUTHORIZED REPRESENTATIVE: Gary Keller, Keller Pools Construction

UPCOMING PUBLIC HEARING: Notice is hereby given that the City of Cape Coral Hearing Examiner will hold a public hearing at 9:00 A.M. on Tuesday, February 5, 2019 on the above mentioned case. The public hearing will be held in the City of Cape Coral Council Chambers, 1015 Cultural Park Boulevard, Cape Coral, FL.

All interested parties are invited to appear and be heard. All materials presented before the Hearing Examiner will become a permanent part of the record. The public hearing may be continued to a time and date certain by announcement at this public hearing without any further published notice. Copies of the staff report will be available 5 days prior to the hearing. The file can be reviewed at the Cape Coral Community Development Department, Planning Division, 1015 Cultural Park Blvd., Cape Coral, FL.

DETAILED INFORMATION: The case report and colored maps for this application are available at the City of Cape Coral website, www.capecoral.net/publ ichearing (Click on 'Public Hearing Information', use the case number referenced above to access the information); or, at the Planning Division counter at City Hall, between the hours of 7:30 AM and 4:30 PM

HOW TO CONTACT: Any person may appear at the public hearing and be heard, subject to proper rules of conduct. You are allowed sufficient time to write or appear at the public hearing to voice your objections or approval. Written comments filed with the Director will be entered into the record. Please reference the case number above within your correspondence and mail to: Department of Community Development, Planning Division, P.O. Box 150027, Cape Coral, FL 33915-0027. The hearings may be continued from time to time as necessary.

ADA PROVISIONS: In accordance with

the Americans With Disabilities Act, persons needing a special accommodation to participate in this proceeding should contact the Human Resources Department whose office is located at Cape Coral City Hall, 1015 Cultural Park Boulevard, Cape Coral, Florida; telephone 1-239-574-0530 for assistance; if hearing impaired, telephone the Florida Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8770 (v) for assistance.

by order of
Kimberly Bruns, CMC
Interim City Clerk
REF # VA18-0021
AD# 3357057 Jan. 26, 2019

Department of Community Development
Planning Division

AFFIDAVIT

IN RE: APPLICATION OF: KAYATTA MICHAEL K + JULIE R

APPLICATION NO: VA18-0021

STATE OF FLORIDA)
) §
COUNTY OF LEE)

I, Vincent A. Cautero, AICP having first been duly sworn according to law, state on my oath the following:

That I am the Director of the Department of Community Development and responsible in performing duties as required for the City of Cape Coral.

That pursuant to City of Cape Coral Code. Section 8.3.2A and Section 8.11.3.A all required written notice and publication has been provided. Also, posting of a sign has been done when applicable per Section 8.3.2A.

DATED this 28th day of January, 2019.

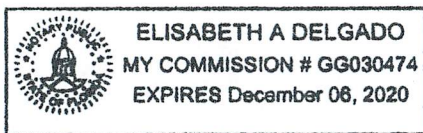


Vincent A. Cautero, AICP

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 28th day of January, 2019, by Vincent A. Cautero, AICP, who is personally known to me and who did not take an oath.

Exp. Date 12/16/20 Commission # GG030474




Elisabeth A. Delgado
Signature of Notary Public

Elisabeth A. Delgado
Print Name of Notary Public



CITY OF CAPE CORAL
Department of
Community Development
Planning Division

Case No. VA18-0021

 Subject Parcel



DECEMBER 7TH, 2018




This map is not a survey and should not be used in place of a survey. While every effort is made to accurately depict the mapped area, errors and omissions may occur. Therefore, the City of Cape Coral cannot be held liable for incidents that may occur. Please contact the Department of Community Development with any questions regarding this map product.

