



AGENDA FOR THE HEARING EXAMINER

Tuesday, March 19, 2019

9:00 AM

Council Chambers

1. HEARINGS CALLED TO ORDER

2. HEARINGS

- A. Case #VA18-0018*; Address: 4402 Chiquita Boulevard South; Applicant: DELO Investment Group, LLC; Continued
- B. Case #VP19-0004*; Address: 5362 Malibu Court; Applicant: Michael and Carolyn Mitch,
- C. Case #SE18-0018*; Address: 905 Del Prado Boulevard North; Applicant: Palmetto Capital Group, LLC
- D. ADDENDUM Case # VA18-0021* Continued; Address: 1205 SW 10th Terrace; Applicant: Michael and Julie Kayatta

3. DATE AND TIME OF NEXT HEARINGS

- A. Tuesday, April 2, 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: 3/19/2019
Item Type: HEARINGS

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Case #VA18-0018*; Address: 4402 Chiquita Boulevard South; Applicant: DELO Investment Group, LLC; Continued

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:

Beattie Development requests a variance of 10 feet, to the minimum rear setback requirement of 20 feet, for a pergola in the Residential Development (RD) District.

LEGAL REVIEW:

EXHIBITS:

See attached "Backup Material"

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 # VA18-0018

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

DELO Investment Group, LLC Address: 5023 Pelican Blvd.

City: Cape Coral State: FL Zip 33904
Phone: 702-204-9435

APPLICANT

Beattie Development

Address: 857 SE 47th St.

EMAIL

office@beattiedev.com

City: Cape Coral State: FL Zip 33904
Phone: 239-257-3295

AUTHORIZED REPRESENTATIVE

Paul Beattie

Address: 857 SE 47th St

EMAIL

office@beattiedev.com

City: Cape Coral State: FL Zip 33904
Phone: 239-257-3295

Unit 70 Block 4741 Lot(s) 53 54 Subdivision Cape Coral

Address of Property 4402 Chiquita Blvd - S

Current Zoning residential Plat Book 22, Page 70

Strap Number 09-45-23-C3-04741-0530

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 # YA18-0018

Paul Beattie

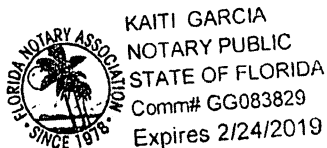
APPLICANT NAME (PLEASE TYPE OR PRINT)

[Signature]
APPLICANT'S SIGNATURE

(SIGNATURE MUST BE NOTARIZED)

STATE OF FL, COUNTY OF Lee

Sworn to (or affirmed) and subscribed before me this 15 day of August, 2018, by
Paul Beattie who is personally known or produced
as identification.



Exp. Date: 2/24/19 Commission Number: GG083829

Signature of Notary Public:
Printed name of Notary Public:

K. Garcia
Kaiti Garcia



DEPARTMENT OF COMMUNITY DEVELOPMENT

APPLICATION FOR VARIANCE

Questions: 239-574-0776

CASE # VA18-0018

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)

DELO Investment Group
CORPORATION/COMPANY NAME

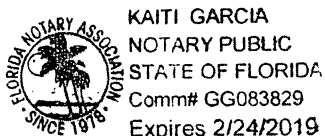
Deanna Frommholz
PROPERTY OWNER (PLEASE TYPE OR PRINT)

[Signature]
PROPERTY OWNER'S SIGNATURE

STATE OF FL, COUNTY OF Lee

Sworn to (or affirmed) and subscribed before me this 15 day of Aug, 2018 by Deanna Frommholz who is personally known or produced n/a as identification.

Exp. Date: 2/24/19 Commission Number: GG083829



Signature of Notary Public: K. Garcia
Printed name of Notary Public: Kaiti Garcia



DEPARTMENT OF COMMUNITY DEVELOPMENT

APPLICATION FOR VARIANCE

Questions: 239-574-0776

CASE # YA18-0018

AUTHORIZATION TO REPRESENT PROPERTY OWNER(S)

PLEASE BE ADVISED THAT

Paul Beattie
(Name of person giving presentation)

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

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

UNIT 70 BLOCK 4741 LOT(S) 53-54 SUBDIVISION Cape Coral

OR LEGAL DESCRIPTION

4402 Chiquita Blvd. S. 09-45-23-03-04741-0530 strap #
Cape Coral, FL 33904 10547279 folio #
LOCATED IN THE CITY OF CAPE CORAL, COUNTY OF LEE, FLORIDA.

DELO Investment Group
PROPERTY OWNER (Please Print)

Deanna Frammholz (MGR)
PROPERTY OWNER (Signature & Title)

PROPERTY OWNER (Please Print)

Deanna Frammholz
PROPERTY OWNER (Signature & Title)

STATE OF FL, COUNTY OF

Lee

Subscribed and sworn to (or affirmed) before me this 15 day of Aug., 2018 by
Deanna Frammholz who is personally known or produced n/a
as identification.



KAITI GARCIA
NOTARY PUBLIC
STATE OF FLORIDA
Comm# GG083829
Expires 2/24/2019

Exp. Date: 2/24/19 Commission Number: 66083829

Signature of Notary Public:

Printed name of Notary Public:

K. Garcia
Kaiti Garcia

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 # VA18-0018

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.

Paul Beattie
OWNER/APPLICANT (PLEASE TYPE OR PRINT)

[Signature]
OWNER/APPLICANT SIGNATURE

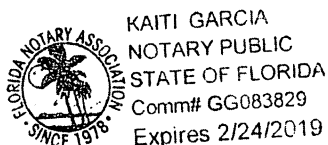
(SIGNATURE MUST BE NOTARIZED)

STATE OF FL COUNTY OF Lee

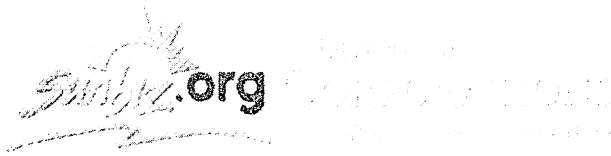
Sworn to (or affirmed) and subscribed before me on this 15 day of August,
2018 by Paul Beattie, who is personally known or who has produced n/a as
Identification.

Exp. Date 2/24/19
Commission # GG083829

K. Garcia
Signature of Notary Public



Kaiti Garcia
Print Name of Notary Public

[Department of State](#) / [Division of Corporations](#) / [Search Results](#) / [Order By Document Number](#) /

Detail by Entity Name

Florida Limited Liability Company
DELO INVESTMENT GROUP, LLC

Filing Information

Document Number L17000252467
FEI/EIN Number NONE
Date Filed 12/11/2017
State FL
Status ACTIVE

Principal Address

5023 PELICAN BOULEVARD
CAPE CORAL, FL 33914

Mailing Address

5023 PELICAN BOULEVARD
CAPE CORAL, FL 33914

Registered Agent Name & Address

WINESETT, RICHARD W
2248 FIRST STREET
FORT MYERS, FL 33901

Authorized Person(s) Detail

Name & Address

Title MGR

FROMMHOLZ, DEANNA
5023 PELICAN BOULEVARD
CAPE CORAL, FL 33914

Annual Reports

No Annual Reports Filed

Document Images

[12/11/2017 - Florida Limited Liability](#)

[View image in PDF format](#)



Visit our Design Center

(239) 257-3295

1213 Cape Coral Parkway E.
Cape Coral, Florida 33904

City of Cape Coral
Community Development Department
RE: Application for Variance

LETTER OF INTENT

8/15/2018

To Whom it May Concern,

Paul Beattie, President and Owner of Beattie Development is applying for a variance and acting as applicant on behalf of property owner, DELO Investment Group, LLC. for a pergola variance to be applied for at property address **4402 Chiquita Blvd. S. Cape Coral, FL 33914.**

SPECIAL CONDITIONS

This address is currently being used as a model home center for Beattie Development. This is not being used currently as a single-family residence. We are willing and able to remove the pergola structure when the property is converted back to a single-family residence.

NO SPECIAL PRIVILEGE

This address is currently being used as a model home center for Beattie Development. This is not being used currently as a single-family residence. We are willing and able to remove the pergola structure when the property is converted back to a single-family residence. Sheds, pools and screen cages have a 10-foot set back requirement, we feel an open-air structure, like our pergola, should be granted to be within the 10-foot set back as well.

HARDSHIP

The initial model home house permit was missing the pergola which we were not aware that it was not included. The pergola has been constructed. Property is currently being used as a model home center, not a single-family residence. We are willing to remove the structure upon converting back to single family residence.

MINIMUM VARIANCE

Sheds, pools and screen cages have a 10-foot set back requirement, we feel an open-air structure, like our pergola, should be granted to be within the 10-foot set back as well.

PURPOSE AND INTENT; PUBLIC INTEREST

This address is currently being used as a model home center for Beattie Development. This is not being used currently as a single-family residence. We are willing and able to remove the pergola structure when the property is converted back to a single-family residence. Pergola is currently being showcased to potential clients as an option for outdoor living space, not including a pool and screen enclosure.

Thank you for considering our variance application. Do not hesitate to call me directly with any further questions.

Sincerely,
Paul Beattie- President

Planning Division Case Report

VA18-0018

Review Date: December 11, 2018

Property Owner: DELO Investment Group, LLC
5023 Pelican Boulevard
Cape Coral, FL 33914

Applicant: Beattie Development

Authorized Rep: Paul Beattie, President, Beattie Development

Request: The applicant requests a variance of 10 feet, to the minimum rear setback requirement of 20 feet, for a pergola in the Residential Development (RD) District.

Location: 4402 Chiquita Boulevard South
Cape Coral, FL 33914
Strap number: 09-45-23-C3-04741.0530
Unit 70, Block 4741, Lots 53-54

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: Transition

Code Compliance Case: No

Right-of-Way Access: The site has frontage along Chiquita Boulevard. Access to the model home site is from a site to the south (4406 Chiquita Boulevard) owned by the City of Cape Coral that has a driveway on SE 44th Street.

Background:

The ±10,000-sq. ft. site is in southern Cape Coral. This site has a Single Family Future Land Use Classification and RD Zoning. Sites to the north, south, and west share the same future land use and zoning classifications. These sites to the east have a Commercial Activity Center Future Land Use Classification and Single Family Residential (R-1B) Zoning.

On February 8, 2018, SE HEX Order 1-2018 approved a model home use at 4402 (Lots 53-54) and 4406 (Lots 55-56) Chiquita Boulevard South.

On March 23, 2018, the City approved a site plan for a model home on Lots 53-54 and a parking lot on Lots 55-56.

On May 7, 2018, a building permit for a pergola was submitted to the City. First review comments from the City included a rejection comment noting that a minimum 20-foot rear setback was required.

On May 11, 2018, a certificate of occupancy was issued a single-family home at 4402 Chiquita Boulevard.

On May 15, 2018, the building permit for the pergola was resubmitted for review. Staff comments show that while the site plan for the project depicts a pergola with a 20-foot rear setback, the pergola had already been constructed on the site with a 10-foot rear setback.

On August 20, 2018, Beattie Development applied for a 10-foot setback variance to allow an existing pergola to remain 10 feet from the rear property line of a site with RD Zoning.

Similar Variances Cases within Block 4741

City records show there have been no variances awarded to properties in Block 4741 or within 500 feet of the subject site. In 2016, the City amended the LUDRs to allow pergolas as an accessory structure (Ordinance 31-16). This case represents the first variance involving a pergola in the City.

Applicable Regulation:

LUDR, Section 2.7.3, Table RD, requires a minimum rear setback of 20 feet for buildings in the RD District. Unless a different setback distance is establish in Section 3.1 for a particular accessory structure, this rear setback also applies to these structures as well.

Zoning History of the Site

The Future Land Use Classification of the site was amended from Single Family and Multi-Family by PDP to Single Family by Ordinance 13-03.

The site was rezoned from Multi-Family (R-3) to RD by Ordinance 61-90.

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 accessory uses in LUDR, Section 3.1, 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 10,000-sq. ft. site is flat and rectangular, typical of most platted home sites in the City. While the applicant correctly points out that a model home is not a residential use, this factor has no bearing on how setbacks are administered. For example, setbacks for single-family

homes as well as buildings associated with nonresidential uses (like parks, assisted living facilities, and child care facilities) allowed in the RD District are required to abide by the same setbacks. The fact that the structure on this site is associated with a nonresidential use does not constitute a special condition or circumstance. As a result, staff finds that special conditions or circumstances are not present in this case.

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.

The applicant correctly states that sheds and pools with screen cages have a minimum 10-foot rear setback for residential-zoned sites. However, different rear setbacks govern several other accessory structures. For example, detached garages, gazebos, and pergolas are required to maintain a minimum 20-foot rear setback for most residential-zoned sites. These same types of accessory structures are required to maintain even greater rear setbacks (a minimum of 35 feet) for Residential Estate sites.

In this case, the pergola was constructed without a permit. In a review of the building permit for the pergola (B18-12409), staff identified in the first review comments that a minimum 20-foot rear setback was required for the subject site.

Since the LUDRs do not explicitly allow a setback of 10 feet for pergolas, combined with the fact that the pergola was constructed without the required permit, no special privilege exists. Other owners with similarly-zoned sites would be required to comply with the same 20-foot minimum rear setback as the applicant.

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.

Pergolas are one of several accessory structures for which special regulations exist in LUDR, Section 3.1. Accessory structures are defined in Article XI as “A building or structure, the use of which is customarily incidental and subordinate to the principal building or structure ...”

As such, accessory structures are not necessary to ensure the reasonable use of the property. In this case, the existing model home building provides the applicant with reasonable use of the site. The pergola, while desired by the applicant, is not required to provide reasonable use of the site. The pergola can be relocated on the site to comply with zoning or removed from the site. While both options may involve inconvenience and expense on the part of the applicant, neither option constitutes an undue hardship, especially since the pergola was constructed without a permit. The applicant can continue to operate the model home with the pergola moved to a different area of the site, or the structure can be removed from the property. Based on this analysis, staff finds that no hardship exists.

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 minimum variance necessary to allow the pergola to remain in place as currently constructed. However, a pergola is an accessory structure and, therefore, is not critical to the owner to enjoy reasonable use of the land. The model home is functional and can operate without the pergola. As a result, since the pergola is not necessary for the model home use, staff finds this standard has not been met.

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.

Setbacks provide minimum separation distances between buildings and structures and property lines. Setbacks are frequently established by local governments for reasons of public policy such as safety, privacy, and environmental protection.

The 10-foot rear setback variance sought by the applicant is substantial as pergolas are required to maintain a minimum 20-foot rear setback. A single-family home is adjacent to the rear of the site at 4403 SW 16th Place. This property would likely be the most affected by a variance. Two other parcels to the south that are near the pergola are either vacant (4407 SW 16th Place) or are developed as a parking lot for the model home (4406 Chiquita Boulevard South).

The LUDRs do allow some accessory structures with lesser rear setbacks than pergolas. For example, sun shelters and sheds have minimum rear yard setbacks of six and 10 feet, respectively. Screen enclosures with open mesh that are commonly used to enclose pools also have a minimum rear setback of 10 feet.

Except for the rear setback, the pergola meets all other standards established in the LUDRs for this type of structure, including height and area. The property to the immediate west, has a six-foot tall vinyl fence along the rear property line of the site that partially screens the pergola. Since the pergola occupies a model home site, the primary building is not inhabited, and consequently the pergola is not used for leisure purposes on a regular basis as this structure might be if it occupied a site with a single-family home. Based on the above factors, the granting of the variance will be in harmony with the general intent and purpose of the LUDRs as the 10-foot setback for this structure will be similar to setbacks established for at least two other accessory structures.

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 RD Zoning that is consistent with the Single Family Future Land Use Classification of the site. The site is 10,000 sq. ft. and has one model home. When the model home is converted to a single-family home at the expiration of the model home term, the site will have a density of 4.36 units per acre that is slightly less than the maximum density of 4.4 units per acre allowed in the Single Family Future Land Use Classification. 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

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

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

OFFICE OF THE HEARING EXAMINER, CITY OF CAPE CORAL
HEARING EXAMINER ORDER

SE HEX Order 1-2018
Rendered February 8, 2018

APPLICATION FOR: Special Exception (DCD Case #SE 17-0013)

NAME OF OWNERS: Andros Property Investment LLC (model home property)
City of Cape Coral (proposed parking lot and stormwater
treatment property)

NAME OF APPLICANT: Beattie Development Corporation

APPLICANT'S AUTHORIZED REPRESENTATIVE: Paul Beattie

PROPERTY ADDRESS: 4402 and 4406 Chiquita Boulevard South, Cape Coral, FL
Unit 70, Block 4741, Lots 53, 54, 55, 56

ZONING DISTRICT: Residential Development (RD)

FUTURE LAND USE CLASSIFICATION: Single-Family (SF)

URBAN SERVICES AREA: Transition

HEARING DATE: February 6, 2018

I. **SUMMARY OF REQUEST**

The Applicant is requesting a Special Exception to allow a model home use in the Residential Development (RD) Zoning District.

II. **SUMMARY OF HEARING EXAMINER ORDER**

The Hearing Examiner **approves** the application for a special exception, **subject to** the conditions set forth below and further subject to the City Council's approval of a lease for the use of Cape Coral City property for parking purposes.

III. **NOTICE OF HEARING**

Based on the testimony of City Staff Justin Heller at the Hearing, the Hearing Examiner finds that proper notice of this hearing was provided, in accordance with the requirements of Article VIII, § 8.3, Public Hearings, of the City of Cape Coral Land Use and Development Regulations ("LUDRs").

IV. **PARTICIPANTS IN HEARING**

CITY STAFF: JUSTIN HELLER, DAWN ANDREWS

CITY CLERK'S OFFICE: PATRICIA SORRELS

APPLICANT'S REPRESENTATIVE: Paul Beattie

MEMBERS OF PUBLIC: None

CORRESPONDENCE FROM PUBLIC: None

V. **EXHIBITS**

APPLICANT'S AND CITY STAFF'S EXHIBITS: previously submitted.

VI. **REVIEW OF LUDR REQUIREMENTS**

Authority.

The Hearing Examiner has the authority to approve or deny an application for a special exemption and prescribe appropriate conditions and safeguards (LUDR § 8.8.4).

Standard of Review of Evidence: Hearsay Evidence.

The Hearing Examiner's decision is based on whether the application meets all applicable requirements of the Comprehensive Plan, the City Code of Ordinances, and the LUDRs, upon review of the entirety of the record. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient by itself to support a finding unless it would be admissible over objection in court. In rendering this decision, the Hearing Examiner must consider all competent substantial evidence in the record, as defined in LUDR § 8.3.1.C.3.b.

Special Exception.

A Special Exception is defined in LUDR § 8.8.2 as:

a use which is essential to or would promote the public health, safety or welfare in a zoning district but which might impair the integrity and character of the district in which it is located or in adjoining districts, such that restrictions or conditions on location, size, extent and character of performance may be imposed in addition to those already imposed by the Land Use and Development Regulations.

VII. **TESTIMONY AT HEARING**

Applicant's Incorporation of Staff Report and Staff Testimony

The Applicant's Representative incorporated the Staff Report and Staff Testimony ("Staff Input") into the presentation and requested that the Hearing Examiner find the Staff Input as findings of fact.

Hearing Examiner's Findings of Fact

All documentary and oral testimony referenced below is accepted by the Hearing Examiner as findings of fact, except as specifically noted otherwise.

VIII. DISCUSSION AND FINDINGS

Site and Surrounding Area

Staff testified that the subject property, located in southwest Cape Coral along Chiquita Boulevard South, has frontage on both SW 44th St. and Chiquita Boulevard South. If approved, the model home would be on Lots 53 and 54, which is owned by Andros Property Investment, LLC.

The parking lot and stormwater treatment area for the model home is proposed for Lots 55 and 56 (4406 Chiquita Boulevard South) on property owned by the City. Staff testified that this site is improved with a lift station.

Staff testified that after the model home, if approved, has been converted to a single-family home, the driveway and parking lot would remain on the site to provide access and parking for the lift station. Staff testified that seven parking spaces would be provided, with access to the parking lot from S.W. 44th Street. Landscaping is proposed along the perimeter of the parking lot.

Staff testified that the surrounding area is primarily single-family homes and undeveloped lots. A neighborhood storage facility is being developed to the south of the site. The site and all properties in Block 4741 have Residential Development (RD) Zoning and a Single-Family (SF) Future Land Use (FLU) Classification. Properties to the east and west have Single-Family (R-1B) Zoning, while properties to the south are zoned Pedestrian Commercial (C-1) and have a Commercial Professional (CP) FLU Classification.

Comprehensive Plan Consistency.

As requested by Staff, the Hearing Examiner finds that the Project **is consistent** with the following provisions of the Future Land Use Element of the City's Comprehensive Plan:

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

Staff testified that signage on-site is regulated to prevent visual blight.

- *Policy 1.6: The City shall develop regulations that establish enhanced landscaping, buffering and signage standards and develop architectural design guidelines for non-residential development.*

Staff testified that the City requires enhanced landscape buffering around model home parking lots.

- *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 testified that, if the City Council approves the lease for the City-owned property, the model home location will meet the parking standards for model home sites. This approval is contingent upon such approval.

IX. **COMPLIANCE WITH SPECIAL EXCEPTION STANDARDS**

For the Application to be granted, it must comply with all of the Special Exception Standards set forth in LUDR § 8.8.5, as follows:

a. *Generally: Zoning District Requirements. (LUDR § 8.8.5 a)*

The site has RD Zoning and a Single-Family FLU Classification. Pursuant to LUDR § 2.7.3C.16, model homes are allowed as a Special Exception in the R-D Zoning District upon compliance with the special regulations set forth in LUDR § 2.7.3, and LUDR § 2.7.3D.2, discussed *infra*.

The Hearing Examiner finds that the requested Special Exception, as conditioned, **complies** with all requirements of the zoning district(s) in which the property is located.

b. *Compatibility. (LUDR § 8.8.5 b)*

As set forth above, all of the parcels in the relevant Block have a Single-Family FLU Classification and RD Zoning.

The RD District has special regulations for model homes including hours of operation, lighting, and prohibiting real estate sales. Staff testified that 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 required to be converted to a single-family home, which is a permitted use in the RD District. Staff testified that this use would be compatible with the surrounding area that is primarily residential in nature.

The Hearing Examiner finds that the tract of land **is suitable** for the type of special exception use proposed, by virtue of its location, shape, topography and the nature of surrounding development.

c. *Minimum Lot Frontage and Access. (LUDR § 8.8.5c)*

Staff testified that the subject site meets all the minimum dimensional requirements for the RD District, including minimum lot depth and width.

Staff further testified that access to the parking lot would be from S.W. 44th Street only.

Staff testified that model homes typically do not generate large numbers of trips, with most trips occurring during the daytime. Since the regulations specify that model homes cannot open until 9:00 a.m., it is unlikely that the hours of

operation would conflict with weekday commuters traveling on SW 43rd Lane or Chiquita Boulevard.

Staff further testified that, due to the low number of trips, along with the timing of these trips, this use should not have a detrimental effect on the neighborhood.

The Hearing Examiner finds that the lot frontage on the street is **sufficient** to permit properly spaced and located access points designed to serve the type of special exception use proposed. In addition, the Hearing Examiner **approves** all access points as described herein.

d. *Building Location and Setbacks.* (LUDR § 8.8.5d)

Staff testified that the model home complies with the established setbacks for the RD district.

The Hearing Examiner finds that the location of the proposed model home on-site is **compliant** with the minimum setbacks for the RD District.

e. *Screening and Buffering.* (LUDR § 8.8.5e)

Staff testified that the site plan provides for a continuous row of shrubs screening the parking lot's perimeter.

The Hearing Examiner finds that the premises **are** properly screened from adjoining and contiguous properties by approved landscaping.

X. **COMPLIANCE WITH SPECIAL REGULATIONS APPLICABLE TO MODEL HOMES**

For the Application to be granted, it must comply with the Special Regulations applicable to Model Homes in the RD Zoning District, as set forth in LUDR § 2.7.3D.2.a-k. The Applicant's Representative testified that Applicant has no objection to the staff testimony and recommendations, as set forth below:

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.* (LUDR §2.7.3D.2.a)

Staff testified that the site is 21, 110 square feet in size, and, if the special exception application is approved, would contain one (1) model home.

This complies with the minimum site area set forth above.

The Hearing Examiner finds that the minimum land area criterion **is met**.

b. *The parking lot for a model home site(s) shall be set back a minimum of five feet from the side property line and 15 feet from the rear property line. The*

setback areas shall contain at least a five-foot landscaped buffer to the adjoining rear and side property lines. (LUDR §2.7.3D.2.b)

Staff testified that the parking lot meets the minimum setback requirements and the landscaped buffer requirements would be met in this Application.

The Hearing Examiner finds that the parking lot setback and landscaped buffer requirements **are met**.

- c. *No parking directly to the rear of a model home on one building site. (LUDR §2.7.3D.2.c)*

Staff testified that this Special Exception involves two parcels. The parking lot will be south of the model home with access from SW 44th St.

The Hearing Examiner finds that the parking location requirements **are met**.

- d. *Parking: five paved spaces on site for the first model home site, three additional paved spaces on site for each additional adjoining model. (LUDR §2.7.3D.2.d)*

Staff testified that seven (7) parking spaces would be provided for use by the subject site.

The Hearing Examiner finds that the parking requirements **are met**.

- e. *Vehicle parking entrance(s) to the model home site shall be from the same street which faces front entrance to the model home site(s) 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. (LUDR §2.7.3D.2.e)*

Staff testified that the access to the parking lot will be from SW 44th Street, consistent with City of Cape Coral Engineering design standards.

The Hearing Examiner finds that the parking entrance requirements **are met**.

- f. *Time limit: five years maximum unless the model home site conforms to all other provisions of this ordinance. (LUDR §2.7.3D.2.f)*

This Special Exception will be **limited to a period of five years**, beginning with the date of City Council's approval of the lease associated with this use.

An extension of this use beyond this five-year period could be sought in the future by Applicant. This would trigger the requirement of another special exception request.

g. Deposit required [remainder of provision omitted] (LUDR §2.7.3D.2.g)

Staff testified that a deposit **will be required** prior to approval of the site plan for the parking lot.

h. Model home sites may be open for business between 9:00 am and 9:00 pm daily. (LUDR §2.7.3D.2.h)

Staff testified that this requirement **will be monitored** by Staff.

i. Outside lighting permitted, except from 10:00 pm to 7:00 am (LUDR §2.7.3D.2.i)

Staff testified that this requirement **will be monitored** by Staff.

j. Security lighting: two security lights, one in front and one at rear of building. (LUDR §2.7.3D.2.j)

Staff testified that **security lighting may be installed**, with 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. (LUDR §2.7.3D.2.k)

Staff testified that this **will be monitored** by Staff.

XI. CONDITIONS OF APPROVAL (LUDR § 8.8.4b)

1. Requirement of City Council's Approval of Lease for City-Owned Site.

This Special Exception approval for the model home use is subject to the lease of the City site being approved by the City Council. If City Council does not approve the lease, this Order shall be null and void and of no effect.

2. Screening of Property.

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.

3. Driveway.

The driveway to the house shall be blocked or roped off to prevent its use during the life of the Special Exception Use.

4. *Deposit Required Prior to Site Plan Approval.*

Prior to site plan approval for the parking lot, the Applicant shall provide a deposit payable to the City for the removal or restoration of the parking lot. A similar deposit shall be provided by the Applicant 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.

5. *Compliance with Zoning District Standards and Requirements and Inclusion of LUDRs, City Ordinances and Other Applicable Law.*

Applicant shall comply with all standards and requirements for the zoning district in which the property is located and all other requirements set forth in the LUDRs, City ordinances and all other applicable laws and regulations, which are incorporated herein by reference.

XII. **FINDINGS AND CONCLUSIONS**

Based upon the testimony and documentary exhibits presented during the Hearing as set forth above, the Hearing Examiner finds and concludes as follows:

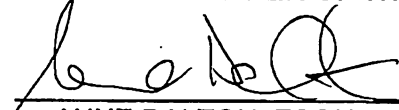
1. *Promotion of Public Health, Safety or Welfare.* The requested Special Exception **is essential to or would promote** the public health, safety or welfare in the zoning district in which it is proposed to be located.
2. *Consideration of Impairment of Integrity or Character of District.* The requested Special Exception **will not** impair the integrity and character of the district in which it is located, or in adjoining districts.
3. *Meeting Minimum Requirements.* The requested Special Exception **meets** the minimum requirements set forth in the LUDRs for this use. Nothing in this Decision shall be construed as reducing, modifying, or eliminating such minimum requirements.
4. *Consistency with Comprehensive Plan, LUDR, and All Other Applicable Law.* The requested Special Exception, as conditioned, is consistent with the requirements of the zoning district(s) in which the property is located, the City of Cape Coral Comprehensive Plan, Land Use Development Regulations, and all other applicable law.

The Hearing Examiner hereby **APPROVES WITH FIVE (5) CONDITIONS** the request for a Special Exception filed by Applicant, for the reasons set forth above. Such approval is specifically conditioned on City Council's approval of the lease related to this application, as set forth in Condition #1 above.

SE HEX ORDER 1-2018
FEBRUARY 8, 2018


This Order takes effect on the date specified below.

HEARING EXAMINER OF THE CITY OF CAPE CORAL, FLORIDA


ANNE DALTON, ESQUIRE

2/8/18
DATE

ATTEST:


CITY CLERK



NOTICE TO SURROUNDING PROPERTY OWNERS

CASE NUMBER: VA18-0018

REQUEST: Beattie Development requests a variance of 10 feet, to the minimum rear setback requirement of 20 feet, for a pergola in the Residential Development (RD) District.

LOCATION: 4402 Chiquita Boulevard South

CAPE CORAL STAFF CONTACT: Mike Struve, AICP, LEED Green Associate, Planning Team Coordinator

PROPERTY OWNER(S): DELO Investment Group, LLC

AUTHORIZED REPRESENTATIVE: Paul Beattie, President, Beattie Development

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, January 8, 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.

Department of Community Development
Planning Division

AFFIDAVIT

IN RE: APPLICATION OF: Beattie Development

APPLICATION NO: VA18-0018

STATE OF FLORIDA)
) §
COUNTY OF LEE)

I, Richard Carr, having first been duly sworn according to law, state on my oath the following:

That I am the Acting 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.

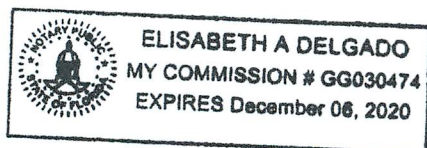
DATED this 31st day of December, 2018.


Richard Carr

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 31st day of December, 2018, by Richard Carr, who is personally known to me and who did not take an oath.

Exp. Date 12/6/20 Commission # GG030474




Signature of Notary Public

Elisabeth A. Delgado
Print Name of Notary Public

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.: 0003311870

Address: 1015 CULTURAL PARK BLVD
CAPE CORAL FL 33990
USA

Net Amt: \$352.55

Run Times: 1

No. of Affidavits: 1

Run Dates: 12/29/18

Text of Ad:

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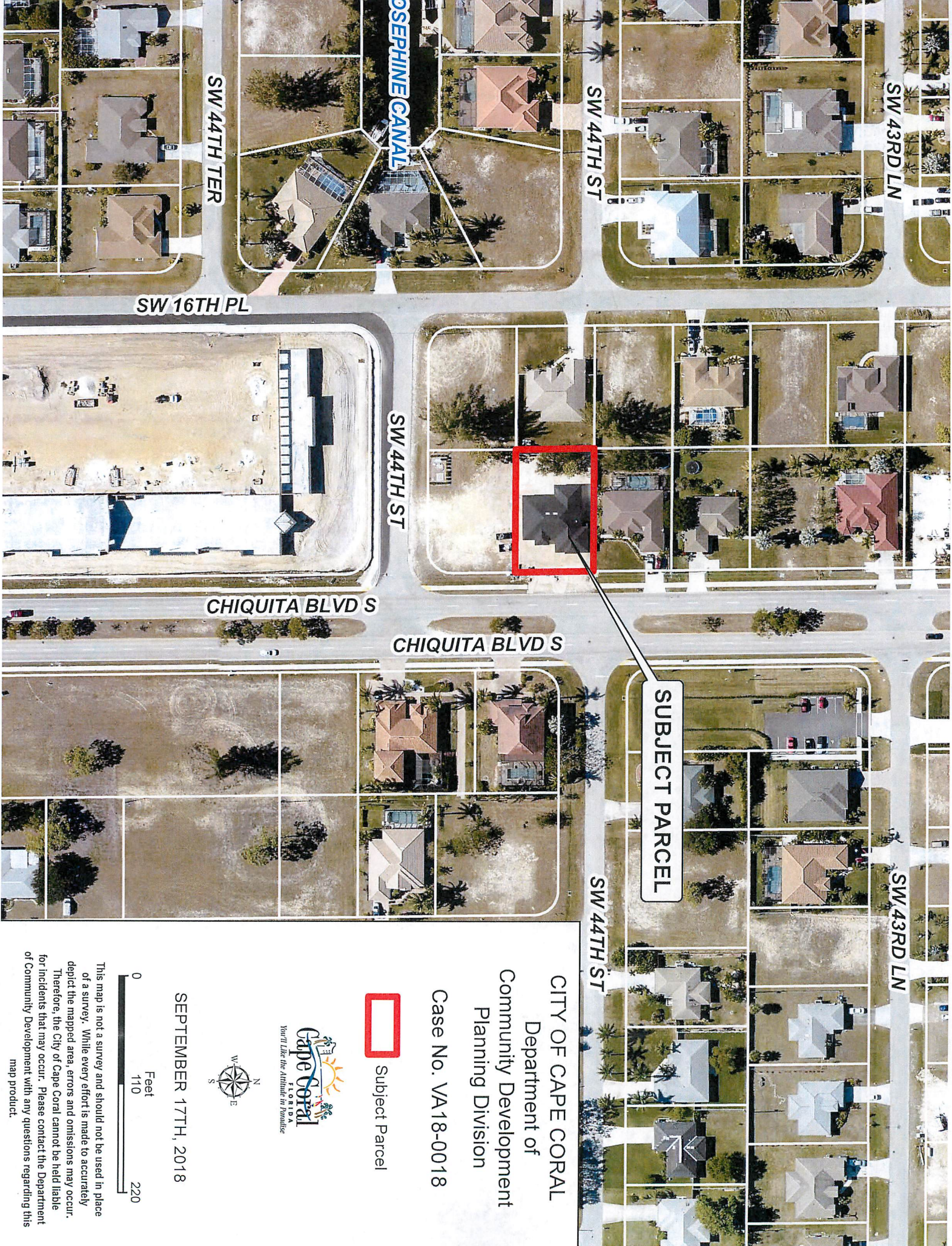
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by order of
Kimberly Bruns, CMC
Interim City Clerk
REF # VA18-0018
AD# 3311870 Dec. 29, 2018



SUBJECT PARCEL

CITY OF CAPE CORAL

Department of
Community Development
Planning Division

Case No. VA18-0018



Subject Parcel



SEPTEMBER 17TH, 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. VA18-0018

LEGEND

 500' Proximity Boundary

 Subject Parcel

Zoning

 MR

 P-1

 R-1B

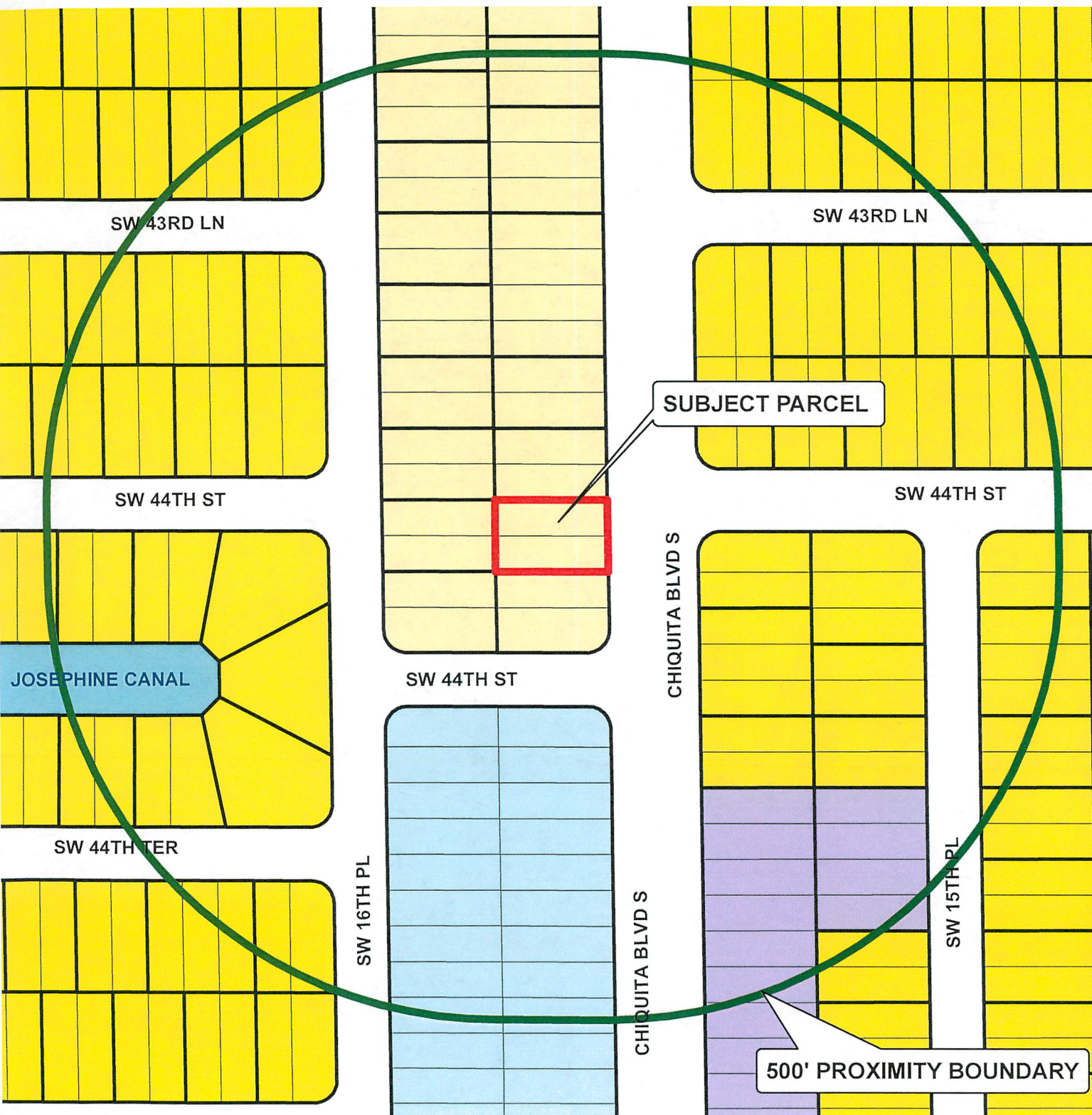
 RD



SEPTEMBER 17TH, 2018



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Item Number: 2.B.
Meeting Date: 3/19/2019
Item Type: HEARINGS

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Case #VP19-0004*; Address: 5362 Malibu Court; Applicant: Michael and Carolyn Mitch,

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, Michael and Carolyn Mitch, request a vacation of plat for a portion of the Lafayette Canal and Malibu Basin rights-of-way and the underlying public utility and drainage easements located adjacent to Lots 23-25, Block 29, Unit 1, Part 2, Cape Coral Subdivision; and request a vacation of plat for public utility and drainage easements associated with Lots 23-25, Block 29, Unit 1, Part 2, Cape Coral Subdivision, property located at 5362 Malibu Court.

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

VACATION OF PLAT APPLICATION

Questions: 239-574-0776

Case # VP19-0004

REQUEST TO PLANNING & ZONING COMMISSION AND COUNCIL FOR A VACATION OF PLAT

FEE: \$843.00 – 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 must be paid prior to public hearing otherwise case will be pulled from public hearing.

Following the approval of your request, the applicant shall be responsible for reimbursing 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

Michael & Carolyn Mitch

Address: 5362 Malibu Ct
City: Cape Coral State: FL Zip 33904
Phone: 410-490-7263

APPLICANT

Michael & Carolyn Mitch
EMAIL michael.insleyfinancial@gmail.com

Address: 5362 Malibu Ct
City: Cape Coral State: FL Zip 33904
Phone: 410-490-7263

AUTHORIZED REPRESENTATIVE

BRIAN HAAG
EMAIL BH4610@gmail.com

Address: 1309 Cape Coral Pkwy E.
City: Cape Coral State: FL Zip 33904
Phone: 239-229-1199

Unit 1 PART 2 Block 29 Lot(s) 23+24+E Subdivision CAPE CORAL
Address of Property 1/2 LT 25 - 5362 MALIBU CT, Cape Coral, FL 33904
Current Zoning Residential Plat Book 11, Page 32
Strap Number 18-45-24-C4-00029.0230



DEPARTMENT OF COMMUNITY DEVELOPMENT

VACATION OF PLAT APPLICATION

Questions: 239-574-0776

Case # VP19-0004

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.

(SIGNATURE MUST BE NOTARIZED)

Michael Mitch

APPLICANT NAME (PLEASE TYPE OR PRINT)

APPLICANT'S SIGNATURE

STATE OF Florida COUNTY OF Lee

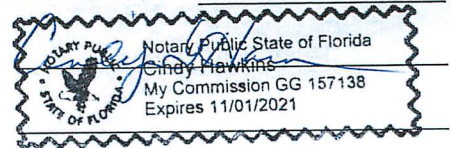
Sworn to (or affirmed) and subscribed before me this 8th day of January, 2019, by

Michael Mitch who is personally known or produced
as identification.

Exp. Date: _____ Commission Number: _____

Signature of Notary Public: _____

Printed name of Notary Public: _____





DEPARTMENT OF COMMUNITY DEVELOPMENT

VACATION OF PLAT APPLICATION

Questions: 239-574-0776

Case # VP19-0004

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, Planning & Zoning Commission/Local Planning Agency, 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.

CORPORATION/COMPANY NAME

Michael Mitch
PROPERTY OWNER (PLEASE TYPE OR PRINT)

STATE OF Florida, COUNTY OF

Lee

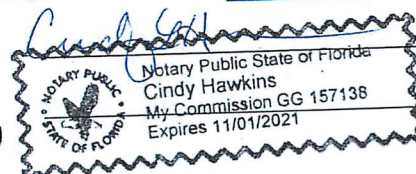
Sworn to (or affirmed) and subscribed before me this 8th day of January, 2019, by
Michael Mitch who is personally known or produced
as identification.

[Signature]
PROPERTY OWNER'S SIGNATURE

Exp. Date: _____ Commission Number: _____

Signature of Notary Public: _____

Printed name of Notary Public:
(SIGNATURE MUST BE NOTARIZED)





DEPARTMENT OF COMMUNITY DEVELOPMENT

VACATION OF PLAT APPLICATION

Questions: 239-574-0776

Case # VP19-0004

AUTHORIZATION TO REPRESENT PROPERTY OWNER(s)

PLEASE BE ADVISED THAT

BRIAN HAAG
(Name of person giving presentation)

IS AUTHORIZED TO REPRESENT ME IN THE REQUEST TO THE PLANNING & ZONING COMMISSION/ LOCAL PLANNING AGENCY, BOARD OF ZONING ADJUSTMENTS AND APPEALS AND/OR CITY COUNCIL FOR

Vacate of property between Seawall & property line

UNIT 1 PART 2 BLOCK 29 LOT(S) 23+24+E 1/2 LT 25 SUBDIVISION CAPE CORAL

OR LEGAL DESCRIPTION

Cape Coral Unit 1 PART 2 BLK 29 PB 11 PG 32
Lots 23+24+E 1/2 LT 25

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

PROPERTY OWNER (Please Print)

Michael Mitch
PROPERTY OWNER (Signature & Title)

PROPERTY OWNER (Please Print)

[Signature]
PROPERTY OWNER (Signature & Title)

STATE OF Florida, COUNTY OF Lee

Subscribed and sworn to (or affirmed) before me this

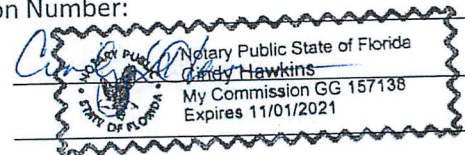
8th day of January, 2019 by

Michael Mitch who is personally known or produced
as identification.

Exp. Date: _____ Commission Number: _____

Signature of Notary Public: _____

Printed name of Notary Public: _____



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



DEPARTMENT OF COMMUNITY DEVELOPMENT

VACATION OF PLAT APPLICATION

Questions: 239-574-0776

Case # VP19-0004

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.

Michael Mitch
OWNER/APPLICANT (PLEASE TYPE OR PRINT)

[Signature]
OWNER/APPLICANT SIGNATURE

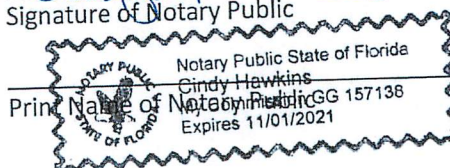
(SIGNATURE MUST BE NOTARIZED)

STATE OF Florida COUNTY OF Lee

Sworn to (or affirmed) and subscribed before me on this 8th day of January, 2019 by Michael Mitch, who is personally known or who has produced _____ as identification.