CITY OF CAPE CORAL
Department of
Community Development
Planning Division

CURRENT ZONING MAP
500' Proximity Boundary

Case No. VA18-0021

LEGEND

 500' Proximity Boundary

 Subject Parcel

Zoning

 R-1B

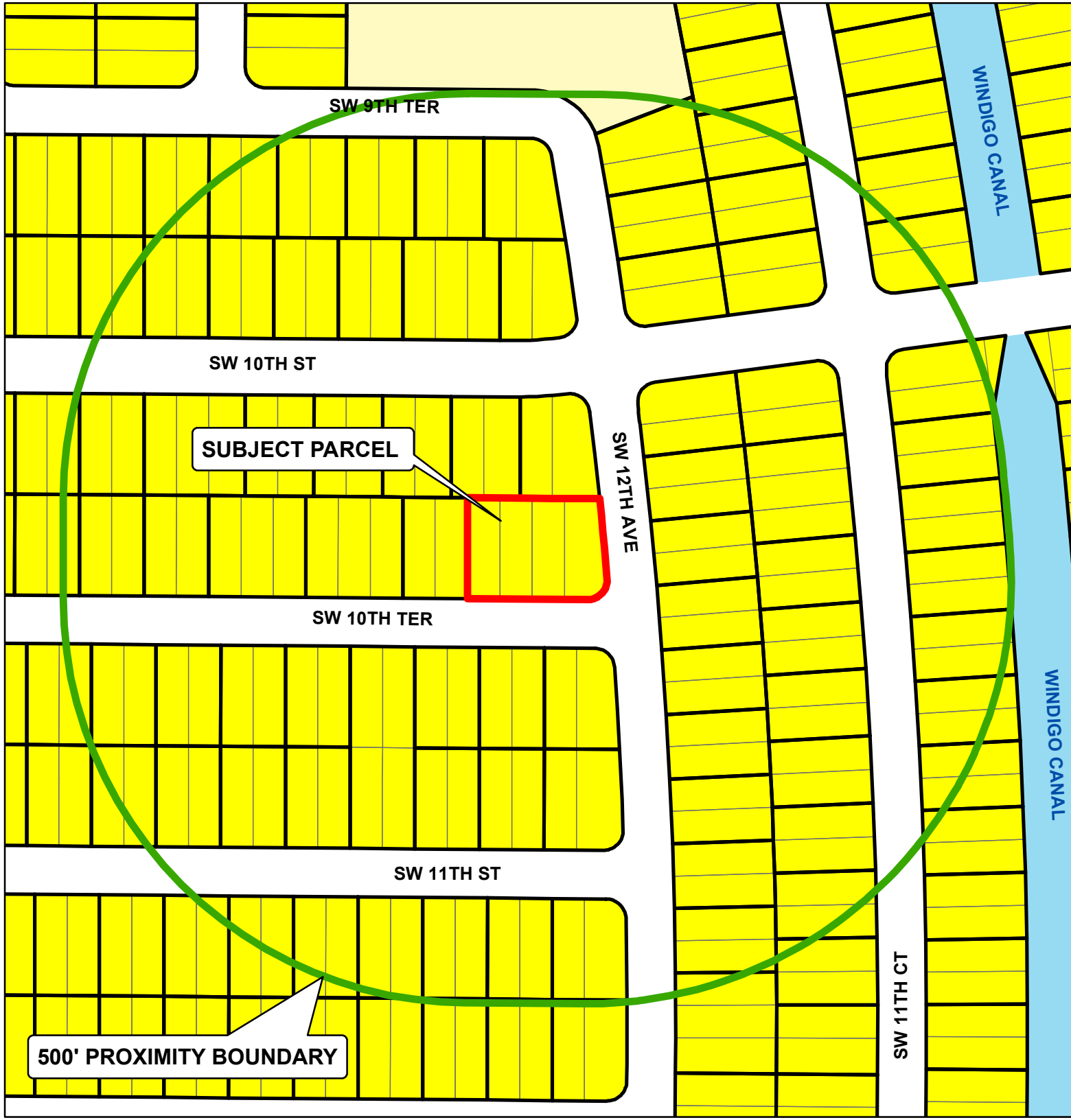
 RD



DECEMBER 7TH, 2018



This map is not a survey and should not be used in place of a survey. While every effort is made to accurately depict the mapped area, errors and omissions may occur. Therefore, the City of Cape Coral cannot be held liable for incidents that may occur. Please contact the Department of Community Development with any questions regarding this map product.



Item Number: 2.C.
Meeting Date: 2/5/2019
Item Type: HEARINGS

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Case #VA18-0023*; Address: 3117 SE 20th Place; Applicant: Marlies Laaper and Uri Aminov

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? No
2. Is this a Strategic Decision? No
If Yes, Priority Goals Supported are listed below.
If No, will it harm the intent or success of the Strategic Plan? No

Planning & Zoning Recommendations:

SUMMARY EXPLANATION AND BACKGROUND:

The applicants, Uri Aminov and Marlies Laaper, seek a dimensional variance of three feet eleven inches from the minimum front setback requirement of twenty-five feet to permit the expansion of an existing garage twenty-one feet one inch from the front property line in the Single-Family Residential (R-1B) District on property described as Lots 24 and 25, Block 1164, Unit 19, Cape Coral Subdivision; property located at 3117 SE 20th Place.

LEGAL REVIEW:

EXHIBITS:

See attached "Backup Materials"

PREPARED BY:

Kristin
Kantarze Division- Planning Department- Community Development

SOURCE OF ADDITIONAL INFORMATION:

Mike Struve, AICP, LEED Green Associate, Planning Team Coordinator, 239-242-3255, mstruve@capecoral.net

ATTACHMENTS:

Description	Type
□ Backup Materials	Backup Material



DEPARTMENT OF COMMUNITY DEVELOPMENT

APPLICATION FOR VARIANCE

Questions: 239-574-0776

CASE # VA18-0023

REQUEST TO HEARING EXAMINER FOR A VARIANCE

FEE: SINGLE-FAMILY RESIDENTIAL USE \$150.00 (\$150.00 PER EACH ADDITIONAL REQUEST) ALL OTHER USES \$673.00. In addition to the application fee, all required advertising costs are to be paid by the applicant (ORD 39-03, Sec. 5.4). Advertising costs will be billed and must be paid prior to hearing.