Exp. Date _____
Commission # _____

[Signature]
Signature of Notary Public



Prepared By and Return To:
OmniOne Title Services, LLC
4707 SE 9th Place
Cape Coral, FL 33904

File No. 0114-160

Property Appraiser's Parcel I.D. (folio) Number(s)
18-45-24-C4-00029.0230

WARRANTY DEED

THIS WARRANTY DEED dated April 6, 2016, by Colin A. Simmonds and Linda B. Simmonds, husband and wife hereinafter called the grantor, to Michael Mitch and Carolyn Mitch Husband and Wife, whose post office address is 231 Wineland Way, Stevensville, MD 21666, hereinafter called the grantee:

(Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

WITNESSETH: That the grantor, for and in consideration of the sum of \$10.00 and other valuable consideration, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys, and confirms unto the grantee, all the certain land situated in Lee County, Florida, viz:

Lot (s) 23 and 24 and The East Half of (E 1/2) of Lot 25, Block 29, Cape Coral Subdivision, Unit One, Part Two, according to the map or plat thereof, as recorded in Plat Book 11, Page(s) 29 to 36, inclusive, of the Public Records of Lee County, Florida.

Subject to easements, restrictions, reservations and limitations of recorded, if any.

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining.

TO HAVE AND TO HOLD the same in Fee Simple forever.

AND the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to: December 31, 2015

WARRANTY DEED

(Continued)

IN WITNESS WHEREOF, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:

Karen Terrell
(Witness Signature)

Angela Petrick
(Witness Signature)

Colin A. Simmonds

Linda B. Simmonds

Beech Hill, Brightling Rd Robertsbridge
(Address)

East Sussex, TN32 5EY England
(Address)

STATE OF Florida

COUNTY OF Lee

I HEREBY CERTIFY that on this day, before me, an officer duly qualified to take acknowledgments, personally appeared Colin A. Simmonds and Linda B. Simmonds, husband and wife who are personally known to me or have presented FL DL as proper photographic identification. WITNESS my hand and seal in the state and county aforesaid this 6th day of April, 2016.

Angela Petrick
Notary Public

My Commission Expires:

(SEAL)





January 14, 2019

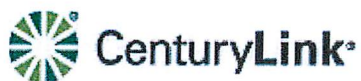
City of Cape Coral
815 Nicholas Pkwy
Cape Coral 33990

Re: Vacate of Plat
5362 Malibu Ct

To Whom it May Concern:

We respectfully request the vacation of the above referenced plat. This is a common occurrence in the Yacht Club area and was for many years via a simple quit claim deed. This will be used to reposition the pool in accordance with the neighboring homes.

Brian Haag
Windward Construction



Attention:

Joanne Stevens
joannewindward@gmail.com
5362 Malibu Ct
Cape Coral FL 33904

Subject: - No Objection Request

Site Address: 5362 Malibu Ct Cape Coral FL 33904
Strap# 18-45-24-C4-00029.0230

Dear Joanne

Regarding the referenced property above CenturyLink has **No Objection** to the Vacation 3' of the 6' utility easement along the east side and rear portion of the property between the canal /sea wall and the property.

Sincerely

Justin Lane

THANK YOU!

Justin Lane

Local Network Engineer
CPCR, NCPC, NFMY, SCST, PNIS
2820 Cargo St
Fort Myers FL 33916
Office: (239)-984-7009
justin.lane@centurylink.com



26100 Westlinks Drive Suite 4
Fort Myers, FL 33913
Phone: 239-432-1805

January 7, 2019

Windward Construction

Re: 5362 Malibu Ct. Cape Coral, Fl.33904

Dear Joanne Stevens,

This letter will serve to inform you that Comcast has no objection to your proposed vacation of the address referenced above.

Should you require additional information or assistance, please feel free to contact me here at 432-1805.

Cordially,

A handwritten signature in blue ink, appearing to read 'Mark Cook'.

Mark Cook
Project Coordinator



Lee County Electric Cooperative, Inc.
Post Office Box 3455
North Fort Myers, FL 33918-3455
(239) 995-2121 • Fax (239) 995-7904
www.lcec.net

January 15, 2019

Ms. Joanne Stevens
Windward Construction
4818 Coronado Parkway
Cape Coral, FL 33904

Re: Letter of No Objection to Vacation of Canal Interest; 5362 Malibu Court, Cape Coral, FL;
Owners: Michael Mitch and Carolyn Mitch, husband and wife; Strap: 18-45-24-C4-00029.0230.

Dear Ms. Stevens:

You have opened up negotiations on behalf of your customer, the Mitches.

We have reviewed the sketch, the request submitted, and our internal records. LCEC has **no objection** to the request. The sketch was most helpful. It produced by Eric Davis, PSM, of Davis Land Surveying, Inc.; having a job number of 18-1310QC.

However, LCEC requires a continuous perimeter easement surrounding your property in order to serve you. Therefore, in the after situation to the vacation, the petitioner will have provided to the appropriate local jurisdiction, and imposed six-foot wide easements along the seawall and the side easements so that there is a continuous perimeter easement located upon the parcel.

Should no definitive action, or no approval by local jurisdiction be received by the petitioner, this letter will terminate upon six months from the date listed above.

Should there be any questions please call me at 239-656-2112, or, if you prefer, I can be reached by email at russel.goodman@lcec.net.

Very truly yours,

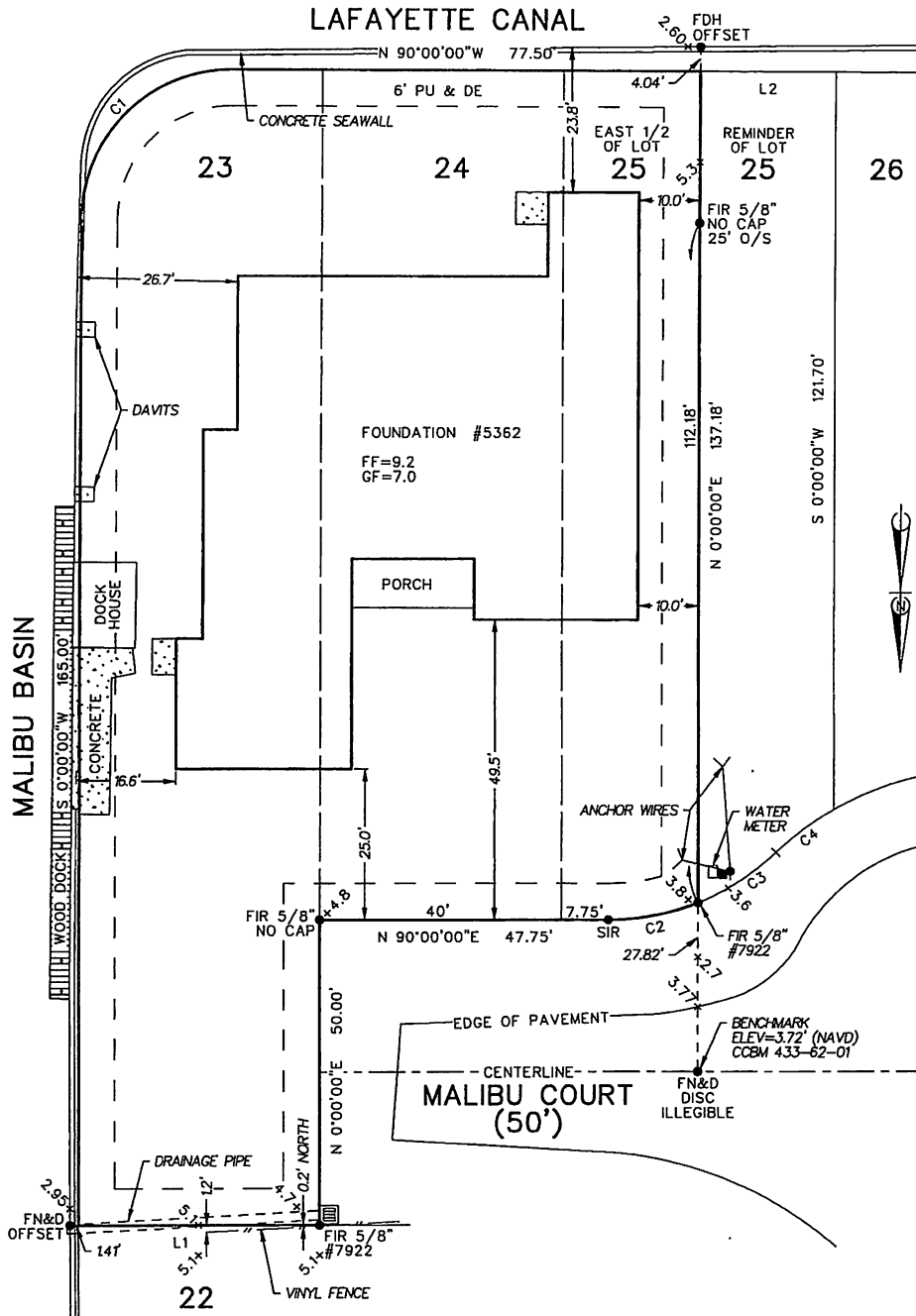
Russ Goodman,
SR/WA

Digitally signed by Russ
Goodman, SR/WA
Date: 2019.01.15 11:30:29
-05'00'

Russel Goodman, SR/WA
Senior Right of Way Agent – Land Rights

CURVE	Arc	Delta Angle	Chord	Ch Bearing	Radius	Tangent
C1	39.27'	90°00'00"	35.36'	S 45°00'00"W	25.00'	25.00'
C2	15.11'	21°38'19"	15.02'	N 79°10'51"E	40.00'	7.64'
C3	15.44'	22°07'23"	15.35'	S 57°18'00"W	40.00'	7.82'
C4	12.01'	13°45'45"	11.98'	S 53°07'10"W	50.00'	6.03'

LINE	BEARING	DISTANCE
L1	N 90°00'00"E	40.00'
L2	N 90°00'00"E	22.50'



BOUNDARY SURVEY

LOTS 23-24, EAST 1/2 OF 25
BLOCK 29, UNIT 1 PART 2

CAPE CORAL SUBDIVISION

PLAT BOOK 11, PAGES 29-36

LEE COUNTY, FLORIDA

CERTIFIED TO THE FOLLOWING ONLY:

MICHAEL AND CAROLYN MITCH

COPYRIGHT 2016 - DAVIS SURVEYING, INC.
THIS SURVEY MAY NOT BE REPRODUCED OR
USED BY OTHER THAN THE CERTIFIED TO
PARTIES ABOVE. NOT VALID FOR PERMITTING
OR CONSTRUCTION WITHOUT WRITTEN
CONTRACT WITH SURVEYOR.

REVISED 10/12/18 FOUNDATION LOCATED

BASIS FOR BEARINGS: MALIBU COURT - PLAT BEARING

COUNTY NUMBER 125095 MAP & PANEL NUMBER 12071C0415 SUFFIX F DATE OF FIRM INDEX 8/28/08 FIRM ZONE AE BASE FLOOD ELEVATION B

FR = FOUND IRON ROD
FP = FOUND IRON PIPE
FDH = FOUND DRILL HOLE
FCM = FOUND CONCRETE MONUMENT
SR = SET IRON ROD 1/2 LB #7075
PUE = PUBLIC UTILITY EASEMENT
PU & DE = PUBLIC UTILITY & DRAINAGE EASEMENT
SN&D = SET NAIL & DISK LB #7075
FRM = PERMANENT REFERENCE MONUMENT
FN&D = FOUND NAIL & DISK
POB = POINT OF BEGINNING
FE COR = FENCE CORNER
CONC = CONCRETE
F = NOT FIELD MEASURED
LNE-LAKE MAINTENANCE EASEMENT
DE=DRAINAGE EASEMENT

LEGEND

+0.0 = EXISTING ELEVATION

□ = UTILITY RISER

○ = UTILITY POLE

⊙ = FIRE HYDRANT

⊞ = CATCH BASIN

(P)=PLAT

(F)=FIELD

(D)=DEED

(C)=COMPUTED

—X— = WIRE FENCE

—/— = WOOD FENCE

NAVD=NORTH AMERICAN VERTICAL DATUM OF 1988

THIS SURVEY IS HEREBY CERTIFIED CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. THIS SURVEY IS NOT A CERTIFICATION OF TITLE, ZONING OR FREEDOM FROM ENCUMBRANCES. NO UNDERGROUND STRUCTURES HAVE BEEN LOCATED BY THIS SURVEY. ANY REFERENCE TO UNDERGROUND STRUCTURES IF ANY IS APPROXIMATE UNLESS OTHERWISE SHOWN. ALL FIELD MEASURED DIRECTIONS AND DISTANCES ARE IN SUBSTANTIAL AGREEMENT WITH THE DIRECTIONS & DISTANCES OF RECORD FOR THE PARCEL SURVEYED, NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF THE FLORIDA LICENSED SURVEYOR AND MAPPER. NO ABSTRACT OF TITLE WAS PROVIDED. EASEMENTS SHOWN ARE FROM THE RECORD PLAT OR DEED ONLY. CONTRACTOR MUST VERIFY WITH CITY OR COUNTY THERE ARE NO OTHER EASEMENTS OR BUILDING SETBACK REQUIREMENTS BURENING THE PROPERTY PRIOR TO PERMITTING AND CONSTRUCTION.

10/5/18

C.E. DAVIS, CERTIFICATE NO. 4839
-OR- ETC C. DAVIS, PSM # 5544
LB #7075



DAVIS
SURVEYING INC.

WWW.DAVISLANDSURVEYS.COM

4536 SE 16th PLACE, SUITE 3
CAPE CORAL, FLORIDA 33904

TEL (239) 549-6454

FAX (239) 549-2548

CONTACT@DAVISLANDSURVEYS.COM

JOB NUMBER

18-1310



Davis Surveying, Inc.

4536 SE 16th Place
Cape Coral, Florida
33904

February 13, 2019

Quit Claim Area

A parcel of land being part of the Malibu Basin and Lafayette Canal rights-of-way adjoining Lots 23, 24 and the East half of Lot 25, Block 29, Unit 1, Part 2, Cape Coral Subdivision, Plat Book 11, Pages 29 thru 36, Lee County, Florida, more particularly described as follows:

Beginning at the Southwest corner of the East half of said Lot 25; Thence run S 90°00'00"E along the platted Southerly lines of the above described lots for a distance of 77.50 feet to the point of curvature of a curve to the left having for it's elements a Radius of 25 feet, a Central Angle of 90°00'00" and a Chord Bearing and Distance of N 45°00'00"E, 35.36 feet; Thence along said curve for a distance of 39.27 feet; Thence run N 0°00'00"E along the easterly platted line of said Lot 23 for a distance of 165.00 feet to the Northeast corner of said Lot 23; Thence run N 90°00'00"E along the Easterly Prolongation of the North line of Lot 23 for a distance of 1.41 feet to a point on the water-face of the existing concrete seawall; Thence run along the water-face of the existing seawall for the following three courses; S 0°12'06"E for 37.12 feet; S 0°26'28"W for 80.94 feet; and S 0°48'10"W for 55.51 feet to the point of curvature of a non-tangent curve to the right having for it's elements a Radius of 19.52 feet, a Central Angle of 84°12'41" and a Chord Bearing and Distance of S 41°49'30"W, 26.18 feet; Thence run along said curve for a distance of 28.69 feet; Thence continue along said seawall S 89°20'54"W for a distance of 85.19 feet to a point on the southerly prolongation of the West line of the East Half of Lot 25; Thence run N 0°00'00"E, a distance of 4.04 feet along said southerly prolongation to the Southwest corner of the East Half of Lot 25 and the point of beginning. Parcel contains 596.8 sq. ft. +/-

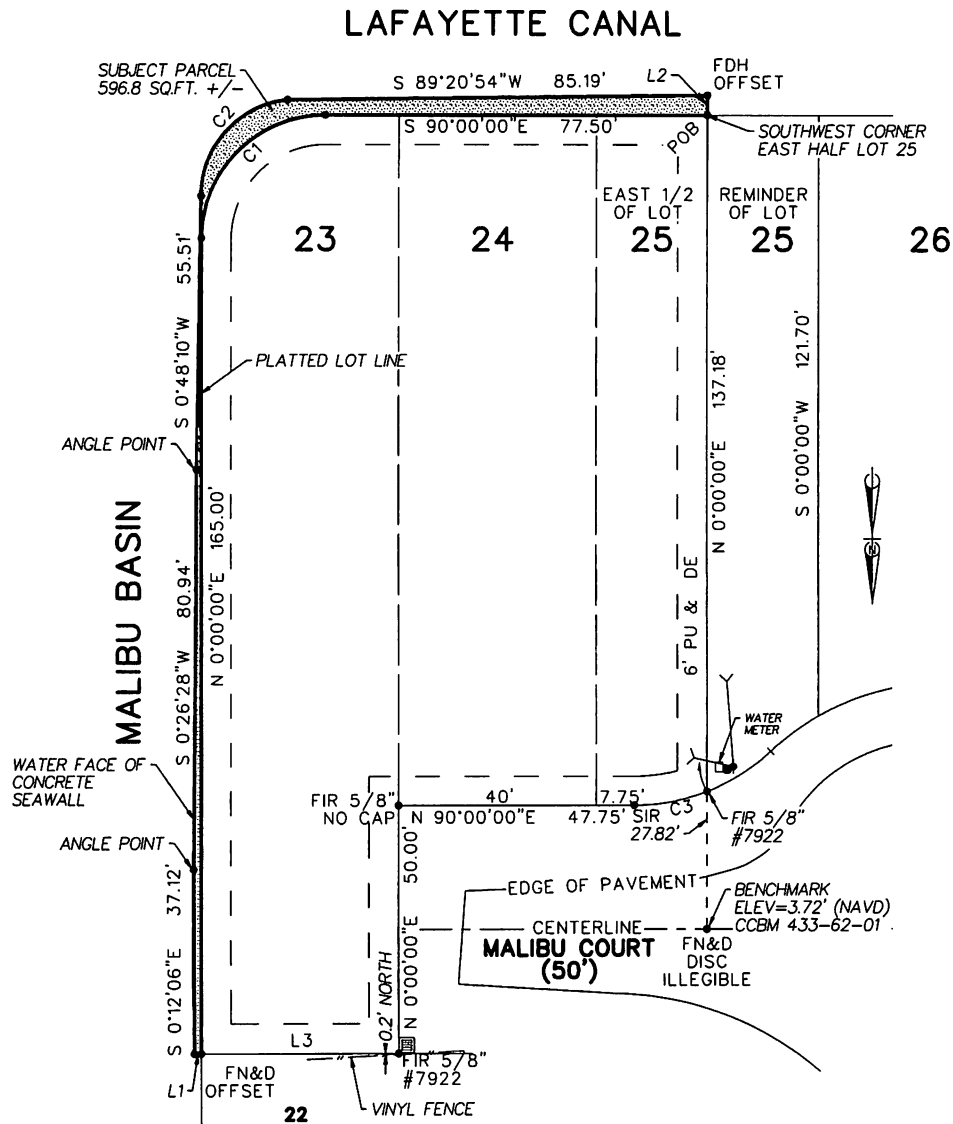
SHEET 1 OF 2



Prepared by Eric C. Davis
FL PSM 5544

CURVE	Arc	Delta Angle	Chord	Ch Bearing	Radius	Tangent
C1	39.27'	90°00'00"	35.36'	N 45°00'00"E	25.00'	25.00'
C2	28.69'	84°12'41"	26.18'	S 41°49'30"W	19.52'	17.64'

LINE	BEARING	DISTANCE
L1	N 90°00'00"E	1.41'
L2	N 0°00'00"E	4.04'
L3	S 90°00'00"W	40.00'



SKETCH TO ACCOMPANY LEGAL DESCRIPTION – NOT A SURVEY

FIR = FOUND IRON ROD
 FIP = FOUND IRON PIPE
 FDH = FOUND DRILL HOLE
 FCM = FOUND CONCRETE MONUMENT
 SR = SET IRON ROD 1/2" LB #7075
 PUE = PUBLIC UTILITY EASEMENT
 PU & DE = PUBLIC UTILITY & DRAINAGE EASEMENT
 SN&D = SET NAIL & DISK LB #7075
 PRM = PERMANENT REFERENCE MONUMENT
 FN&D = FOUND NAIL & DISK
 POB = POINT OF BEGINNING
 FE. COR = FENCE CORNER
 CONC. = CONCRETE
 * = NOT FIELD MEASURED
 LME = LAKE MAINTENANCE EASEMENT
 DE = DRAINAGE EASEMENT

LEGEND

+0.0 = EXISTING ELEVATION
 ● = UTILITY RISER
 ○ = UTILITY POLE
 ⊕ = FIRE HYDRANT
 ☐ = CATCH BASIN
 (P) = PLAT
 (F) = FIELD
 (D) = DEED
 (C) = COMPUTED
 —X— = WIRE FENCE
 —/— = WOOD FENCE

NAVD = NORTH AMERICAN VERTICAL DATUM OF 1988

A PARCEL OF LAND BEING PART OF THE MALIBU BASIN AND LAFAYETTE CANAL RIGHTS-OF-WAY ADJOINING LOT 23, 24 AND A THE EAST HALF OF LOT 25, BLOCK 29, UNIT 1, PART 2, CAPE CORAL SUBDIVISION LEE COUNTY, FLORIDA, PLAT BOOK 11, PAGES 29 THRU 36

SEE SHEET 1 OF 2 FOR DESCRIPTION

SCALE: 0 30

Eric C. Davis

C.E. DAVIS, CERTIFICATE NO. 4839
 --OR-- ERIC C. DAVIS, PSM # 5544
 LB #7075



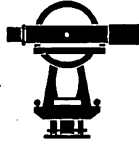
DAVIS
SURVEYING INC.
 WWW.DAVISLANDSURVEYS.COM

4536 SE 16th PLACE SUITE 3
 CAPE CORAL, FLORIDA 33904
 TEL(239)549-6454 FAX(239)549-2548
 CONTACT@DAVISLANDSURVEYS.COM

JOB NUMBER:

18-1310QC

SHEET 2 OF 2



Davis Surveying, Inc.

4536 SE 16th Place
Cape Coral, Florida
33904

December 17, 2018

VACATED 6' PUBLIC UTILITY AND DRAINAGE EASEMENT

A parcel of land being part of perimeter Public Utility and Drainage easement over and across Lots 23, 24 and the East half of Lot 25, Block 29, Unit 1, Part 2, Cape Coral Subdivision, Plat Book 11, Pages 29 thru 36, Lee County, Florida, more particularly described as follows:

Commencing at the Southwest corner of the East half of said Lot 25; Thence run S 90°00'00"E along the platted Southerly line said Lot 25 for a distance of 6.00 feet to the Point Beginning; thence run N 0°00'00"E for a distance of 6.0 feet; Thence S 90°00'00"E for a distance of 71.50 feet to the point of curvature of a curve to the left having for it's elements a Radius of 19.00 feet, a Central Angle of 90°00'00" and a Chord Bearing and Distance of N 45°00'00"E, 26.87 feet; Thence run along said curve to the left a distance of 29.85 feet; Thence run N 0°00'00"E for a distance of 159.00 feet; thence run N 90°00'00"E for 6.00 feet to the platted east line of said lot 23; Thence run along said east line S 0°00'00"W for a distance of 159.00 feet to the point of curvature of a curve to the right having for it's elements a Radius of 25.00 feet, a Central Angle of 90°00'00" and a Chord Bearing and Distance of S 45°00'00"W, 35.36 feet; Thence run along said curve to the right for a distance of 39.27 feet to the point of tangency; Thence run N 90°00'00"W along the south lines of Lots 23, 24 and the East half of lot 25 for a distance of 71.50 feet to the Point of Beginning. Parcel Contains 1590.3 SQ.FT. +/-

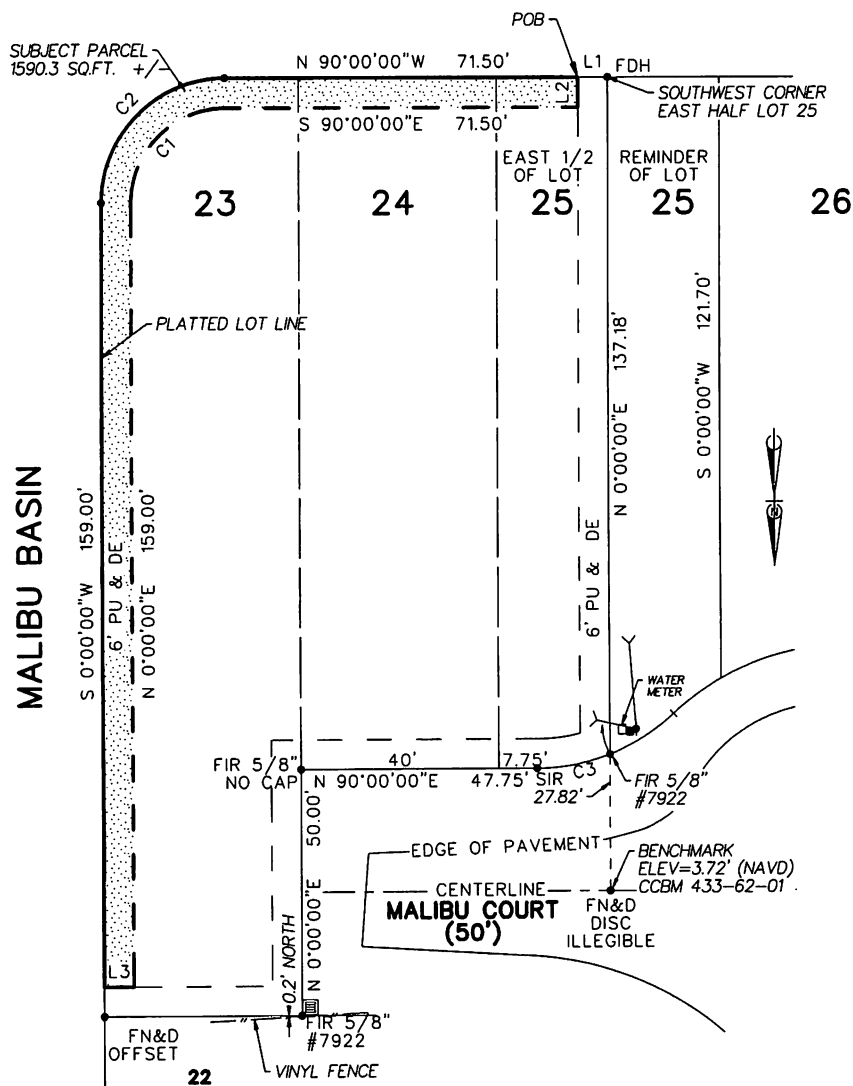
SHEET 1 OF 2

Prepared by Eric C. Davis
FL PSM 5544

CURVE	Arc	Delta Angle	Chord	Ch Bearing	Radius	Tangent
C1	29.85'	90°00'00"	26.87'	N 45°00'00"E	19.00'	19.00'
C2	39.27'	90°00'00"	35.36'	S 45°00'00"W	25.00'	25.00'

LINE	BEARING	DISTANCE
L1	N 90°00'00"E	6.00'
L2	N 0°00'00"E	6.00'
L3	N 90°00'00"E	6.00'

LAFAYETTE CANAL



SKETCH TO ACCOMPANY LEGAL DESCRIPTION – NOT A SURVEY

FIR = FOUND IRON ROD
FIP = FOUND IRON PIPE
FCM = FOUND CONCRETE MONUMENT
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LME=LAKE MAINTENANCE EASEMENT
DE=DRAINAGE EASEMENT

LEGEND

+0.0 = EXISTING ELEVATION
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UP = UTILITY POLE
FH = FIRE HYDRANT
CB = CATCH BASIN
(P)=PLAT
(F)=FIELD
(D)=DEED
(C)=COMPUTED
WF = WIRE FENCE
WF = WOOD FENCE
NAVD=NORTH AMERICAN VERTICAL DATUM OF 1988

A PARCEL OF LAND BEING PART OF THE EXISTING PERIMETER EASEMENT OVER & ACROSS LOT 23, 24 AND A THE EAST HALF OF LOT 25, BLOCK 29, UNIT 1, PART 2 CAPE CORAL SUBDIVISION LEE COUNTY, FLORIDA, PLAT BOOK 11, PAGES 29 THRU 36

SCALE: 0 30

Eric C. Davis

C.E. DAVIS, CERTIFICATE NO. 4839
-OR- ERIC C. DAVIS, PSM # 5544
LB #7075

SEE SHEET 1 OF 2 FOR DESCRIPTION



DAVIS SURVEYING INC.
WWW.DAVISLANDSURVEYS.COM

4536 SE 16th PLACE SUITE 3
CAPE CORAL, FLORIDA 33904
TEL(239)549-6454 FAX(239)549-2548
CONTACT@DAVISLANDSURVEYS.COM

JOB NUMBER:

18-1310QC
SHEET 2 OF 2



Davis Surveying, Inc.

4536 SE 16th Place
Cape Coral, Florida
33904

December 17, 2018

NEW PERIMETER EASEMENT

A 6' Public Utility and Drainage easement along the quit claimed portion of the Malibu Basin and Lafayette Canal adjoining Lot 23, 24 and the East Half of lot 25, Block 29, Unit 1, Part 2, Cape Coral Subdivision, Plat Book 11, Pages 29 thru 36, Lee County, Florida being more particularly described as follows:

Commencing at the Southwest corner of the East Half of said Lot 25; Thence run N 0°00'00"E for a distance of 1.96 feet to the Point of Beginning; Thence run N 89°20'54"E for a distance of 84.81 feet to the point of Curvature of a non-tangent curve to the left having for it's elements a Radius of 13.52 feet, a Central Angle of 83°20'12" and a Chord Bearing and Distance of N 41°10'09"E, 17.98 feet; Thence along said curve a distance of 19.67 feet; Thence run N 0°48'10"E for a distance of 55.56' to an angle point; Thence run N 0°26'28"E for 80.89 feet to an angle point; Thence N 0°12'06"W for a distance of 37.11 feet to a point on the North line of said lot 23; Thence run N 90°00'00"E along said north line and the easterly extension thereof for a distance of 6.00 feet to the water-face of the existing seawall along Malibu Basin; Thence run S 0°12'06"E along said water-face for a distance of 37.12 feet to an angle point; Thence run S 0°26'28"W for a distance of 80.94 feet to an angle point; Thence run S 0°48'10"W for a distance of 55.51 feet to the point of curvature of a non-tangent curve to the right having for it's elements a Radius of 19.52 feet, a Central Angle of 84°12'41" and a Chord Bearing and Distance of S 41°49'30"W, 26.18 feet; Thence run along said curve a distance of 28.69 feet; Thence continue along said seawall S 89°20'54"W for a distance of 85.19 feet to the southerly prolongation of the west line of the east half of said lot 25; Thence run N 0°00'00"E along said prolongation for a distance of 6.00 feet to the point of beginning. Parcel contains 1696.4 sq. ft. +/-

SHEET 1 OF 2

Prepared by Eric C. Davis
FL PSM 5544

LINE	BEARING	DISTANCE
L1	N 0.00'00"E	1.96'
L2	N 90.00'00"E	6.00'

Planning Division Case Report

VP 19-0004

Review Date: March 6, 2019

**Applicants/
Property Owners:** Michael and Carolyn Mitch

Rep: Brian Haag, Windward Construction

Owner Address: 5362 Malibu Court
Cape Coral, FL 33904

Request: The applicant requests to vacate:

1. ± 596.8 sq. ft. of canal right-of-way (ROW) and all underlying easements for a portion of the Lafayette Canal and the Malibu Basin.
2. $\pm 1,590.3$ sq. ft. of platted easements associated with Lots 23-25, Block 29, Unit 1, Part 2, Cape Coral Subdivision.

Property Location: 5362 Malibu Court
Cape Coral, FL 33904
Strap number: 18-45-24-C4-00029.0230
See Exhibit "A" for legal description

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

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

Recommendation: **Approval with conditions**

Urban Service Infill

Property Description:

The applicants own an $\pm 16,218$ sq. ft. site in southeast Cape Coral. A single-family dwelling that was constructed in 1967 was recently demolished in 2018. A permit for a new single-family dwelling was issued by the City in late August of 2018 and construction is currently underway on a 5,198-sq.ft. single-family residence. Construction of a new seawall on the site was completed in September 2018.

The site has a Single Family Future Land Use Classification and Single Family Residential (R-1B) Zoning and all properties within 1,500 feet share the same future land use classification and zoning.

Requests

A sketch of the site shows a narrow, uneven strip of canal ROW between the southern and eastern property lines and the outer edge of the seawall, adjacent to the Lafayette Canal the Malibu Basin, respectively. For most platted water-front sites in the City, property lines with water frontage extend to the edge of the canal. The applicants request to vacate ± 596.8 sq. ft. of canal ROW and all underlying

easements for a portion of the Lafayette Canal and Malibu Basin to extend the site to the edge of the seawall. The applicants also request to vacate $\pm 1,590.3$ sq. ft. of platted easements in Lots 23-25.

Zoning History of Block 29

The site has always had a Single Family Future Land Use Classification and R-1B Zoning.

Analysis:

Staff analyzed this request with the Land Use and Development Regulations (LUDR), Section 8.11, *"Vacation of plats, rights-of-way and other property."* The City Comprehensive Plan was also reviewed for policies on vacations.

Request No. 1: Vacate ± 596.8 sq. ft. of ROW Adjacent to the Lafayette Canal and Malibu Basin

The applicants request to vacate 596.8 sq. ft. of canal ROW between the east and south property lines of the site and the edge of the seawall. The applicants own the site that abuts this ROW and are therefore eligible to request this vacation. The ROW width is not uniform and appears between four to five feet at the widest point. The ROW is too narrow to provide a benefit to the public. As a result, there is no apparent reason for the City to maintain this strip of land as ROW. This vacation will enlarge the site by about 600 sq. ft. and will provide uninterpreted ownership of land between the east and south property lines and the edge of the seawall as was intended based on the subdivision plat for Unit 1, Part 2.

Request No. 2: Vacate ± 596.8 sq. ft. of Easements Underlying the Subject ROW

The applicants seek to vacate 596.8 sq. ft. of easements underlying the ROW described above in Request No. 1. All three utility providers lack facilities in these easements. None of these providers object to this request. The City also lacks facilities within this easement. Staff recommends that an easement be deeded by the owners to the City for providing an uninterrupted six-foot wide perimeter easement around the expanded site.

Request No. 3: Vacate $\pm 1,590.3$ sq. ft. of Easements in Lots 23-25, Block 29

The applicants seek to vacate $\pm 1,590.3$ sq. ft. of platted easements in Lots 23-25 adjacent to the east and south property lines of the site. All three utility providers lack facilities in these easements and do not object to this request. The City lacks facilities within this easement. This easement will no longer be necessary as the owners will be providing the City with a six-foot wide replacement easement around the expanded site.

Consistency with the Comprehensive Plan

The City lacks specific policies in the Comprehensive Plan for vacations involving residential-zoned lands.

This request is consistent with Policy 1.15 of the 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: This request is consistent with Policy 1.15.a as the site will be ±16,815.5 sq. ft. following the ROW vacation. When the site is redeveloped with a new single-family dwelling, this will equate to a density of 2.6 dwelling units per acre. This density is less than the maximum 4.4 dwelling units per acre allowed within this future land use classification.

Recommendation:

Based on the above analysis, staff recommends **approval** of all requested vacations with the following conditions.

Conditions of Approval

1. The vacation of the 596.8 sq. ft. of ROW and underlying easements shall be consistent with that shown in the sketch and accompanying legal description prepared by Davis Surveying, Inc., dated February 13, 2019, entitled "*Quit Claim Area*."
2. The vacation of the 1,590.3 sq. ft. of easements in Lots 23-25, Block 29 shall be consistent with that shown in the sketch and accompanying legal description prepared by Davis Surveying, Inc., dated December 17, 2018, entitled "*Vacated 6' Public Utility and Drainage Easement*."
3. Within 60 days from the date of adoption of this vacation, the owners shall provide to the City an easement deed for a six-foot wide easement consistent with that shown in the sketch and accompanying legal description prepared by Davis Surveying, Inc., dated December 17, 2018, entitled "*New Perimeter Easement*." This deed shall be approved by the City Property Broker prior to execution.
4. This resolution shall be recorded with the Lee County Clerk of Court by the City of Cape Coral. This resolution shall not be effectuated until the owners provide the City with an easement deed as described in Condition #3 above and reimburses the Department of Community Development for all recording fees associated with this resolution and the easement deed.

Staff Contact Information

Mike Struve, AICP, LEED Green Associate, Development Management Team Coordinator

PH: 239-242-3255

Email: mstruve@capecoral.net

EXHIBIT A

LEGAL DESCRIPTION OF 5362 MALIBU COURT

Lots 23 and 24 and the east half of (E ½) of Lot 25, Block 29, Cape Coral Subdivision, Unit One, Part Two, according to the map or plat thereof, as recorded in Plat Book 11, Pages 29-36, inclusive, of the Public Records of Lee County, Florida.



NOTICE TO SURROUNDING PROPERTY OWNERS

CASE NUMBER: VP19-0004

REQUEST: The applicants, Michael and Carolyn Mitch, request a vacation of plat for a portion of the Lafayette Canal and Malibu Basin rights-of-way and the underlying public utility and drainage easements located adjacent to Lots 23-25, Block 29, Unit 1, Part 2, Cape Coral Subdivision; and request a vacation of plat for public utility and drainage easements associated with Lots 23-25, Block 29, Unit 1, Part 2, Cape Coral Subdivision, property located at 5362 Malibu Court.

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

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, March 19th, 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.

After Hearing Examiner has made a written recommendation, the case will be scheduled for a public hearing before the City Council who will review the recommendation and make a final decision. You will receive another public hearing notice when this case is scheduled for a City Council hearing.

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

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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.: 0003423942

Address: 1015 CULTURAL PARK BLVD
CAPE CORAL FL 33990
USA

Net Amt: \$

Run Times: 1

No. of Affidavits: 1

Run Dates: 03/09/19

Text of Ad:

NOTICE OF PUBLIC HEARING

CASE NUMBER: VP19-0004

REQUEST: The applicants, Michael and Carolyn Mitch, request a vacation of plat for a portion of the Lafayette Canal and Malibu Basin rights-of-way and the underlying public utility and drainage easements located adjacent to Lots 23-25, Block 29, Unit 1, Part 2, Cape Coral Subdivision; and request a vacation of plat for public utility and drainage easements associated with Lots 23-25, Block 29, Unit 1, Part 2, Cape Coral Subdivision, property located at 5362 Malibu Court.

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

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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.

After Hearing Examiner has made a written recommendation, the case will be scheduled for a public hearing before the City Council who will review the recommendation and make a final decision. You will receive another public hearing notice when this case is scheduled for a City Council hearing.

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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 # VP19-0004
AD# 3423942 Mar. 9, 2019

Department of Community Development
Planning Division

AFFIDAVIT

IN RE: APPLICATION OF: Michael and Carolyn Mitch

APPLICATION NO: VP19-0004

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 12th day of March, 2019.

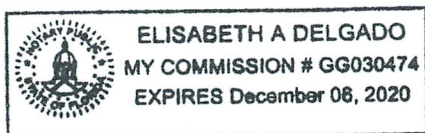


Vincent A. Cautero, AICP

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 12th day of March, 2019, by Vincent A. Cautero, AICP, who is personally known to me and who did not take an oath.

Exp. Date 12/1/20 Commission # 66030474



Elisabeth A. Delgado
Signature of Notary Public

Elisabeth A. Delgado
Print Name of Notary Public



Subject Parcels

MALIBU CANAL

MIKADO CT

LAFAYETTE
CANAL

CITY OF CAPE CORAL
Department of
Community Development
Planning Division

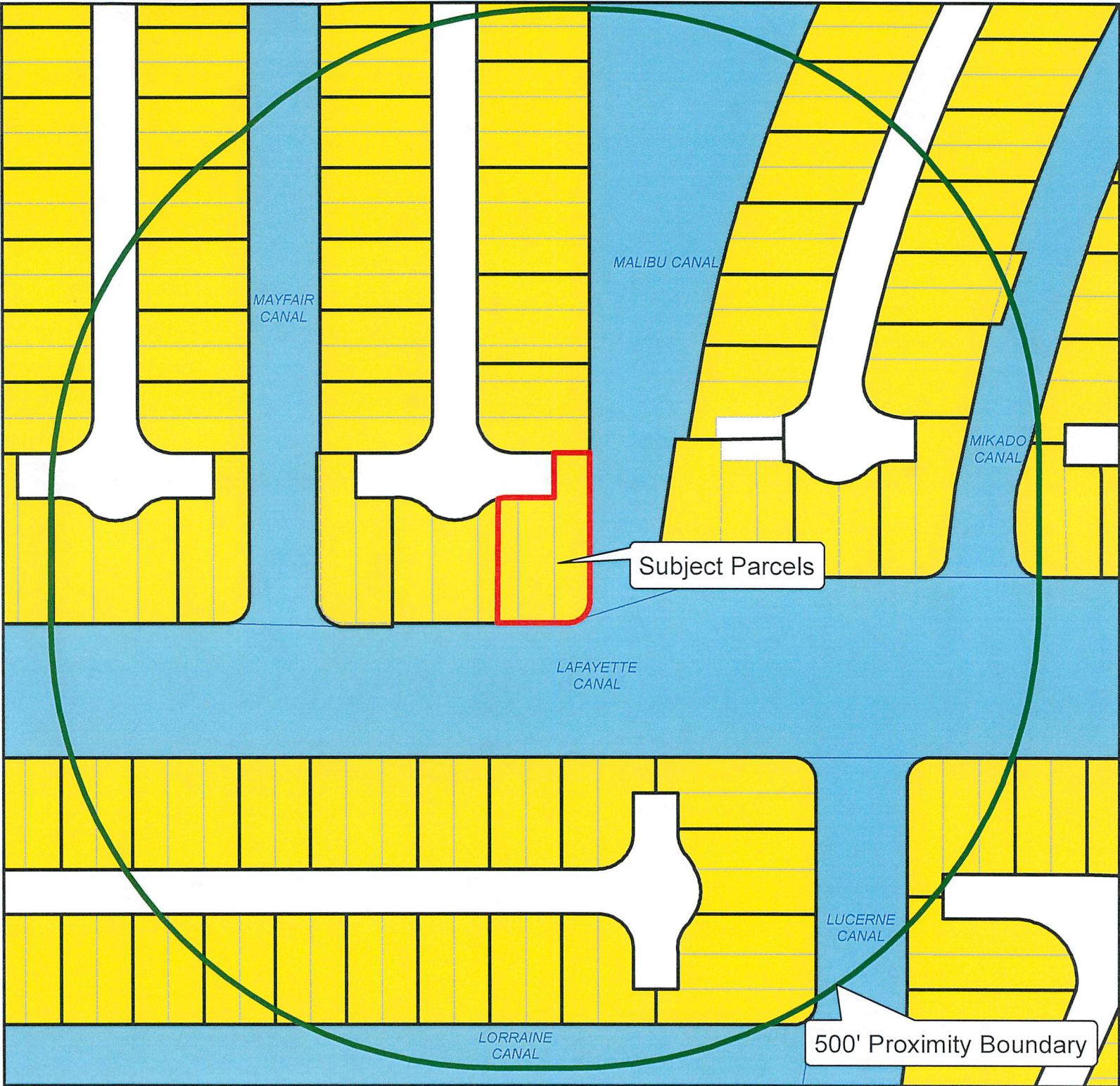
Case No. VP19-0004

 Subject Parcel



0 30 60 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. VP19-0004

Legend

-  Subject Parcel
-  500' Boundary
-  R-1B



FEBRUARY 6, 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



DEPARTMENT OF COMMUNITY DEVELOPMENT

VACATION OF PLAT APPLICATION

Questions: 239-574-0776

Case # _____

INSTRUCTIONS - APPLICATION FOR VACATION OF A
PLAT, STREET, ALLEY, CANAL, RIGHT OF WAY or EASEMENT

1. Application, Acknowledgement Form, Authorization to Represent.
 - a. All forms must be filled out completely.
 - b. All forms must be signed by the property owner(s) and must be notarized.
 - c. If the Authorized Representative is an attorney, the Application and the Acknowledgement form may be signed by the attorney and an Authorization to Represent Property Owner is not required.
2. Letter of intent identifying your request.
3. Proof of title to the tract or parcel of land covered by the plat or, of the plat of which vacation is sought.
4. Letters of approval from the following:

Lee County Electric Cooperative, Inc	Century Link (Telephone)	Comcast (Cable)
Russell Goodman	Justin Lane	Mark Cook
Project Coordinator-Land Acquisition	OSP Engineering	Project Coordinator
LCEC, PO Box 3455 North Ft Myers, FL 33918-3455	3301 Del Prado Blvd S. Cape Coral, FL	26100 Westlinks Drive Suite 4 Fort Myers, FL 33913
Russel.goodman@lcec.net	Justin.lane@centurylink.com	Mark_cook@comcast.com
(239) 656-2112	(239) 984-7009	(239) 432-1805

5. A sketch and legal description of the area proposed to be vacated area.
6. If there are any deed restrictions on the property, a copy of the restrictions will be required.
7. Certified topographic survey (done within the past six (6) months), and showing all pavement, utility and drainage features in said area, including but not limited to water, sewer and irrigation lines and manholes; power, cable and utility lines and poles; catch basins, inlets, pipes, and swales. In the case where no features exist, a signed, sealed and dated certification by a Florida registered Professional Engineer can be submitted which certifies that there are no such roadway, utility or drainage features within the limits of and adjacent to the proposed vacated area.
8. Please indicate on a separate sheet those persons to whom you wish a copy of the Public Hearing Notice sent.
9. IT IS REQUIRED THAT APPLICANT AND/OR REPRESENTATIVE ATTEND HEARINGS BEFORE BOTH THE HEARING EXAMINER AND THE CITY COUNCIL.