Following the approval of your request, the applicant shall be responsible for paying the City to electronically record the final signed Resolution or Ordinance with the Lee County Clerk of Court. Until this fee is paid, restrictions on the issuance of any City permits will remain on the affected property that will prevent the city from issuing any applicable building permits, site plans, certificates of use, or certificates of occupancy for any property covered by the Resolution or Ordinance.

OWNER OF PROPERTY

Marlies Laaper and Uri Aminov

Address: 3117 SE 20th PL

City: Cape Coral State: FL Zip 33904

Phone: 239 560 2211

APPLICANT

Uri Aminov

Address: 1423 SE 10th St Unit 16

EMAIL

uriami@yahoo.com

City: Cape Coral State: FL Zip 33990

Phone: 239 560 2211

AUTHORIZED REPRESENTATIVE

Address: _____

EMAIL

City: _____ State: _____ Zip _____

Phone: _____

Unit 19 Block 1164 Lot(s) 24-25 Subdivision _____

Address of Property 3117 SE 20th PL

Current Zoning Singel family Plat Book 13 , Page 123

Strap Number 32-44-24-C3-01164.0240

THIS APPLICATION SHALL ALSO HAVE ANY ADDITIONAL REQUIRED SUPPORTING DOCUMENTS

The owner of this property, or the applicant, agrees to conform to all applicable laws of the City of Cape Coral and to all applicable Federal, State, and County laws and certifies that all information supplied is correct to the best of their knowledge.

If the owner does not own the property in his/her personal name, the owner must sign all applicable forms in his/her corporate capacity.



DEPARTMENT OF COMMUNITY DEVELOPMENT

APPLICATION FOR VARIANCE

Questions: 239-574-0776

CASE # _____

URI AMINOV

APPLICANT NAME (PLEASE TYPE OR PRINT)

APPLICANT'S SIGNATURE

STATE OF

FL

COUNTY OF

Lee

(SIGNATURE MUST BE NOTARIZED)

Sworn to (or affirmed) and subscribed before me this 31st day of October, 2018 by

who is personally known or produced

as identification.

Exp. Date:

9-19-2021

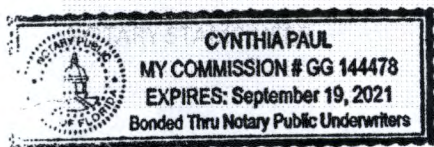
Commission Number:

GG-144478

Signature of Notary Public:

Printed name of Notary Public:

Cynthia Paul
Cynthia Paul





DEPARTMENT OF COMMUNITY DEVELOPMENT

CASE # _____

APPLICATION FOR VARIANCE

Questions: 239-574-0776

ADDRESS THE FOLLOWING POINTS IN YOUR REQUEST:

Section 8.10

Before any variance may be granted, the Hearing Examiner must find that all five of the standards identified below have been met. Such findings shall be recorded, along with any imposed conditions or restrictions, in the Hearing Examiner's minutes and the records and issued in written form to the applicant to constitute proof of the variance:

a. Special Conditions

The special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district; that the special conditions and circumstances do not result from the actions of the applicant.

b. No Special Privilege

The granting of the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, buildings or structures in the same zoning district.

c. Hardship

That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Ordinance and would work unnecessary and undue hardships on the applicant.

d. Minimum Variance

That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.

e. Purpose and Intent; Public Interest

That the granting of the variance will be in harmony with the general intent and purpose of this Ordinance, and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

*** * * * * THESE FIVE STANDARDS MUST BE ADDRESSED IN LETTER OF INTENT * * * * ***



DEPARTMENT OF COMMUNITY DEVELOPMENT

APPLICATION FOR VARIANCE

Questions: 239-574-0776

CASE # _____

ACKNOWLEDGEMENT FORM

I have read and understand the above instructions. Hearing date(s) will be confirmed when I receive a copy of the Notice of Public Hearing stipulating the day and time of any applicable hearings.

I acknowledge that I or my representative must attend any applicable meetings scheduled for the Hearing Examiner, and City Council.

I will have the opportunity, at the hearing, to present verbal information pertaining to my request that may not be included in my application.

I understand any decision rendered by the CITY shall be subject to a thirty (30) day appeal period. Any work performed within the thirty (30) day time frame or during the APPEAL process will be completed at the applicant's risk.

I understand I am responsible for all fees, including advertising costs. All fees are to be submitted to the City of Cape Coral with the application or the item may be pulled from the agenda and continued to future date after fees are paid.

Please obtain all necessary permits prior to commencing any phase of construction.

Please indicate on a separate sheet those persons to whom you wish a copy of the Public Hearing Notice sent.

By submitting this application, I acknowledge and agree that I am authorizing the City of Cape Coral to inspect the subject property and to gain access to the subject property for inspection purposes reasonably related to this application and/or the permit for which I am applying.

(SIGNATURE MUST BE NOTARIZED)

CORPORATION/COMPANY NAME

Marlies Laaper & Uri Aminov

PROPERTY OWNER (PLEASE TYPE OR PRINT)

PROPERTY OWNER'S SIGNATURE

STATE OF FL, COUNTY OF Lee

Sworn to (or affirmed) and subscribed before me this 31st day of Oct, 2018 by

who is personally known or produced

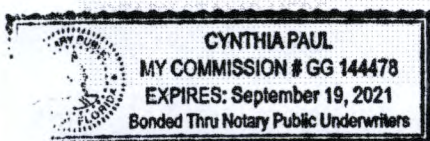
as identification.

Exp. Date: 9-19-2021 Commission Number: GG 144478

Signature of Notary Public:

Printed name of Notary Public:

Cynthia Paul
Cynthia Paul





DEPARTMENT OF COMMUNITY DEVELOPMENT

APPLICATION FOR VARIANCE

Questions: 239-574-0776

CASE # _____

DOCUMENTARY EVIDENCE (LUDR, Section 8.3.1.C.6.f)

A copy of all documentary evidence shall be made available to the decision-making body or the Hearing Examiner and to staff no later than two business days prior to the hearing of the application. This requirement includes information that the applicant intends to present at public hearing.

I have read the above requirement and agree to comply with this provision.

Uri Aminov

OWNER/APPLICANT (PLEASE TYPE OR PRINT)

OWNER/APPLICANT SIGNATURE

(SIGNATURE MUST BE NOTARIZED)

STATE OF

FL

COUNTY OF

Lee

Sworn to (or affirmed) and subscribed before me on this 31st day of October, 2018 by _____, who is personally known or who has produced _____ as Identification.

Exp. Date

9-19-2021

Commission #

GG144478

Signature of Notary Public

Print Name of Notary Public



Marlies Laaper & Uri Aminov
1955 SE 31st Street
Cape Coral, FL 33990

City of Cape Coral
Department of Community Development

Re: Variance Request Revision

We recently purchased the house at 3117 SE 20th Place.

Request

To allow us to extend the garage 3 feet 11 inch in to the 25 feet easement witch is outlined on the attached drawings for this property.

The reason for our request

Because of our respective businesses, a restaurant and a property management company, we drive larger vehicles, a van and a truck.

1. The existing garage is not long enough to fit the truck and is not wide enough to accommodate both vehicles.
2. The angle of the drive way into the garage is too sharp to get the second car into the garage without several maneuver.
3. We would feel much safer being able to park in the garage when we work late work hours which is often required in the restaurant business.

No special privilege

Several houses in the street have already received the same/similar variances and the extension will be in keeping and harmony with these and other homes in the street. This will not affect the esthetics or the street view in any way.

Thank you,

Planning Division Case Report

VA18-0023

Review Date: January 23, 2019

Property Owners: Marlies Laaper and Uri Aminov
3117 SE 20th Place
Cape Coral, FL 33904

Applicant: Uri Aminov

Request: The applicant requests a variance of three feet, eleven inches to the minimum front setback requirement of 25 ft. for a site in the Single Family Residential (R-1B) District.

Location: 3117 SE 20th Place
Cape Coral, FL 33904
Strap number: 32-44-24-C3-01164.0240
Unit 19, Block 1164, Lots 24-25

Prepared By: Mike Struve, AICP, LEED Green Associate, Planning Team Coordinator

Approved By: Robert H. Pederson, AICP, Planning Division Manager

Recommendation: Denial

Urban Service Area: Infill

Code Compliance Case: No

Right of Way Access: The site has access to SE 20th Place, a two-lane local street.

Background:

The ±10,672-sq. ft. site is in southeast Cape Coral and has water frontage along the South Tennyson Canal (Figure 1). This site has a Single Family Future Land Use Classification and Single Family Residential (R-1B) Zoning. All properties within 2,500 feet of this site share the same future land use and zoning designations.

The site has a single-family home. According to the Lee County Property Appraiser (LEEPA) website, this house was constructed in 1980 and has a living area of 1,660 sq. ft. The house has three bedrooms and two bathrooms. An attached garage is at the south end of the house. The garage is 21 ft. wide and 22 ft. deep.

The applicant requests a variance of three feet, eleven inches from the 25-foot front setback requirement to expand the existing garage. According to the letter of intent (LOI), the expansion will allow the owners to park a van with a truck in the renovated garage.

Figure 1. Aerial of the site outlined in red.**Similar Variance Cases in Unit 19:**

Staff found records of six variances that were previously approved for front setback relief in the R-1B District by the Board of Zoning Adjustments and Appeals (BZAA) for sites in Unit 19. Three cases involved garage additions. Two other cases granted front setback relief for the construction of garages associated with new homes along SE 20th Place, north of the applicant's site. All six cases are summarized below in Table 1.

Table 1. Variances granting front setback relief for sites in Unit 19.

Resolution	Applicant	Address	Variance Requested	Purpose	Staff Recommendation	BZAA Decision
VA-4-97	Melercio and Claudia Piantini	1919 Cornwallis Pkwy	4.00 ft. ¹	Front entry addition	Denial	Approval
VA-24-2000	Ann Mary Tikka	284 SE 19 th Ave	11.20 ft.	Garage addition	Approval	Approval
VA 27-2002	Daniel W. & Dorothy K. Haines	2254 SE 28 th St	5.00 ft.	Garage addition	Denial	Approval
VA 16-2005	Frank & Alice Haase	2035 Everest Pkwy	2.75 ft.	Garage addition	Denial	Approval
VA 11-2007	BMC & Associates, Inc.	3105 SE 20 th Pl	11.42 ft.	New garage	Denial	Approval
VA 1-2013	Boaz Rogan	3101 SE 20 th Pl	12.50 ft.	New garage	Denial	Approval

¹ When this variance was approved, the R-1B District had a minimum required front setback of 30 feet.