DEPARTMENT OF COMMUNITY DEVELOPMENT

VACATION OF PLAT APPLICATION

Questions: 239-574-0776

Case # _____

REQUEST TO PLANNING & ZONING COMMISSION AND COUNCIL FOR A VACATION OF PLAT

FEE: \$843.00 – 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 must be paid prior to public hearing otherwise case will be pulled from public hearing.

Following the approval of your request, the applicant shall be responsible for reimbursing 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

Michael + Carolyn Mitch

Address: 5362 Malibu Ct.
City: Cape Coral State: FL Zip 33904
Phone: 410-490-7263

APPLICANT

Michael + Carolyn Mitch

EMAIL

Michael.insleyfinancial@gmail.com

Address: 5362 Malibu Ct.
City: Cape Coral State: FL Zip 33904
Phone: 410-490-7263

AUTHORIZED REPRESENTATIVE

Brian HAAG
EMAIL BH4610@gmail.com

Address: 1309 Cape Coral PKWY E.
City: Cape Coral State: _____ Zip _____
Phone: 239-229-1199

Unit 1 part 2 Block 29 Lot(s) 23+24 + E 1/2 425 Subdivision Cape Coral
Address of Property _____

Current Zoning Residential Plat Book 11, Page 32
Strap Number 18-45-24-C4-00029-0230



DEPARTMENT OF COMMUNITY DEVELOPMENT

VACATION OF PLAT APPLICATION

Questions: 239-574-0776

Case # _____

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.

(SIGNATURE MUST BE NOTARIZED)

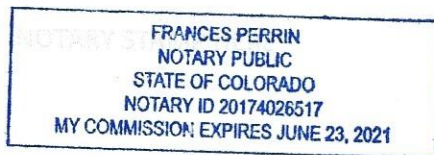
Carolyn mitch
APPLICANT NAME (PLEASE TYPE OR PRINT)

Carolyn mitch
APPLICANT'S SIGNATURE

STATE OF CO, COUNTY OF Saguache

Sworn to (or affirmed) and subscribed before me this 13 day of March, 2019 by Carolyn Insoley-mitch who is personally known or produced known personally as identification.

Exp. Date: 6-23-2021 Commission Number: 20174026517



Signature of Notary Public: Frances Perrin

Printed name of Notary Public: Frances Perrin

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, Planning & Zoning Commission/Local Planning Agency, 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.



DEPARTMENT OF COMMUNITY DEVELOPMENT

VACATION OF PLAT APPLICATION

Case # _____

Questions: 239-574-0776

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.

STATE OF CO, COUNTY OF Saguache

CORPORATION/COMPANY NAME

Sworn to (or affirmed) and subscribed before me this 13 day of March 2019 by

Carolyn Mitch

who is personally known or produced

Carolyn Mitch

PROPERTY OWNER (PLEASE TYPE OR PRINT)

PROPERTY OWNER'S SIGNATURE

Exp. Date: 6-23-21 Commission Number: 20174026517

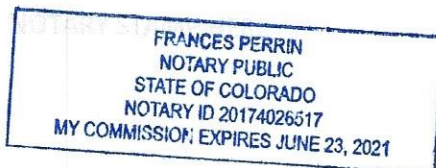
Signature of Notary Public:

Frances Perrin

Printed name of Notary Public:

Frances L Perrin

(SIGNATURE MUST BE NOTARIZED)





DEPARTMENT OF COMMUNITY DEVELOPMENT

VACATION OF PLAT APPLICATION

Questions: 239-574-0776

Case # _____

AUTHORIZATION TO REPRESENT PROPERTY OWNER(S)

PLEASE BE ADVISED THAT

Brian Haag
(Name of person giving presentation)

IS AUTHORIZED TO REPRESENT ME IN THE REQUEST TO THE PLANNING & ZONING COMMISSION/ LOCAL PLANNING AGENCY, BOARD OF ZONING ADJUSTMENTS AND APPEALS AND/OR CITY COUNCIL FOR

Vacate of property between seawall + property line

UNIT 1 part 2 BLOCK 29 LOT(S) 23+24+E 1/2 LT 25 SUBDIVISION Cape Coral

OR LEGAL DESCRIPTION

Cape Coral unit 1 Part 2 Blk 29 PB 11
PG 32 Lots 23+24+E 1/2 LT 25

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

Carolyn Mitch

PROPERTY OWNER (Please Print)

PROPERTY OWNER (Please Print)

Carolyn Mitch

PROPERTY OWNER (Signature & Title)

PROPERTY OWNER (Signature & Title)

STATE OF CO, COUNTY OF

Saguache

Subscribed and sworn to (or affirmed) before me this

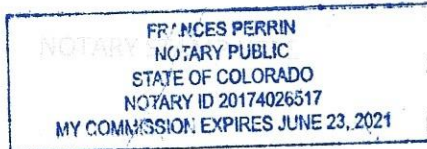
13

day of

March, 2019, by

Carolyn Mitch who is personally known or produced
as identification.

personally known



Exp. Date:

6-23-21

Commission Number:

20174026517

Signature of Notary Public:

Frances Perrin

Printed name of Notary Public:

Frances Perrin

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



DEPARTMENT OF COMMUNITY DEVELOPMENT

VACATION OF PLAT APPLICATION

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.

Carolyn Mitch

OWNER/APPLICANT (PLEASE TYPE OR PRINT)

Carolyn Mitch

OWNER/APPLICANT SIGNATURE

(SIGNATURE MUST BE NOTARIZED)

STATE OF CO COUNTY OF Saguache

Sworn to (or affirmed) and subscribed before me on this 13 day of March 2019 by Carolyn Mitch, who is personally known or who has produced personally known as identification.

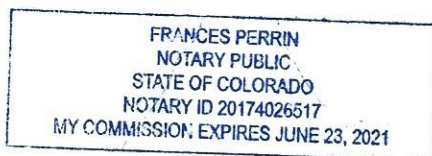
Exp. Date 6-23-21
Commission # 20174026517

Frances Perrin

Signature of Notary Public

Frances Perrin

Print Name of Notary Public



Item Number: 2.C.
Meeting Date: 3/19/2019
Item Type: HEARINGS

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Case #SE18-0018*; Address: 905 Del Prado Boulevard North; Applicant: Palmetto Capital Group, LLC

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, Palmetto Capital Group, LLC, requests a special exception for an Automotive Repair and Service, Group I Use in the Corridor (CORR) District at 905 Del Prado Boulevard North.

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
SPECIAL EXCEPTION APPLICATION
Questions: 239-574-0776

Case # SE18-0018

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

Lawrence L + Marie Kitsberg TR for Kitsberg Family Trust
Email: leekitsberg@gmail.com

Address: PO Box 100987
City: Cape Coral State FL Zip 33910
Phone: _____

APPLICANT (if different from Owner)
Palmetto Capital Group, LLC

Email: Jeff@palmettocapitalgroup.com Jeff Lazenby

Address: 1643 Williamsburg Square
City: Lakeland State Florida Zip 33803
Phone: 863-808-1320

AUTHORIZED REPRESENTATIVE
Avalon Engineering, Inc. / Linda Miller

Email: linda@avaloneng.com

Address: 2503 Del Prado Boulevard So., Suite 200
City: Cape Coral State Florida Zip 33904
Phone: 239-573-2077

Unit _____ Block _____ Lot(s) _____ Subdivision Cape Coral
Address of Property 905 Del Prado Boulevard North, Cape Coral, Florida
Plat Book _____ Page _____
Current Zoning CORR (Corridor District) Strap Number 05-44-24-C4.00006.0030

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.

Lawrence L Kitsberg

NAME (PLEASE TYPE OR PRINT)
Marie Kitsberg

NAME (PLEASE TYPE OR PRINT)

Kitsberg Lawrence L + Marie TR for Kitsberg Family Trust

CORPORATION/COMPANY NAME

Lawrence L Kitsberg
APPLICANT'S SIGNATURE

Marie L Kitsberg
APPLICANT'S SIGNATURE

Special_exception_application_11_21_16



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

Case # _____

AUTHORIZATION TO REPRESENT PROPERTY OWNER(s)

PLEASE BE ADVISED THAT Avalon Engineering, 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 BLOCK LOT(S) SUBDIVISION

OR LEGAL DESCRIPTION

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

Kitsberg Lawrence L + Marie TR for Kilsberg Family Trust
Lawrence L. Kitsberg

Marie Kitsberg

PROPERTY OWNER (Please Print)

PROPERTY OWNER (Please Print)

Lawrence L. Kitsberg
PROPERTY OWNER (Signature & Title)

Marie Kitsberg
PROPERTY OWNER (Signature & Title)

STATE OF FL, COUNTY OF Lee

Subscribed and sworn to (or affirmed) before me this 26 day of December, 2018, by
Lawrence L. & Marie L. Kitsberg who is personally known or produced
as identification. FL. DL.



Exp. Date: 3/28/2020 Commission Number: FF 959859
Signature of Notary Public: Antoinette M. Tanner
Printed name of Notary Public: Antoinette M. Tanner

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 # _____

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

26th day of

December, 2018

Lawrence L Kitsberg
Marie Kilsberg

PRINT APPLICANT'S NAME

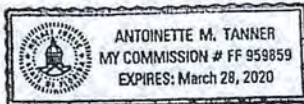
Lawrence L Kitsberg
APPLICANT'S SIGNATURE

Marie Kilsberg
APPLICANT'S SIGNATURE

STATE OF FL, COUNTY OF

Lee

Subscribed and sworn to (or affirmed) before me this 26 day of December, 2018, by Lawrence L. & Marie L. Kitsberg who is personally known or produced as identification. FLDL



Exp. Date: 3/28/2020

Commission Number: FF 959859

Signature of Notary Public:

Antoinette M. Tanner

Printed name of Notary Public:

Antoinette M. Tanner



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

Case # _____

(SIGNATURE MUST BE NOTARIZED)

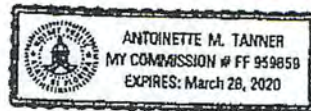
I have read and understand the above instructions. Hearing date(s) will be confirmed when I receive a copy of the Notice of Public Hearing stipulating the day and time of any applicable hearings.

STATE OF FL, COUNTY OF Lee

Sworn to (or affirmed) and subscribed before me this 24 day of Dec., 2018 by Lawrence L. & Marie L. Hickey who is personally known or produced FLDL as identification.

Exp. Date: 3/28/2020 Commission Number: FF 959859

Signature of Notary Public: [Signature]
Printed name of Notary Public: Antoinette M. Tanner





DEPARTMENT OF COMMUNITY DEVELOPMENT
SPECIAL EXCEPTION APPLICATION
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.

Kitsberg Lawrence L + Marie TR for Kitsberg Family Trust

Lawrence L Kitsberg

Lawrence L Kitsberg
OWNER/APPLICANT SIGNATURE

Marie Kitsberg

OWNER/APPLICANT (PLEASE TYPE OR PRINT)

Marie L Kitsberg
OWNER/APPLICANT SIGNATURE

(SIGNATURE MUST BE NOTARIZED)

STATE OF FL COUNTY OF Lee

Sworn to (or affirmed) and subscribed before me on this 26 day of December
2018 by Lawrence L + Marie L Kitsberg who is personally known or who has produced FL DL
as identification.

Exp. Date 3/28/2020
Commission # FF 959859

Antoinette M. Tanner
Signature of Notary Public

Antoinette M. Tanner
Print Name of Notary Public





Avalon Engineering, Inc.
2503 Del Prado Boulevard South, Suite 200
Cape Coral, Florida 33904
Phone: (239) 573-2077 Fax: (239) 573-2076
#AA C001936 #EB 0003128

December 28, 2018

Mr. Vince Cautero, Director
Department of Community Development
City of Cape Coral
1015 Cultural Park Boulevard
Cape Coral, Florida 33990

PROJECT: FIRESTONE COMPLETE AUTO CARE FACILITY

SUBJECT: SPECIAL EXCEPTION LETTER OF INTENT

Dear Mr. Cautero:

On behalf of the property owners, Lawrence L and Marie Kitsberg, and the prospective future business operator Firestone, we respectfully request approval of a Special Exception for an Automotive Repair Service – Group 1 (Tire Store) Use.

The subject property consists of approximately 0.86 of an acre and is located at 905 Del Prado Boulevard North, Strap Number 05-44-24-C4-00006.0030. The proposed construction will consist of a 6,519 square foot building with 8 service bays.

The subject parcel is currently zoned CORR (Corridor District) and has a Land Use Designation of PIRD (Pine Island Road District). The adjacent parcels have the same Zoning (CORR) and Land Use (PIRD) as the subject parcel.

As required by Section 8.8.5 of the Land Use and Development Regulations, the following addresses standards that shall apply to all applications for Special Exception uses:

- a. *Generally* - The proposal shall comply with all requirements of the zoning districts in which the property is located, this ordinance, and all other applicable law.

The proposed development complies with all of the dimensional requirements within the City of Cape Coral's Corridor Zoning District.

- b. *Compatibility* - The tract of land must be suitable for the type of special exception use proposed by virtue of its location, shape, topography and the nature of surrounding development.

The parcel is an outlying parcel within a commercial subdivision. This NE commercial corner contains a Lowes Home Improvement Store, a CVS drugstore and a Steak & Shake fast food restaurant. An automotive repair service - group 1 (Tire Store) is a compatible use within this commercial area.

- c. *Minimum lot frontage; access.* Minimum lot frontage on a street shall be sufficient to permit properly spaced and located access points designed to serve the type of special exception use proposed. Wider spacing between access points and intersecting street right-of-way lines should be required when the lot has more than the minimum required frontage on a street. All access points shall be specifically approved by the Board.

The site has frontage on Del Prado Blvd North. The main access into the facility will be from a right turn into the site from a shared driveway on Del Prado Blvd North. A second entrance and exist will utilize the shared driveway provided within the Lowes Shopping Center.

- d. *Building location; setbacks.* All buildings shall be located an adequate distance from all property lines and street right-of-way lines. Greater building setback lines may be required when the lot has more than the minimum lot area required or when deemed necessary to protect surrounding properties.

The building setbacks on all sides exceeds the minimum building setback requirement.

- e. *Screening and buffering.* A continuous strip of properly maintained landscaped area should be provided along all property lines and along all streets serving the premises. Such continuous strip of properly maintained landscaped area may, however, be allowed to contain walkway(s) and driveway entrances. The Board 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 is provided on all property lines. Additional shrubs are provided along the perimeter of the site to screen this special exception use.

Should you or your staff have questions or need additional information regarding this project, please feel free to contact me.

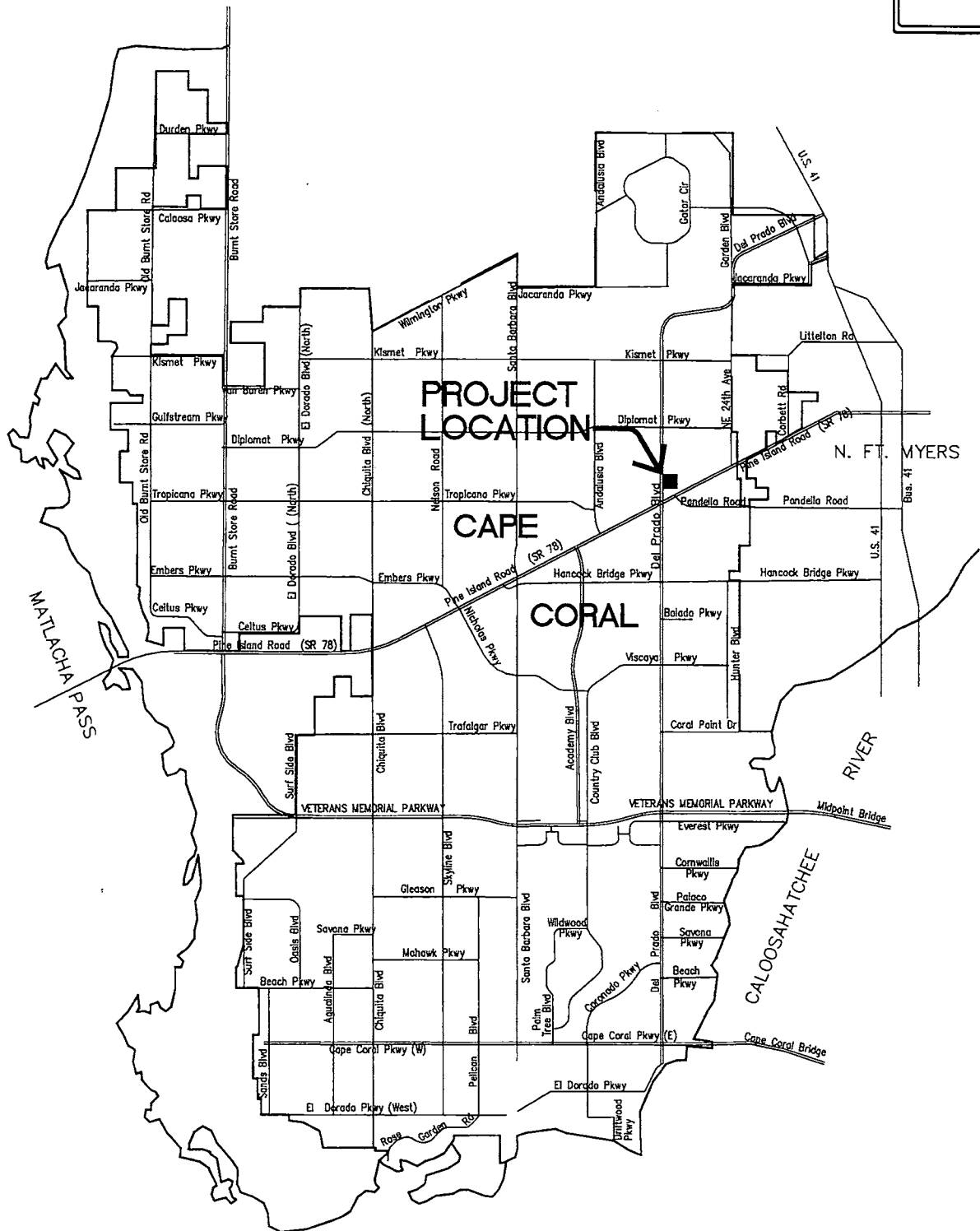
Sincerely,

AVALON ENGINEERING, INC.



Linda Miller, AICP
Senior Planner

c: Jeff Lazenby, Palmetto Capital Group, LLC



LOCATION MAP

1 of 1

DATE **BY** **REVISION DESCRIPTION**

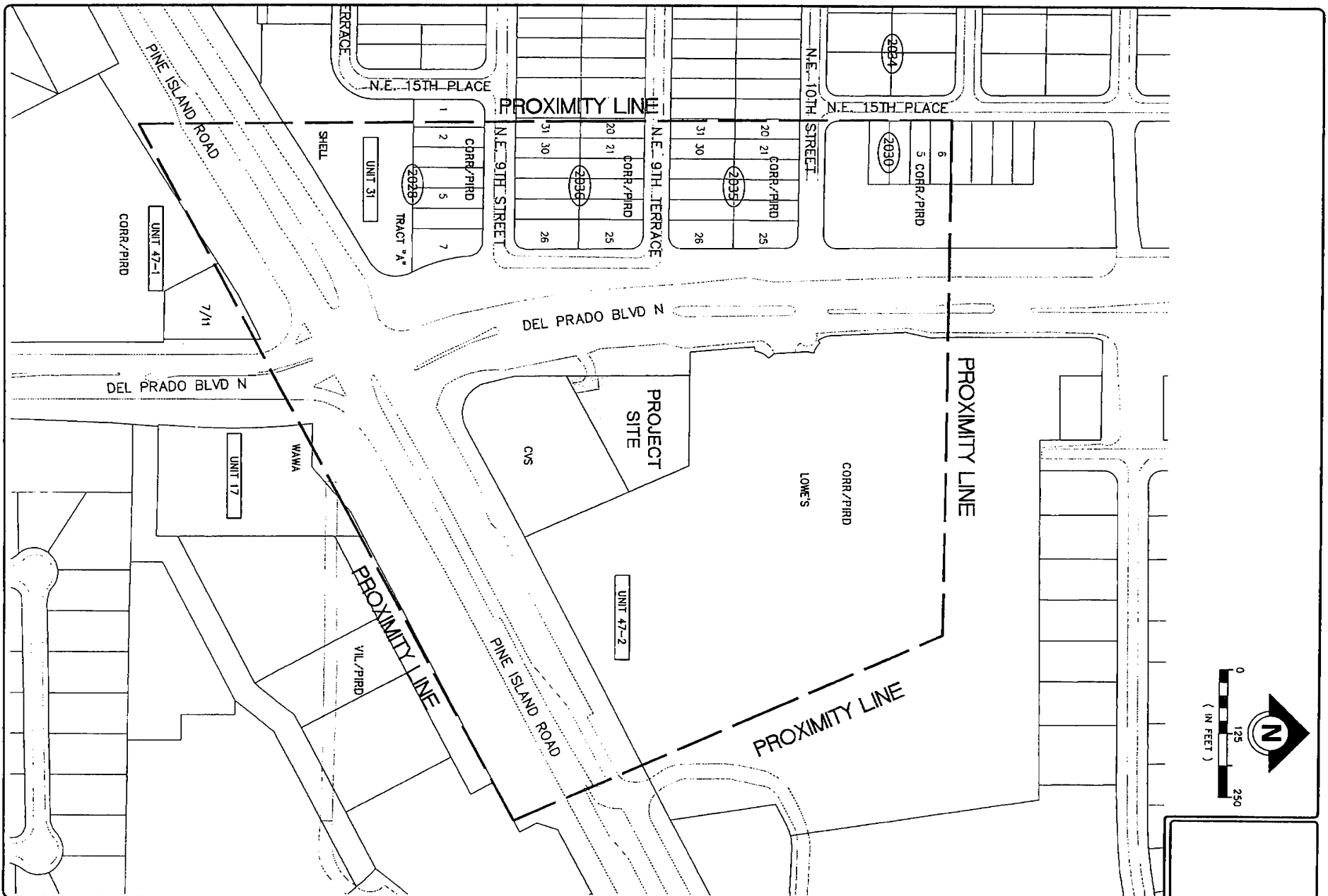
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AVALON ENGINEERING, INC.
2503 DEL PRADO BLVD. #200
CAPE CORAL, FLORIDA 33904
FBFEJ3128 (238) 573-2077

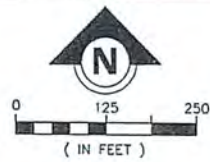
FIRESTONE
906 DEL PRADO BLVD NORTH
CAPE CORAL - LEE COUNTY, FLORIDA

PALMETTO GROUP
JEFF LAZENBY
1681 WILLIAMS SQ
LAKELAND, FL 33803
883-607-4100

#18-129/LWA



500' PROXIMITY MAP	PALMETTO GROUP JEFF LAZENBY 1661 WILLIAMS SO LAKELAND, FL 33603 853-607-4100	FIRESTONE 905 DEL PRADO BLVD NORTH CAPE CORAL - LEE COUNTY, FLORIDA	 AVALON ENGINEERING, INC. 2503 DEL PRADO BLVD. #200 CAPE CORAL, FLORIDA 33904 FBPE#3128 (239) 573-2077	<table border="1" style="width: 100%; border-collapse: collapse; font-size: 0.7em;"> <thead> <tr> <th>DATE</th> <th>BY</th> <th>REVISION DESCRIPTION</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table>	DATE	BY	REVISION DESCRIPTION										THIS PLAN IS INTENDED FOR CONCEPTUAL PLANNING PURPOSES ONLY. SITE LAYOUT MAY CHANGE SIGNIFICANTLY BASED UPON SURVEY, ENVIRONMENTAL AND REGULATORY CONSTRAINTS. "NOT FOR CONSTRUCTION"
DATE	BY	REVISION DESCRIPTION															



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DATE	BY	REVISION DESCRIPTION

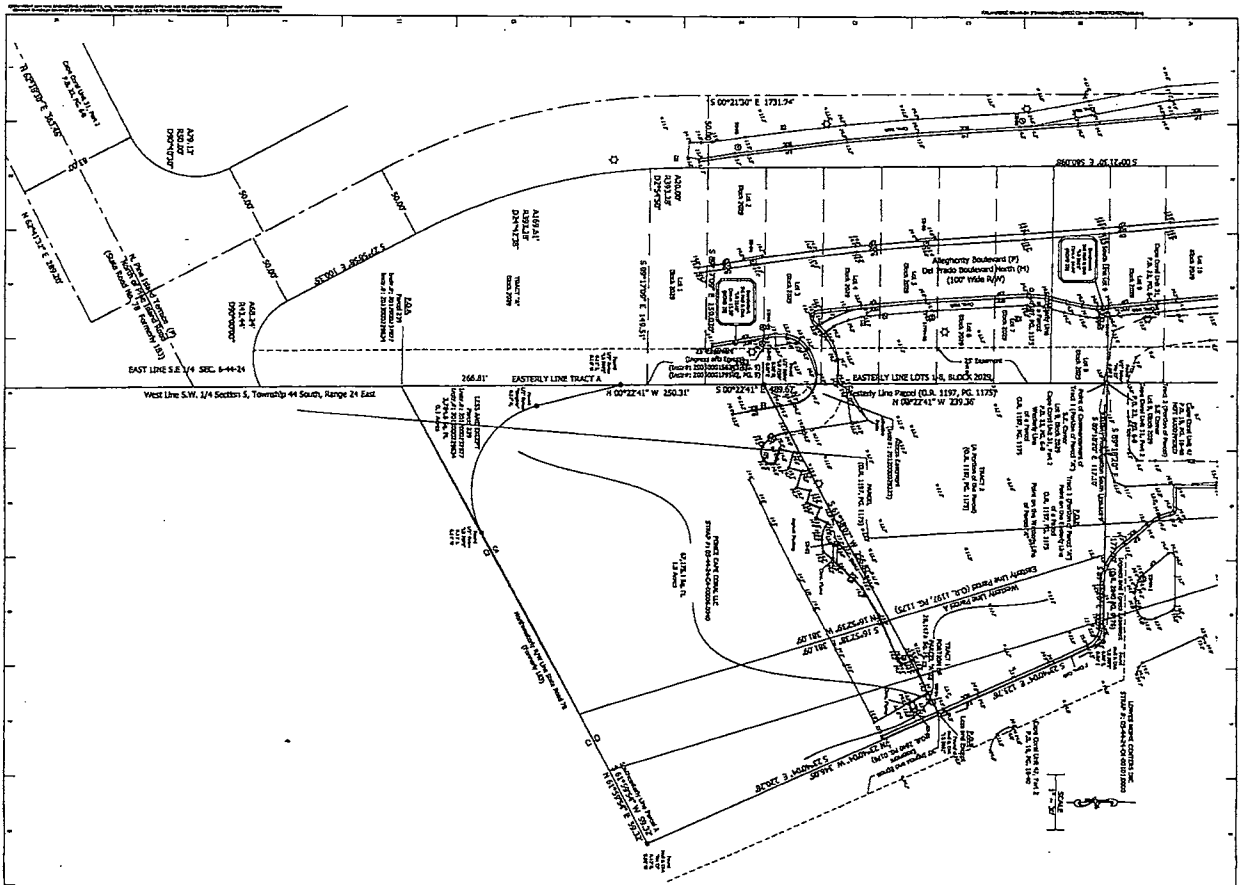
AVALON ENGINEERING, INC.
2503 DEL PRADO BLVD. #200
CAPE CORAL, FLORIDA 33904
FBPE#3128 (239) 573-2077

FIRESTONE
905 DEL PRADO BLVD NORTH
CAPE CORAL - LEE COUNTY, FLORIDA

PALMETTO GROUP
JEFF ZIMMERMAN
1000 W. PALMETTO BLVD.
LAKELAND, FL 33853
863-607-4100

VICINITY MAP
(2018 AERIAL)

#18-129/LUMA



NOTES:

1. This survey was conducted in accordance with the Florida Surveying and Mapping Act, Chapter 461, F.S.
2. The survey was conducted by a Licensed Professional Surveyor, State of Florida, No. 12345.
3. The survey was conducted on or about the date of the survey.
4. The survey was conducted in accordance with the Florida Surveying and Mapping Act, Chapter 461, F.S.
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DEED RECORD:

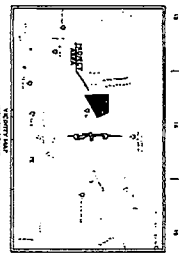
Deed No. 12345, recorded in Book 1234, Page 567, of the Public Records of the State of Florida, dated 12/31/2020.

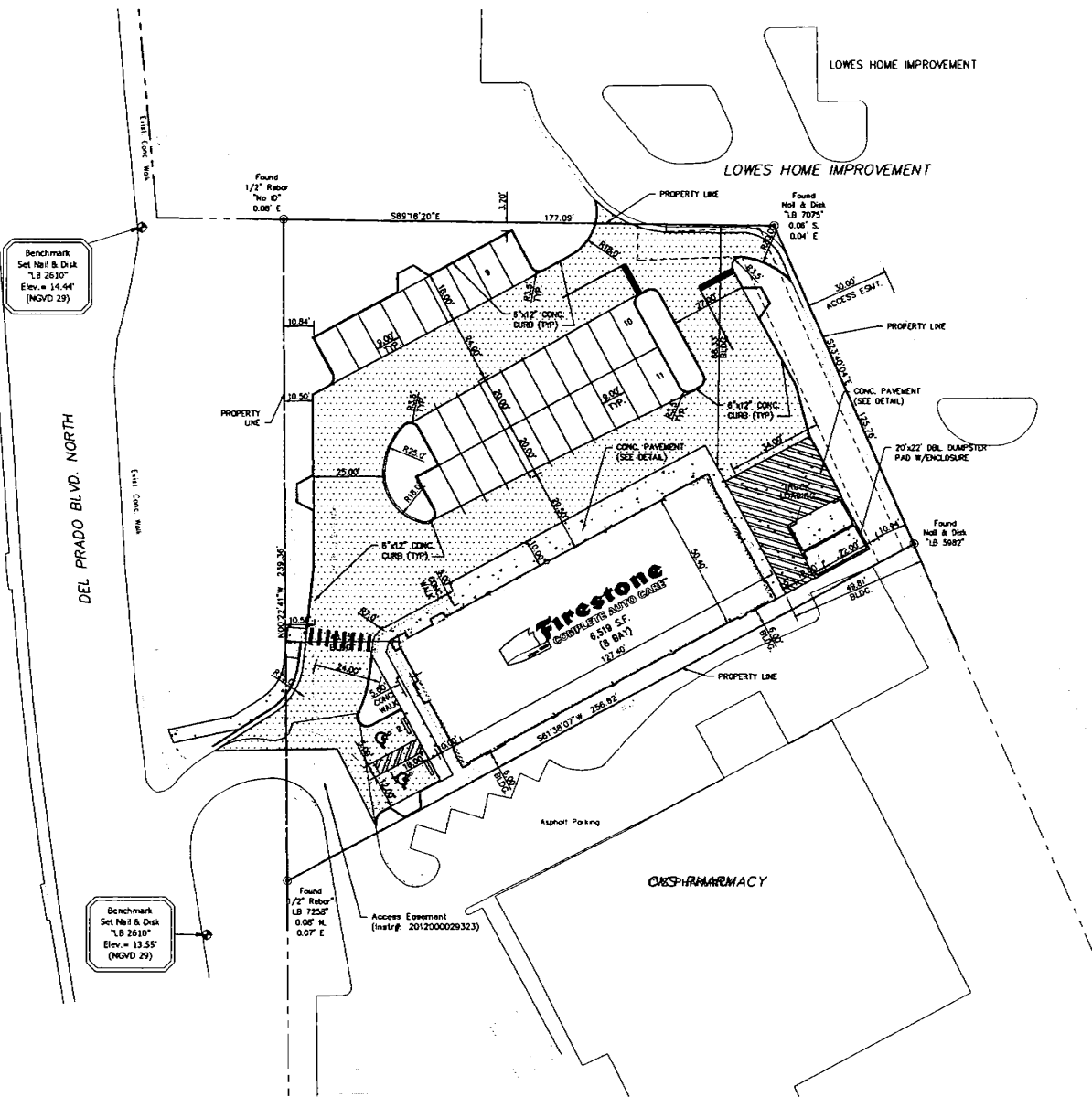
Deed No. 12346, recorded in Book 1234, Page 568, of the Public Records of the State of Florida, dated 12/31/2020.

Deed No. 12347, recorded in Book 1234, Page 569, of the Public Records of the State of Florida, dated 12/31/2020.

Lot	Area (Acres)	Area (Sq. Ft.)
1	0.10	6,969.87
2	0.10	6,969.87
3	0.10	6,969.87
4	0.10	6,969.87
5	0.10	6,969.87
6	0.10	6,969.87
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10	0.10	6,969.87

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6	0.10	6,969.87
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8	0.10	6,969.87
9	0.10	6,969.87
10	0.10	6,969.87





SITE DATA:

PROJECT DEVELOPMENT: 37,287 SQ.FT. 0.88 AC.± (100%)
 BUILDING COVERAGE: 6,519 SQ.FT. 0.15 AC.± (17%)
 (LEASE AREA: 6,110 SF)
 PAVEMENT AREA: 18,956 SQ.FT. 0.43 AC.± (51%)
 EXIST PAVEMENT: 684 SF, PROPOSED PAVEMENT: 18,282 SF)
 CONCRETE AREA: 3,569 SQ.FT. 0.08 AC.± (9%)
 (4\"/>

PARKING DATA:

PARKING REQUIRED: 28 SPS.
 (2 SPS. PER x 8 BAY)=16 SPS.
 (1 SP. PER 12 EMPLOYEES)=12 SPS.
 PARKING PROVIDED: 32 SPS. (INCL. 2 H/C)



Brandon D. Sloan
 FL LICENSE # 59978

SEAL
 DATE
 PROJECT
 SHEET NO.
 TOTAL SHEETS

AVALLON ENGINEERING, INC.
 10000 W. BOULEVARD NORTH
 SUITE 100
 BOULVAR, FL 33503
 PHONE: 863-607-4100
 FAX: 863-607-4101

SEAL
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CONSTRUCTION DOCUMENTS WILL BE BASED ON THE LATEST RELEASE OF THE PROTOTYPICAL DOCUMENTS ONLUGHERS AT THE TIME OF CONSTRUCTION. DOCUMENT AUTHORIZATION. NOTE: THIS DRAWING IS FOR CONCEPTUAL PURPOSES ONLY. SITE INFORMATION WAS OBTAINED FROM THE CLIENTS DOCUMENTS, DESIGN MAY VARY.

PROJECT CONTACTS	ARCHITECT: KRISTINE PAKAYO	SGA DESIGN GROUP	PROTOTYPE SMALL ER
PHONE #	(913) 587-5500		
VP			
CONT.			
RM			
CM			
ENTRY ID	XXXXXXX		
SITE ID	XXXXXXX		
LEGACY ID	XXXXXXX		
ZONE APPROVAL (BY DATE)			

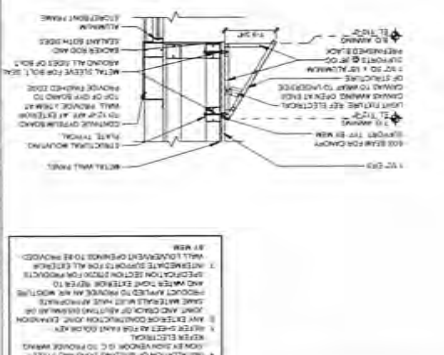
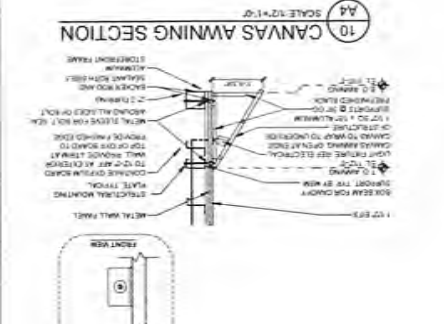
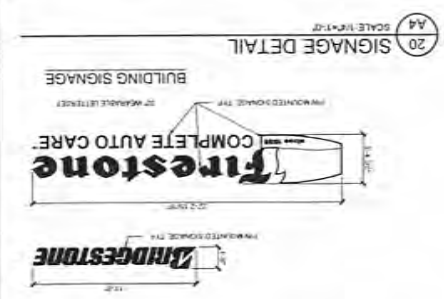
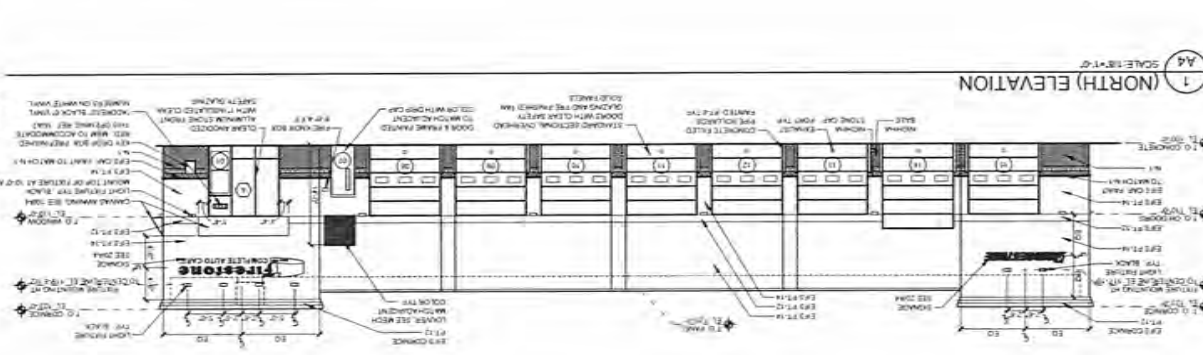
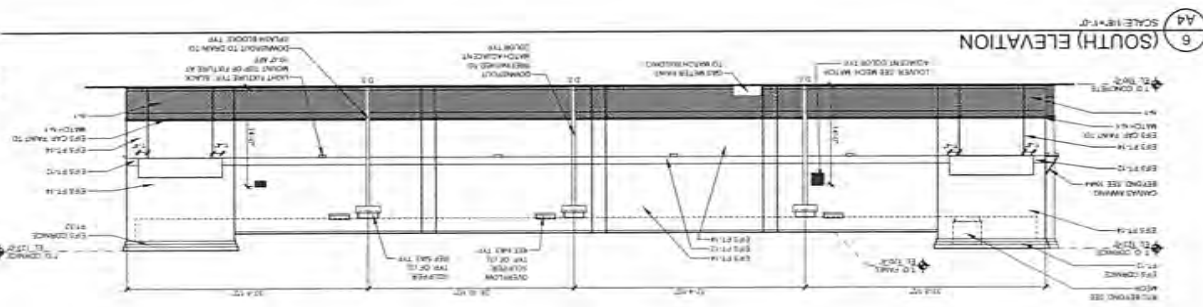
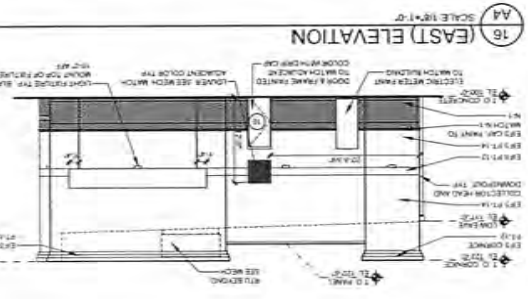
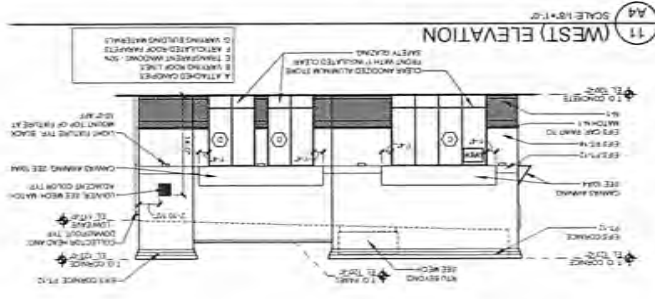
905 DEL PRADO BLVD. (NORTH)
CAPE CORAL, FL

Firestone
COMPLETE AUTO CARE

SGA Design Group, Inc.
ARCHITECTS
EXTERIOR ELEVATIONS & DETAILS

PA4

SGA Design Group, Inc.



GENERAL NOTES

1. PROVIDE BASE CAP OVER ALL WALLS EXPOSED TO WEATHER.

2. FINISH ALL EXPOSED SURFACES TO MATCH EXISTING SURFACES.

3. SEE ELECTRICAL FOR SYMBOLS AND NOTES.

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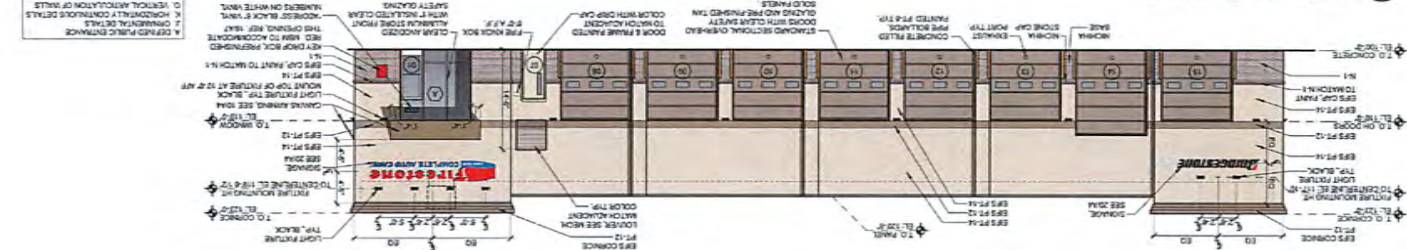
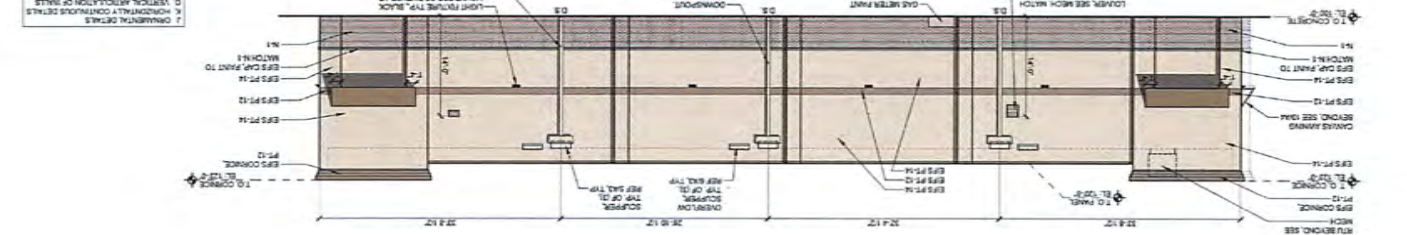
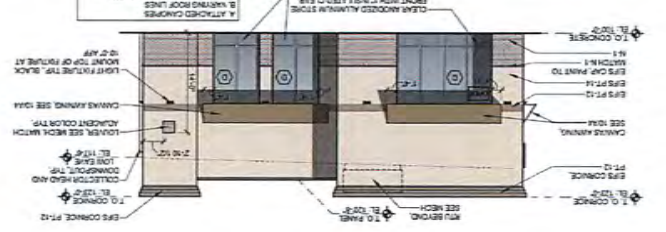
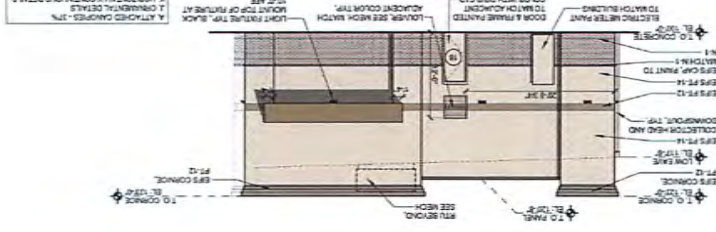
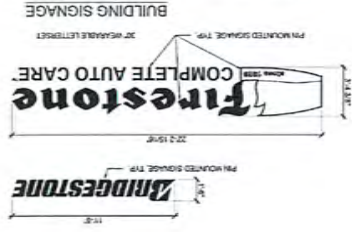
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[illegible]

UNIONBROOK SHALE BROWN

UNIONBROOK SHALE BROWN

L 2.0



Avalon Engineering, Inc.
2503 Del Prado Boulevard South, Suite 200
Cape Coral, Florida 33904
Phone: (239) 573-2077 Fax: (239) 573-2076
#AA C001936 #EB 0003128

December 28, 2018

Mr. Vince Cautero, Director
Department of Community Development
City of Cape Coral
1015 Cultural Park Boulevard
Cape Coral, FL 33990

PROJECT: FIRESTONE COMPLETE CAR CARE
05-44-24-C4-00006.0030
905 Del Prado Blvd North

SUBJECT: TRAFFIC GENERATION STATEMENT FOR SPECIAL EXCEPTION

Dear Mr. Cautero,

Included herewith are the traffic generation calculations for the above referenced project. As the project creates less than 300 vehicle trips, peak hour of the generator, a traffic impact statement will not be necessary.