Zoning History of the Site

Since 1989, the site has had a Single Family Future Land Use Classification and R-1B Zoning.

Applicable Regulation:

The Land Use and Development Regulations (LUDR), Section 2.7.1, Table R-1, requires a minimum front setback of 25 ft. for buildings in the R-1B District.

Analysis:

A variance is defined as a modification of the requirements of the City ordinance when such modification will not be contrary to the public interest where, because of conditions peculiar to the property involved and not the result of the actions of the applicant which occurred after the effective date of the ordinance, a literal interpretation of the ordinance would result in unnecessary and undue hardship.

Staff has reviewed this application based on the five standards in LUDR, Section 8.10.3a-e and offers the following analysis:

1. *Special Conditions: The special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other land, structure or buildings in the same zoning district; that the special conditions and circumstances do not result from the actions of the applicant.*

Staff determination and analysis: Standard NOT MET by the applicant.

The 10,672-sq. ft. site is flat and resembles a parallelogram, similar to several sites along the South Tennyson Canal. The site meets all minimum dimensional requirements for the R-1B District. Staff finds there are no unique or special features about the physical nature of the lot.

The house has an existing attached garage at the south end. The dimensions of the existing garage (21 ft. wide and 22 ft. deep) exceed the minimum requirements of 14 ft. wide by 20 ft. deep established by the City in LUDR, Section 3.1.2.A.1. Since the existing garage meets the minimum dimensional standards, a special condition or circumstance does not exist. The City has no provision requiring that a garage must be able to accommodate a certain number of vehicles or a particular size of vehicles.

The applicant states in the LOI that the angle of the driveway to the garage is too great to allow a second vehicle to enter the garage without several back and forth maneuvers to orient the vehicle property. This situation, however, also does not constitute a special condition or circumstance as the owners presumably were aware, or should have been aware, of any limitations associated with the garage and driveway when they acquired the property in 2018.

2. *No Special Privilege: The granting of the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, buildings or structures in the same zoning district.*

Staff determination and analysis: Standard NOT MET by the applicant.

Since the site has a garage that meets minimum dimensional requirements, the variance would constitute a special privilege because other applicants with garages that comply with City standards could expect to be denied a variance.

Staff would likely view this standard differently if the house lacked a garage altogether or had a garage that did not meet the minimum dimensional requirement of 14 ft. by 20 ft. In a situation like this, a variance may be appropriate to eliminate a nonconformity. However, in this case, the applicant has a garage that meets current code.

3. *Hardship: That literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this ordinance and would work unnecessary and undue hardships on the applicant.*

Staff determination and analysis: Standard NOT MET by the applicant.

While a garage lacking space for two vehicles may be considered inconvenient or undesirable, such a condition by itself does not constitute a hardship. The garage meets minimum dimensional requirements established by the City. The City is not obligated to provide special accommodation to an owner who desires a garage exceeding the minimum standards who cannot demonstrate compliance with setback requirements. The house with garage can be used as it currently exists. The owner enjoys reasonable use of the property without a variance.

Unlike some variance requests where an applicant discovers a minor setback infringement after acquiring a property, the owners in this case presumably purchased the home with full knowledge that the house had a garage with limited area. Had the design of the garage constituted a “hardship” to the applicants at that time, a different single-family home presumably would have been sought.

4. *Minimum Variance: That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.*

Staff determination and analysis: Standard NOT MET by the applicant.

The existing garage shown on the plans submitted by the applicant is 35.7 ft. from the front property line. The garage can be extended 10.7 ft. closer to the front property line for expanding this structure. Thus, the applicant can expand the existing garage to provide additional room and still comply with the front setback requirement, just not to the extent desired.

Staff does not consider this request to comply with this standard because 1) a variance is not necessary to enjoy reasonable use of the property, and 2) the garage can be extended toward the front property line to allow for renovations without the need of a variance.

5. *Purpose and Intent; Public Interest: That the granting of the variance will be in harmony with the general intent and purpose of this ordinance, and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.*

Staff determination and analysis: Standard MET by the applicant.

The purpose of setbacks is varied and includes providing minimum separation distances between buildings and property lines. Since property owners frequently choose to construct houses at the front setback line, front setbacks can serve an aesthetic function by providing a uniform line of sight for buildings along a street.

Front setbacks for single-family homes along this section of SE 20th Place range from 12.5 feet to about 35 feet. The varied setbacks coupled with the relatively modest variance requested (16%) would likely

result in a renovated house that would not appear noticeably closer to the front property line with respect to other houses along the east side of SE 20th Place. The placement of such a building given the existing development patterns would be in character with the area and the variance would not be detrimental to the public safety and welfare.

Lastly, the public interest is served by the homeowners seeking to improve their property. In general, homeowners are encouraged to take an active role in maintaining their properties for improving neighborhood conditions.

Consistency with the Comprehensive Plan

This request is consistent with the following objective and policy.

Housing Element

Objective 5: Housing Quality. The City will continue to maintain a high standard of quality for new and existing housing. **Staff comment: This request is consistent with Objective 5 as the City encourages existing housing to be maintained and kept in good repair.**

Future Land Use Element

Policy 1.15: Land development regulations adopted to implement this comprehensive plan will be based on, and will be consistent with, the standards for uses and densities/intensities as described in the following future land use classifications. In no case shall maximum densities allowable by the following classifications conflict with Policy 4.3.3 of the Conservation and Coastal Management Element regulating density of development within the Coastal High Hazard Area.

- a. Single Family Residential: *Sites of 10,000 square feet and greater, with densities not to exceed 4.4 units per acre.* **Staff comment: The site has R-1B Zoning that is consistent with the Single Family Future Land Use Classification of the site. The site has an area of 10,672 sq. ft. and one dwelling which equates to a density of 4.1 dwelling units per acre, less than the maximum density of 4.4 dwelling units per acre allowed by land use classification.**

Recommendation:

Since the variance does not meet all five standards for considering such requests, staff recommends **denial**.

Staff Contact Information

Mike Struve, AICP, LEED Green Associate, Planning Team Coordinator

PH: 239-242-3255/Email: mstruve@capecoral.net



NOTICE TO SURROUNDING PROPERTY OWNERS

CASE NUMBER: VA18-0023

REQUEST: The applicants, Uri Aminov and Marlies Laaper, seek a dimensional variance of three feet eleven inches from the minimum front setback requirement of twenty-five feet to permit the expansion of an existing garage twenty-one feet one inch from the front property line in the Single-Family Residential (R-1B) District on property described as Lots 24 and 25, Block 1164, Unit 19, Cape Coral Subdivision; property located at 3117 SE 20th Place.

LOCATION: 3117 SE 20th Place

CAPE CORAL STAFF CONTACT: Mike Struve, AICP, LEED Green Associate, Planning Team Coordinator, 239-242-3255, mstruve@capecoral.net

PROPERTY OWNERS: Marlies Laaper and Uri Aminov

UPCOMING PUBLIC HEARING: Notice is hereby given that the City of Cape Coral Hearing Examiner will hold a public hearing at 9:00 A.M. on Tuesday, February 5, 2019 on the above mentioned case. The public hearing will be held in the City of Cape Coral Council Chambers, 1015 Cultural Park Boulevard, Cape Coral, FL.

All interested parties are invited to appear and be heard. All materials presented before the Hearing Examiner will become a permanent part of the record. The public hearing may be continued to a time and date certain by announcement at this public hearing without any further published notice. Copies of the staff report will be available five days prior to the hearing. The file can be reviewed at the Cape Coral Community Development Department, Planning Division, 1015 Cultural Park Blvd., Cape Coral, FL.

DETAILED INFORMATION: The case report and colored maps for this application are available at the City of Cape Coral website, www.capecoral.net/publichearing (Click on 'Public Hearing Information', use the case number referenced above to access the information); or, at the Planning Division counter at City Hall, between the hours of 7:30 AM and 4:30 PM. The public hearing may be continued to a time and date certain by announcement at this public hearing without any further published notice.

HOW TO CONTACT: Any person may appear at the public hearing and be heard, subject to proper rules of conduct. You are allowed sufficient time to write or appear at the public hearing to voice your objections or approval. Written comments filed with the Director will be entered into the record. Please reference the case number above within your correspondence and mail to: Department of Community Development, Planning Division, P.O. Box 150027, Cape Coral, FL 33915-0027. The hearings may be continued from time to time as necessary.

ADA PROVISIONS: In accordance with the Americans With Disabilities Act, persons needing a special accommodation to participate in this proceeding should contact the Human Resources Department whose office is located at Cape Coral City Hall, 1015 Cultural Park Boulevard, Cape Coral, Florida; telephone 1-239-574-0530 for assistance; if hearing impaired, telephone the Florida Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8770 (v) for assistance.

APPEALS: If a person decides to appeal any decision made by the Hearing Examiner with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

The News-Press media group

news-press.com A GANNETT COMPANY

Please contact us with changes or cancellations as soon as possible, otherwise no further action needed.

TOLL-FREE
888-516-9220

Local #
239-335-0258

Email
FNPLegals@gannett.com

Customer: CITY OF CAPE CORAL_DEPT OF COM

Ad No.: 0003357050

Address: 1015 CULTURAL PARK BLVD
CAPE CORAL FL 33990
USA

Net Amt: \$

Run Times: 1

No. of Affidavits: 1

Run Dates: 01/26/19

Text of Ad:

NOTICE OF PUBLIC HEARING

CASE NUMBER: VA18-0023

REQUEST: The applicants, Uri Aminov and Marlies Laaper, seek a dimensional variance of three feet eleven inches from the minimum front setback requirement of twenty-five feet to permit the expansion of an existing garage twenty-one feet one inch from the front property line in the Single-Family Residential (R-1B) District on property described as Lots 24 and 25, Block 1164, Unit 19, Cape Coral Subdivision; property located at 3117 SE 20th Place.