Source: I.T.E. Trip Generation Manual, 10th Edition
Land Use: (942) Automobile Car Center
Gross Leasable Area: 6,519 square feet

A.M. Peak Hour of the Generator:
2.83 Average Rate per 1,000 SF

10.33 vehicles entering 56%
8.12 vehicles exiting 44%
18.45 TOTAL VEHICLES

P.M. Peak Hour of the Generator:
3.51 Average Rate per 1,000 SF

11.22 vehicles entering 49%
11.66 vehicles exiting 51%
22.88 TOTAL VEHICLES

If you should have any questions or require additional information, please feel free to call me.

Sincerely,

AVALON ENGINEERING, INC.

Linda Miller, AICP
Senior Planner

Protected Species Assessment

Firestone Complete Car Care

905 Del Prado Boulevard North
Cape Coral, Florida
Section 05, Township 44S, Range 24E

Prepared for:

Palmetto Capital Group, LLC

1643 Williamsburg Square
Lakeland, FL 33803

Prepared by:

Avalon Engineering, Inc.

2503 Del Prado Boulevard South, Suite 200
Cape Coral, Florida 33904

December 2018

INTRODUCTION

This 0.85 acre parcel is located at the southeast corner of Del Prado Boulevard North and Pine Island Road. Adjacent properties consist of the following: to the north: corridor zoning (detention area for Lowes), to the south: Corridor Zoning for a CVS Drug Store, to the east: Corridor Zoning for a Lowes Home Improvement Store, to the west: ROW (Del Prado Boulevard North). The parcel is located in Section 05, Township 44S, Range 24E, Cape Coral, Florida.

SITE CONDITIONS

A site inspection was conducted by Scott Tucker on December 13, 2018. The weather was partly cloudy with temperatures in the 70's.

VEGETATION CLASSIFICATIONS

The table below displays the (#1) vegetative associations found on the subject parcel. These vegetative associations were identified using the Florida Land Use Cover Classification System. (FLUCCS) and are shown on the table below. Also included is a description of each FLUCCS association below.

FLUCCS CODE	DESCRIPTION	APPROXIMATE ACREAGE
192	Inactive lands with street patterns but without structures (routinely mowed).	0.85±
TOTAL ACREAGE		0.85±

SURVEY METHOD

To provide at least 100% visual coverage, ten centered transects were completed at 30' intervals within the construction area. This method was selected to examine for the presence or absence of protected or listed species within the entire construction area.

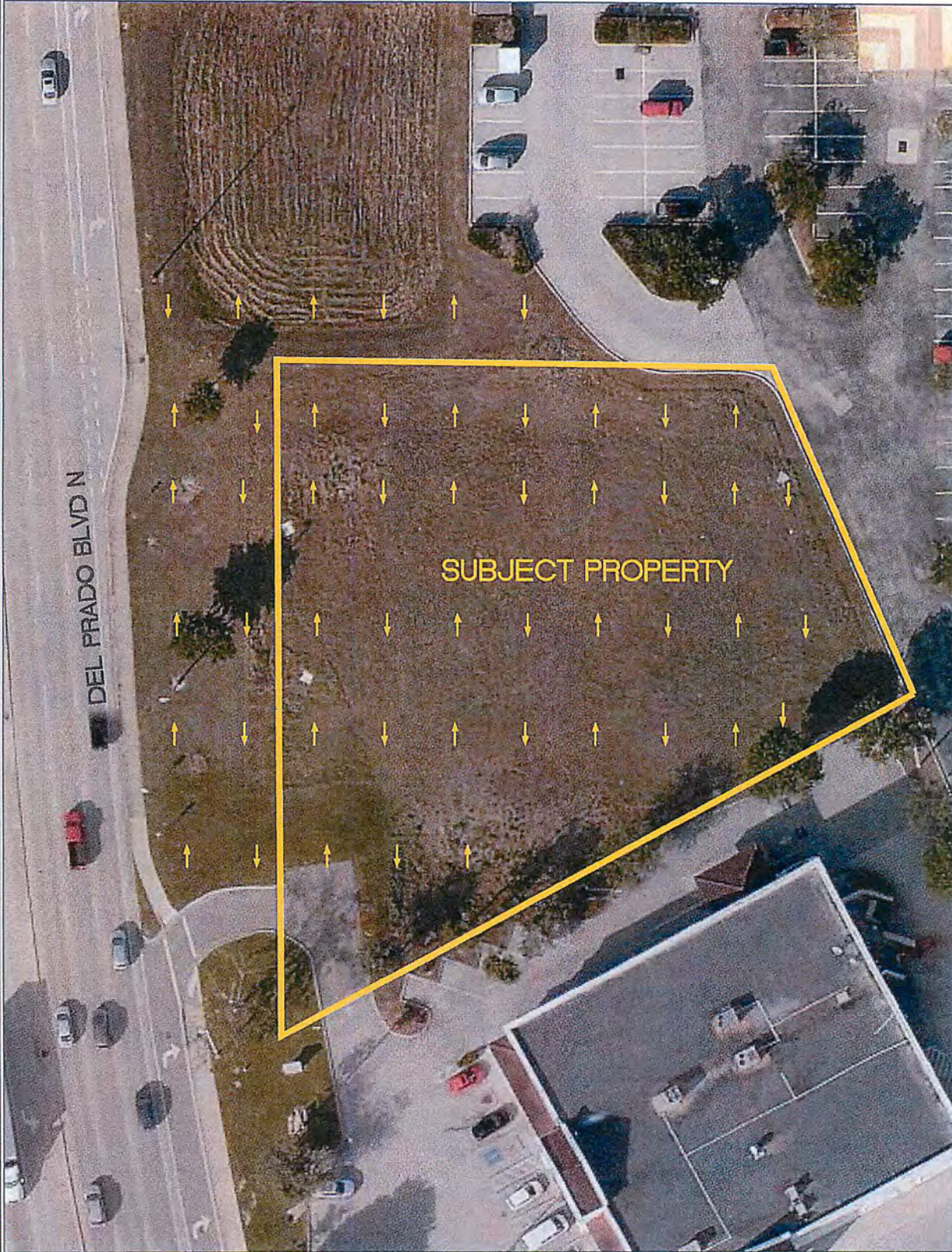
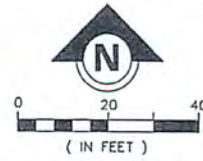
If a sign or sighting was observed, an aerial photograph was marked depicting the approximate location. The attached scale aerial map depicts the results of this survey. Other listed protected species which could occur on the subject parcel according to City of Cape Coral which were surveyed for are as follows:

SPECIES	SCIENTIFIC NAME	OBSERVED
Burrowing Owl	Athene cunicularia	None
Gopher Tortoise	Gopherus polyphemus	None

RESULTS

The Protected Species Survey revealed the presence of no species listed by either the U.S. Fish & Wildlife Service (USFWS) or by the Florida Fish & Wildlife Conservation Commission (FFWCC).

Attachment: Transect Line Map



THIS PLAN IS INTENDED FOR CONCEPTUAL PLANNING PURPOSES ONLY. SITE LAYOUT MAY CHANGE SIGNIFICANTLY BASED UPON SURVEY DATA, FIELD CONDITIONS, AND CONSTRAINTS. "NOT FOR CONSTRUCTION"

DATE	BY	REVISION DESCRIPTION

AVALON ENGINEERING, INC.
2503 DEL PRADO BLVD. #200
CAPE CORAL, FLORIDA 33904
FBPE#3128 (239) 573-2077

FIRESTONE
905 DEL PRADO BLVD NORTH
CAPE CORAL - LEE COUNTY, FLORIDA

PALMETTO GROUP
JEFF LAZENBY
1661 WILLIAMS SQ
LAKELAND, FL 33803
863-607-4100

TRANSECT
MAP

#18-129/LUMA

Planning Division Case Report

SE18-0018

Review Date: March 8, 2019

Property Owner: Lawrence L. Kitsberg and Marie L. Kitsberg, as Trustees of the trust designated the Kitsberg Family Trust Agreement, dated May 10, 2001

Owner Address: PO Box 100987
Cape Coral, FL 33910

Applicant: Palmetto Capital Group, LLC

Authorized Rep: Avalon Engineering, Inc.

Request: The applicant requests a special exception use for an Automotive Repair and Service, Group I Use in the Corridor District at 905 Del Prado Boulevard North.

Location: 905 Del Prado Boulevard North
Strap Number 05-44-24-C4-00006.0030
See Exhibit "A" for legal description

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

Reviewed by: Robert H. Pederson, AICP, Planning Manager

Recommendation: **Approval with conditions**

Urban Service Area: Transition

Right-of Way-Access: The site has frontage and a driveway along Del Prado Boulevard, a Principal Arterial.

Property Description:

The site is ±37,193 sq. ft. and is near the northeast corner of Pine Island Road and Del Prado Boulevard. The site is an outparcel of the Lowe's Home Center Planned Development Project (PDP) that was approved in 1997 and amended in 1999¹. The site is vacant except for a right-in only driveway along Del Prado Boulevard and associated drive isle that provides access to the site and a drugstore to the south. The site has a Pine Island Road District Future Land Use Classification (FLUC) and Corridor Zoning.

Surrounding sites in all directions have a Pine Island Road District FLUC. Sites to the north, east, and west have Corridor Zoning, while sites south of Pine Island Road have Village Zoning.

¹ Ordinances 29-97 and 29-99, respectively.

Figure 1. Special exception site shown in red along with surrounding area.



Proposed Use:

The applicant requests a special exception for an Automotive Repair and Service, Group I Use. This use allows for a wide variety of repairs and services including towing, brake and carburetor repairs, inspection services, transmission repairs, wheel alignment, and oil changes. Repairs involving major body work including engine repairs, axle straightening, frame and front-end work, as well as painting and rust proofing are not allowed within this Group I category but are classified instead as Automotive Repair and Service, Group II uses. Group II uses are restricted to properties with Thoroughfare Commercial (C-3) and Industrial (I-1) Zoning, and the Commerce Park Overlay (CPO).

Zoning History of the Site

The site has had a Pine Island Road District FLUC since 2002 and Corridor Zoning since 2004².

Analysis:

This application was reviewed based on the Land Use and Development Regulations (LUDR), Section 2.7.13, the Corridor District, and the five standards in Section 8.8.5a-e for special exceptions.

1. Generally

The Corridor Zoning of the site is consistent with the Pine Island Road District FLUC. There is no minimum area requirement nor special regulations governing this use. The area of the site is comparable to several other similar establishments in the City.

The project will involve new development on an existing outparcel of the Lowe's Home Center. Neither Ordinance 29-97 that approved the Lowe's Home Center, nor Ordinance 29-99 that amended this same project, required future special exceptions or outparcel development to be approved by PDP amendment. Compliance with the LUDRs will be verified during the site plan review of the project.

² The future land use and zoning were most recently amended by Ordinances 38-02 and 8-04, respectively.

2. Compatibility

This site is near the intersection of two major six-lane streets, Del Prado Boulevard and Pine Island Road. This intersection has commercial development at each corner, with convenience stores with fuel occupying three of the corners. Average annual daily traffic counts at this intersection average 33,000 vehicles according to Florida Department of Transportation data.³ This intersection is well illuminated and has background noise associated with traffic independent of commercial establishments in the area.

Surrounding uses next to the site include a home improvement store to the north, a restaurant to the east, and a drugstore to the south. Vacant sites with Corridor Zoning are to the west across Del Prado Boulevard. The nearest single-family residence is about 600 feet to the west.

Estimated PM peak hour trips are 23. This number is substantially lower than the 300-trip threshold that automatically triggers the submittal of a detailed Traffic Impact Study.

Automotive Repair and Service, Group I Uses allow repairs that are generally considered minor and less intensive compared to Group II Uses. As a result, Group 1 repairs are typically not large noise generators. Conditions recommended by staff include limiting all repairs to inside the building and restricting the hours when repairs can be made.

Based on the analysis provided with this section, staff finds the proposed use will be compatible with the surrounding area. Impacts associated with traffic, lighting, and noise will be minimal in comparison with background levels near the Del Prado/Pine Island Road intersection. Conditions of approval are recommended by staff that will minimize noise and maintain an orderly site.

3. Minimum Lot Frontage; Access

The site has about 237 feet of frontage on Del Prado Boulevard. An existing right-in only driveway along this street provides access to the site and a drugstore to the south. Motorists leaving the establishment will pass through the parking lot of Lowe's Home Center before exiting onto either Pine Island Road or Del Prado Boulevard.

The parking standard for this use requires a minimum of two parking spaces per bay plus one additional space for each employee. The business will employ a maximum of 12 people at a time⁴ and the building will have eight bay doors. The 32 parking stalls shown on the site plan will exceed the minimum number of parking spaces required.

³ Florida Department of Transportation's Florida Traffic Online Web Application, <https://tdaappsprod.dot.state.fl.us/fto/>, 2017 data.

⁴ Based on a February 15, 2019 email from Avalon Engineering.

4. *Building Location; Setbacks*

Minimum building setbacks for the project are: front (as measured from the west property line) 25 feet; side (north and south) none required; and rear (west) 10 feet. A site plan for this project shows compliance with all setbacks. Setback compliance will be verified during the site plan and building permit review processes.

5. *Screening and Buffering*

A landscaping plan shows plantings along the north, south, and west property lines. Staff recommends a row of canopy trees along the east property line of the site that would extend along the south property line to the rear of the building. These trees combined with those planting shown on the site plan, will provide a site with buffering around the perimeter of the development.

Consistency with the Comprehensive Plan

With the implementation of conditions recommended by staff, the project will be consistent with the following goals and policies.

Future Land Use Element

Policy 1.15.m

"Pine Island Road District: Under this land use designation, at least two distinctive zoning categories will be allowed: Village and Corridor zoning. The Village zone is intended to promote maximum pedestrian friendliness and minimal automobile traffic between residential areas, shopping destinations, a variety of entertainment establishments, and employment opportunities. The Corridor zone designation will be placed on the land located between the Villages and will include larger scale, less pedestrian-oriented uses. This Land Use designation will encourage mixed-use development at key intersections with major North-South streets along Pine Island Road. The Pine Island Road District will be defined as the union of two major mixed-use areas defined below as follows: ...

... Corridor: The land located between the Villages and includes such uses as, retail, office, office/warehouse, light manufacturing, institutional (schools, colleges), single family residential, multi-family residential golf courses, larger scale commercial retail (big box stores over 50,000 square-feet) and government uses such as parks and public facilities. Commercial and light manufacturing uses shall not exceed a floor to lot area ratio (FAR) of 1.25 in accordance with City design standards. Public facilities shall be subject to Policy 1.15.i of the Future Land Use Element and parks and recreation shall be subject to Policy 1.15.j of the Future Land Use Element." **Staff comments: The Corridor Zoning of the site is consistent with the Pine Island Road District Future Land Use Classification. The site will have an estimated FAR of 0.18. This policy is supportive of this request.**

Policy 4.1

"Future development requiring access or connection to public water and sewer facilities will be located within either the Urban Services Infill or Transition areas." **Staff comments: The site is in the City Urban Services Transition Area. This policy is supportive of this request.**

Policy 8.2

"Land development regulations adopted pursuant to s. 163.3202, F.S., will require the buffering of incompatible land uses." **Staff comments: With a condition recommended by staff, landscaping will be present along all four property lines. This policy is supportive of this request.**

Policy 8.3

"Commercial developments shall be designed to minimize negative impacts on surrounding residential uses and the land development regulations shall provide for adequate buffering between commercial and residential uses. The design should ensure adequate screening of unsightly views of commercial development (such as loading docks, rooftop equipment, service entrances, trash containers, parking areas and exterior storage) through the extensive uses of landscaping, berms, fencing, concealment, architectural features, open space, setbacks, and/or building orientation. Ensure that the placement of any noise generating activities such as ingress/egress, parking, deliveries, air conditioning equipment and dumpster collections are designed to minimize any adverse noise effects. Traffic and parking should not adversely affect neighborhood quality. Noise, safety and overall maintenance of commercial properties should be carefully monitored." **The site lacks a loading dock. Rooftop equipment will be screened from Del Prado and Pine Island Road. Trips to the site are anticipated to be relatively low. Landscaping around the perimeter of the site provides buffering. Conditions are recommended by staff with will minimize noise associated with the development. This policy is supportive of this request.**

Transportation Element

Policy 1.3.4

"Joint driveways shall be encouraged for properties located along Cape Coral's divided arterials and collectors. The joint driveways shall be designed to operate in a safe and efficient manner." **Staff comments: An existing driveway on the site is shared with a second commercial site to the immediate south. This policy is supportive of this request.**

Recommendation:

Staff recommends **approval** of the requested special exception use with the following conditions.

1. Repair work shall be limited to the hours beginning at 7:00 a.m. and ending at 8:00 p.m. daily. This provision, however, shall not preclude the establishment from staying open past 8:00 p.m. to allow customers to pick up vehicles and to allow non-repair tasks to occur.
2. All repair work shall be conducted inside the building. Automotive repairs occurring outside the building are prohibited.

3. No vehicles, tires, automobile parts, or other materials shall be stored outside the building. This condition, however, is not intended to prohibit old tires and other waste materials from being temporarily placed in the dumpster enclosure until such solid waste can be hauled from the site. Vehicles may be kept overnight on site, however, to allow repairs to continue the following day and provide time for customers to pick up repaired vehicles.
 4. Vehicle sales and the advertising of vehicles for sale is prohibited.
 5. To provide landscaping around the perimeter of the development, landscaping shall be consistent with that shown on Sheet L2.0, dated January 24, 2019, prepared by LA Landesco, except for the following additional requirement: a row of canopy trees shall be installed 25 feet on center along the east property line and extend westward along the south property line to the rear of the building.
-

Staff Contact Information

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

Planning Division

PH: 239-242-3255

Email: mstruve@capecoral.net

EXHIBIT "A"

FIRESTONE - SUBJECT PARCEL DESCRIPTION:

A TRACT OF LAND SITUATED IN THE SW 1/4 (SOUTHWEST ONE-QUARTER) OF SECTION 05, TOWNSHIP 44 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA, CONSISTING OF A PORTION OF PARCEL 'A', OF O.R. 1197, PG. 1175 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 9, BLOCK 2029, CAPE CORAL UNIT 31, PART 2, ACCORDING TO PLAT BOOK 23, PAGES 6 THROUGH 8, THENCE RUN S89°18'20"E ALONG THE EASTERLY PROLONGATION OF THE SOUTH LINE OF LOT 9 FOR A DISTANCE OF 177.09 FEET; THENCE S23°40'04"E FOR A DISTANCE OF 125.76 FEET; THENCE RUN S61°38'07"W FOR A DISTANCE OF 256.82 FEET TO THE SOUTHEAST CORNER OF LOT 3, BLOCK 2029, CAPE CORAL UNIT 31, PART 2; THENCE ALONG THE EASTERLY LINE OF LOTS 1 THROUGH 8 OF SAID BLOCK 2029 N00°22'41"W FOR A DISTANCE OF 239.36 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 37,287 SQUARE FEET (MORE OR LESS)

BEARINGS ARE BASED ON EASTERLY LINE OF BLOCK 2029, UNIT 31 PART 2, CAPE CORAL SUBDIVISION BEING N00°22'41"W.



NOTICE TO SURROUNDING PROPERTY OWNERS

CASE NUMBER: SE18-0018

REQUEST: The applicant, Palmetto Capital Group, LLC, requests a special exception for an Automotive Repair and Service, Group I Use in the Corridor (CORR) District at 905 Del Prado Boulevard North.

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

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, March 19, 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.

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

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Address: 1015 CULTURAL PARK BLVD
CAPE CORAL FL 33990
USA

Net Amt: \$

Run Times: 1

No. of Affidavits: 1

Run Dates: 03/09/19

Text of Ad:

NOTICE OF PUBLIC HEARING

CASE NUMBER: SE18-0018

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by order of
Kimberly Bruns, CMC
Interim City Clerk
REF # SE18-0018
AD# 3423930 Mar. 9, 2019

Department of Community Development
Planning Division

AFFIDAVIT

IN RE: APPLICATION OF: Lawrence Kitsberg

APPLICATION NO: SE18-0018

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 12th day of March, 2019.