LOCATION: 3117 SE 20th Place

CAPE CORAL STAFF CONTACT: Mike Struve, AICP, LEED Green Associate, Planning Team Coordinator, 239-242-3255, mstruve@capecoral.net

PROPERTY OWNERS: Marlies Laaper and Uri Aminov

UPCOMING PUBLIC HEARING: Notice is hereby given that the City of Cape Coral Hearing Examiner will hold a public hearing at 9:00 A.M. on Tuesday, February 5, 2019 on the above mentioned case. The public hearing will be held in the City of Cape Coral Council Chambers, 1015 Cultural Park Boulevard, Cape Coral, FL.

All interested parties are invited to appear and be heard. All materials presented before the Hearing Examiner will become a permanent part of the record. The public hearing may be continued to a time and date certain by announcement at this public hearing without any further published notice. Copies of the staff report will be available five days prior to the hearing. The file can be reviewed at the Cape Coral Community Development Department, Planning Division, 1015 Cultural Park Blvd., Cape Coral, FL.

DETAILED INFORMATION: The case report and colored maps for this application are available at the City of Cape Coral website, www.capecoral.net/publichearing (Click on 'Public Hearing Information', use the case number referenced above to access the information); or, at the Planning Division counter at City Hall, between the hours of 7:30 AM and 4:30 PM

HOW TO CONTACT: Any person may appear at the public hearing and be heard, subject to proper rules of conduct. You are allowed sufficient time to write or appear at the public hearing to voice your objections or approval. Written comments filed with the Director will be entered into the record. Please reference the case number above within your correspondence and mail to: Department of Community Development, Planning Division, P.O. Box 150027, Cape Coral, FL 33915-0027.

The hearings may be continued from time to time as necessary.

ADA PROVISIONS: In accordance with the Americans With Disabilities Act, persons needing a special accommodation to participate in this proceeding should contact the Human Resources Department whose office is located at Cape Coral City Hall, 1015 Cultural Park Boulevard, Cape Coral, Florida; telephone 1-239-574-0530 for assistance; if hearing impaired, telephone the Florida Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8770 (v) for assistance.

by order of
Kimberly Bruns, CMC
Interim City Clerk
REF # VA18-0023
AD# 3357050 Jan. 26, 2019

Department of Community Development
Planning Division

AFFIDAVIT

IN RE: APPLICATION OF: LAAPER MARLIES & AMINOV URI

APPLICATION NO: VA18-0023

STATE OF FLORIDA)
) §
COUNTY OF LEE)

I, Vincent A. Cautero, AICP having first been duly sworn according to law, state on my oath the following:

That I am the Director of the Department of Community Development and responsible in performing duties as required for the City of Cape Coral.

That pursuant to City of Cape Coral Code. Section 8.3.2A and Section 8.11.3.A all required written notice and publication has been provided. Also, posting of a sign has been done when applicable per Section 8.3.2A.

DATED this 28th day of January, 2019.