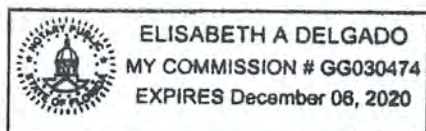


Vincent A. Cautero, AICP

STATE OF FLORIDA
COUNTY OF LEE

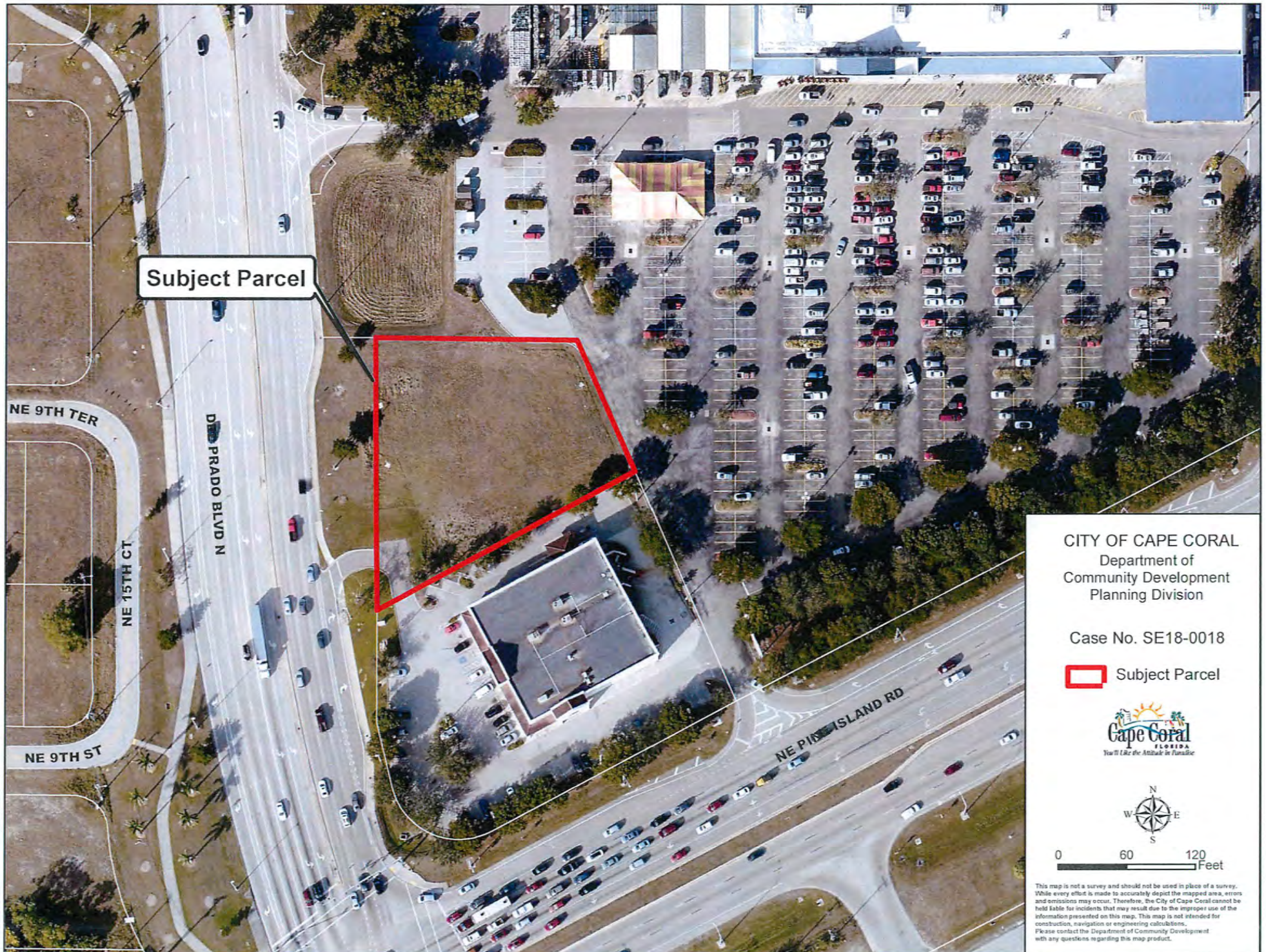
The foregoing instrument was acknowledged before me this 12th day of March, 2019, by Vincent A. Cautero, AICP, who is personally known to me and who did not take an oath.

Exp. Date 12/16/20 Commission # 66030474




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. SE18-0018

 Subject Parcel



0 60 120
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. SE18-0018

LEGEND

-  Subject Parcel
-  500' Boundary
-  C-1
-  CORR
-  R-1B
-  VILL

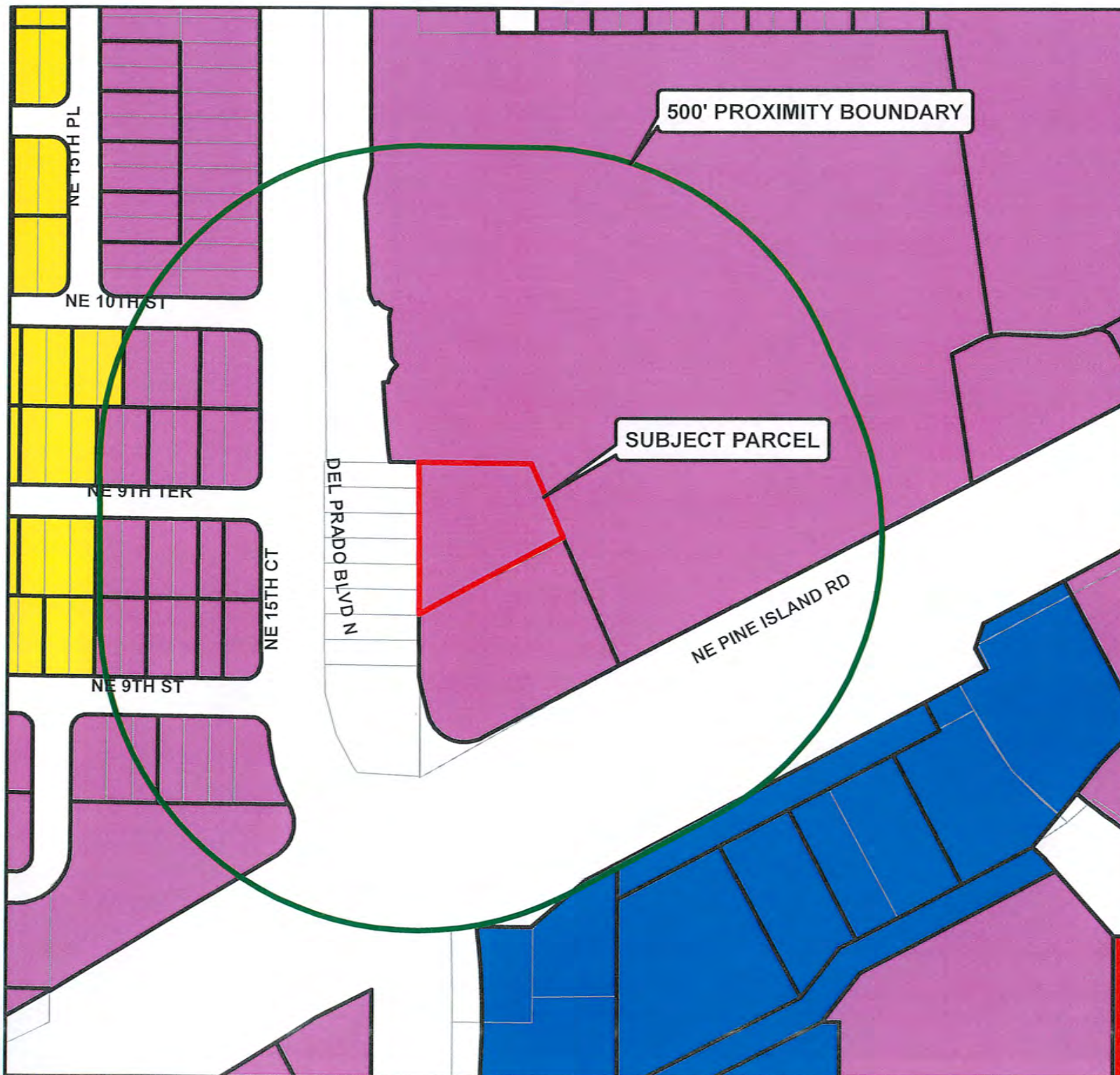


MARCH 1, 2019

0 80 160 240 320 Feet

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KRKA



Item Number: 2.D.
Meeting Date: 3/19/2019
Item Type: HEARINGS

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

ADDENDUM Case # VA18-0021* Continued; 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
Kantarze Division- Planning Department- Community Development

SOURCE OF ADDITIONAL INFORMATION:

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

ATTACHMENTS:

Description	Type
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
as identification.

who is personally known or produced

Exp. Date:

June 27, 2020

Commission Number:

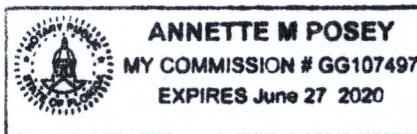
GG107 497

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:

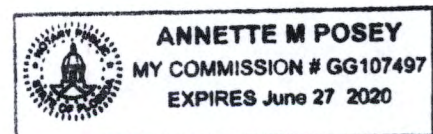
Annette M. Posey

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

CASE # _____

APPLICATION FOR VARIANCE

Questions: 239-574-0776

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.

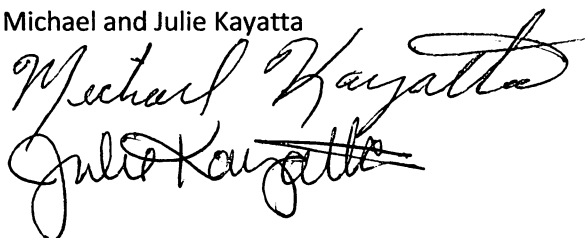
The hardship that would result from a denial of the variance request for us may sound small, be we have always wanted at pool to enjoy with our family and now to watch our grandchildren enjoy, making priceless memories. The hedge encloses the area and allows our neighbors to be unburned by the pool on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

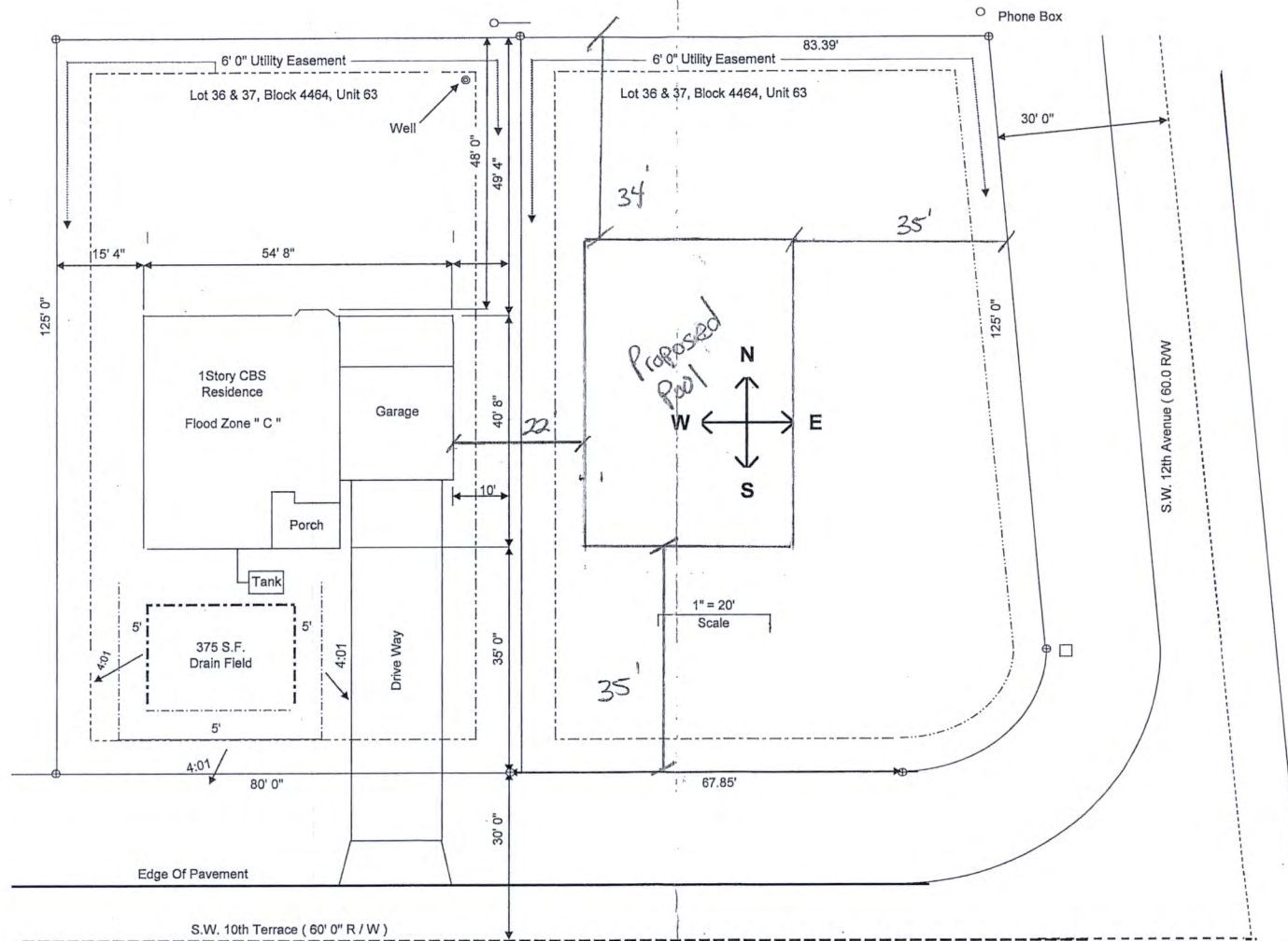
The minimum variance we are requesting is to allow the pool and spa to be built on our married adjacent corner lot.

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.



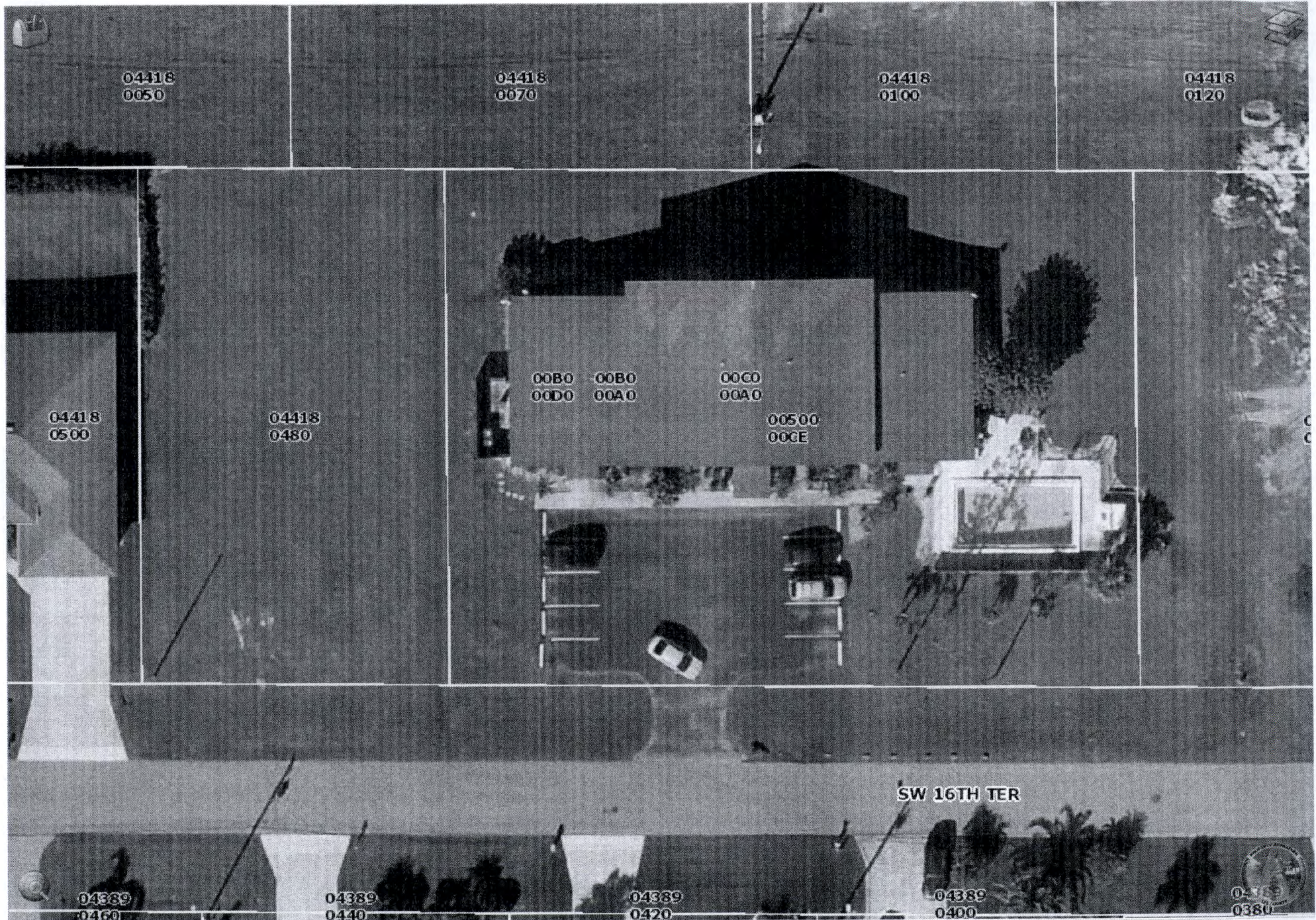








✕	STRAP	Folio	Owner Name	Site Address	Last Trans. Date	Last Trans.
			Steven & Maria Mullins	1422 SW 4th Ave		



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.

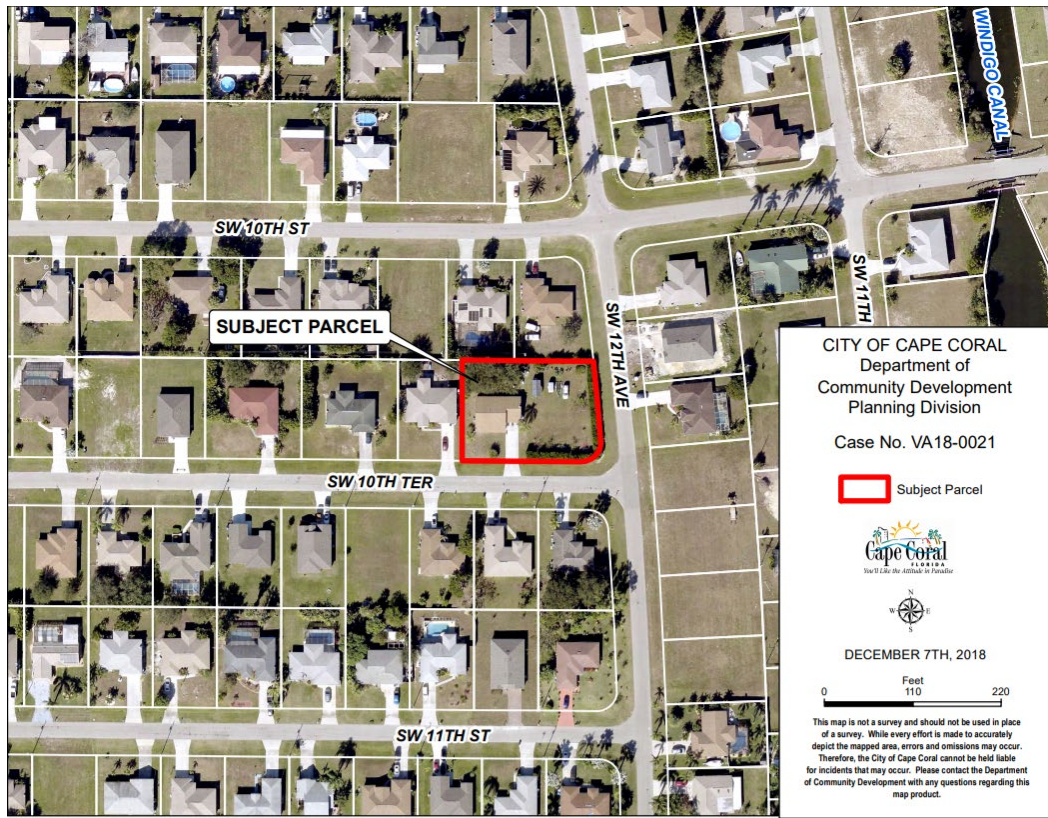
Applicable Regulation:

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:

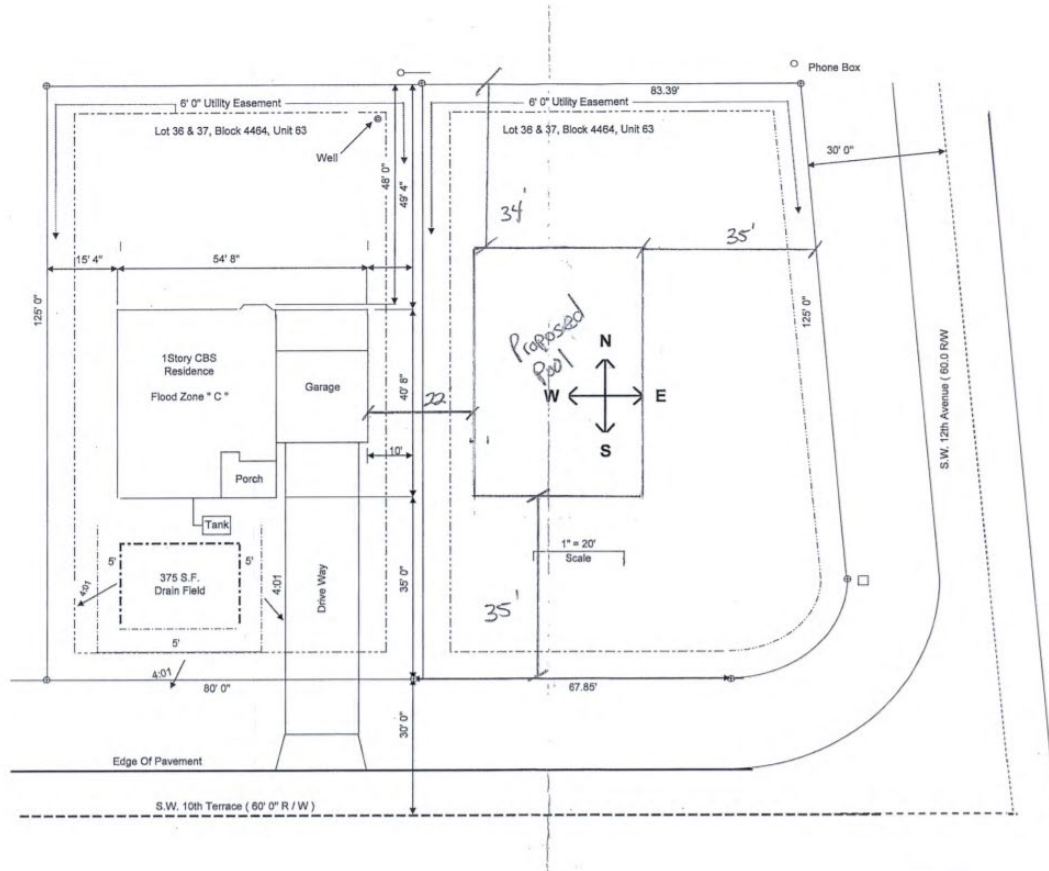
Staff finds that this variance meets one of the five standards established for variances. Since this request does not meet all five standards, staff recommends **denial**.

Staff Contact Information

Chad Boyko, AICP, Principal Planner

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

Exhibit "A"





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.

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No. of Affidavits: 1

Run Dates: 01/26/19

Text of Ad:

NOTICE OF PUBLIC HEARING

CASE NUMBER: VA18-0021

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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.

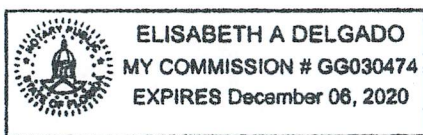


Vincent A. Cautero, AICP

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