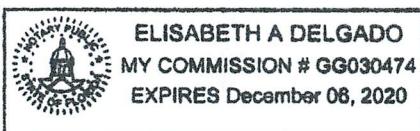


Vincent A. Cautero, AICP

STATE OF FLORIDA
COUNTY OF LEE

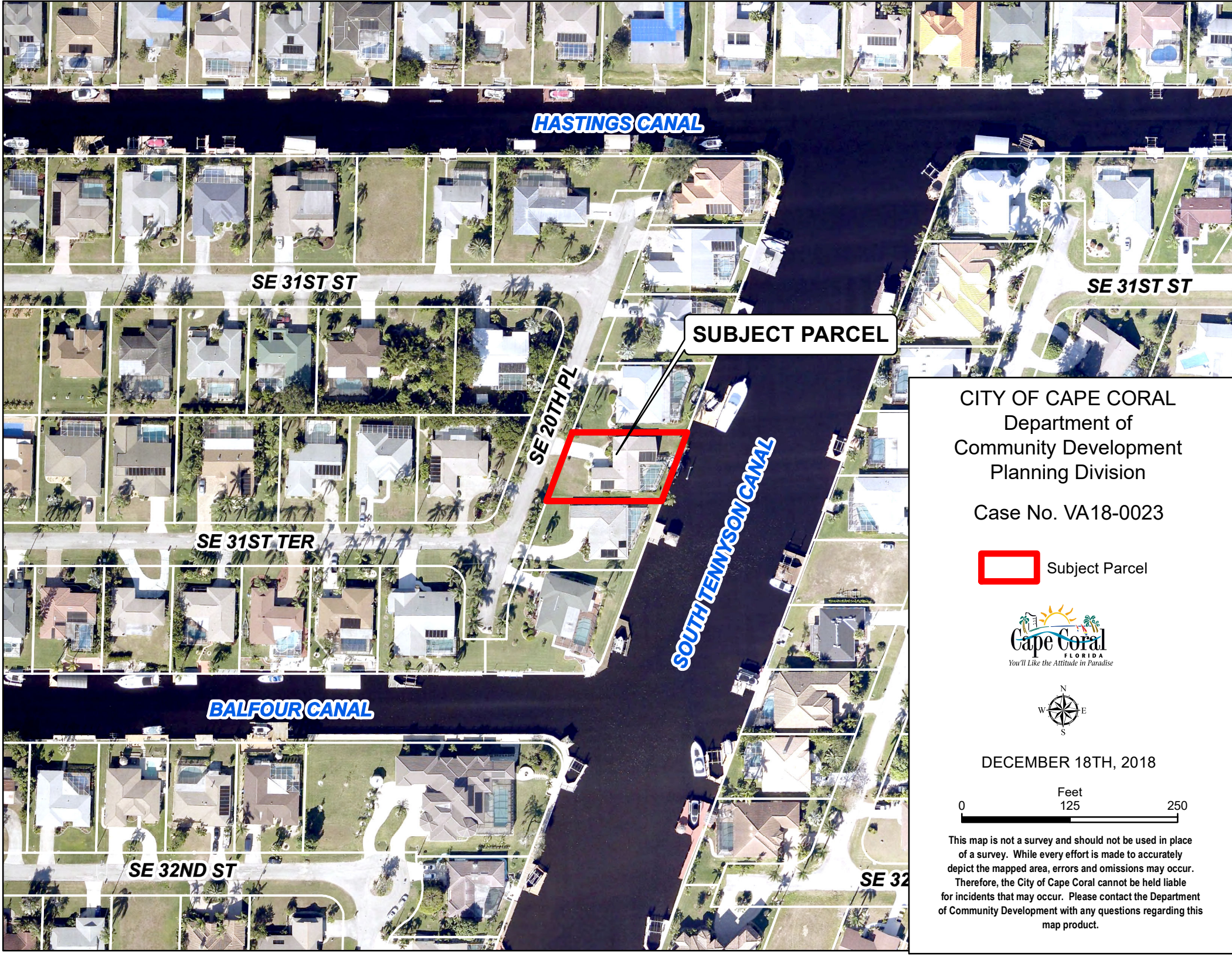
The foregoing instrument was acknowledged before me this 28th day of January, 2019, by Vincent A. Cautero, AICP, who is personally known to me and who did not take an oath.

Exp. Date 12/4/20 Commission # 66030474



Elisabeth A. Delgado
Signature of Notary Public

Elisabeth A. Delgado
Print Name of Notary Public



HASTINGS CANAL

SE 31ST ST

SE 31ST ST

SUBJECT PARCEL

SE 20TH PL

SOUTH TENNYSON CANAL

SE 31ST TER

BALFOUR CANAL

SE 32ND ST

SE 32ND ST

CITY OF CAPE CORAL
Department of
Community Development
Planning Division

Case No. VA18-0023



Subject Parcel



DECEMBER 18TH, 2018

0 Feet 125 250

This map is not a survey and should not be used in place of a survey. While every effort is made to accurately depict the mapped area, errors and omissions may occur. Therefore, the City of Cape Coral cannot be held liable for incidents that may occur. Please contact the Department of Community Development with any questions regarding this map product.

CORNWALLIS PKWY


CITY OF CAPE CORAL
Department of
Community Development
Planning Division

CURRENT ZONING MAP
500' Proximity Boundary

Case No. VA18-0023

LEGEND

 500' Proximity Boundary

 Subject Parcel

Zoning

 R-1B



DECEMBER 18TH, 2018



This map is not a survey and should not be used in place of a survey. While every effort is made to accurately depict the mapped area, errors and omissions may occur. Therefore, the City of Cape Coral cannot be held liable for incidents that may occur. Please contact the Department of Community Development with any questions regarding this map product.

HASTINGS CANAL

SE 31ST ST

SE 31ST ST

SUBJECT PARCEL

SE 20TH PL

SE 31ST TER

SOUTH TENNYSON CANAL

SE 22ND AVE

BALFOUR CANAL

SE 22ND PL

SE 32ND ST

SE 32ND ST

500' PROXIMITY BOUNDARY

MOODY CANAL

Item Number:	3.A.
Meeting Date:	2/5/2019
Item Type:	DATE AND TIME OF NEXT MEETING

**AGENDA REQUEST
FORM**
CITY OF CAPE CORAL



TITLE:

Tuesday, February 19, 2019, at 9:00 a.m., in Council Chambers

REQUESTED ACTION:

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?
2. Is this a Strategic Decision?
If Yes, Priority Goals Supported are listed below.
If No, will it harm the intent or success of the Strategic Plan?

Planning & Zoning Recommendations:

SUMMARY EXPLANATION AND BACKGROUND:

WHAT THE ORDINANCE ACCOMPLISHES:

LEGAL REVIEW:

EXHIBITS:

PREPARED BY:

Division- Department-

SOURCE OF ADDITIONAL INFORMATION: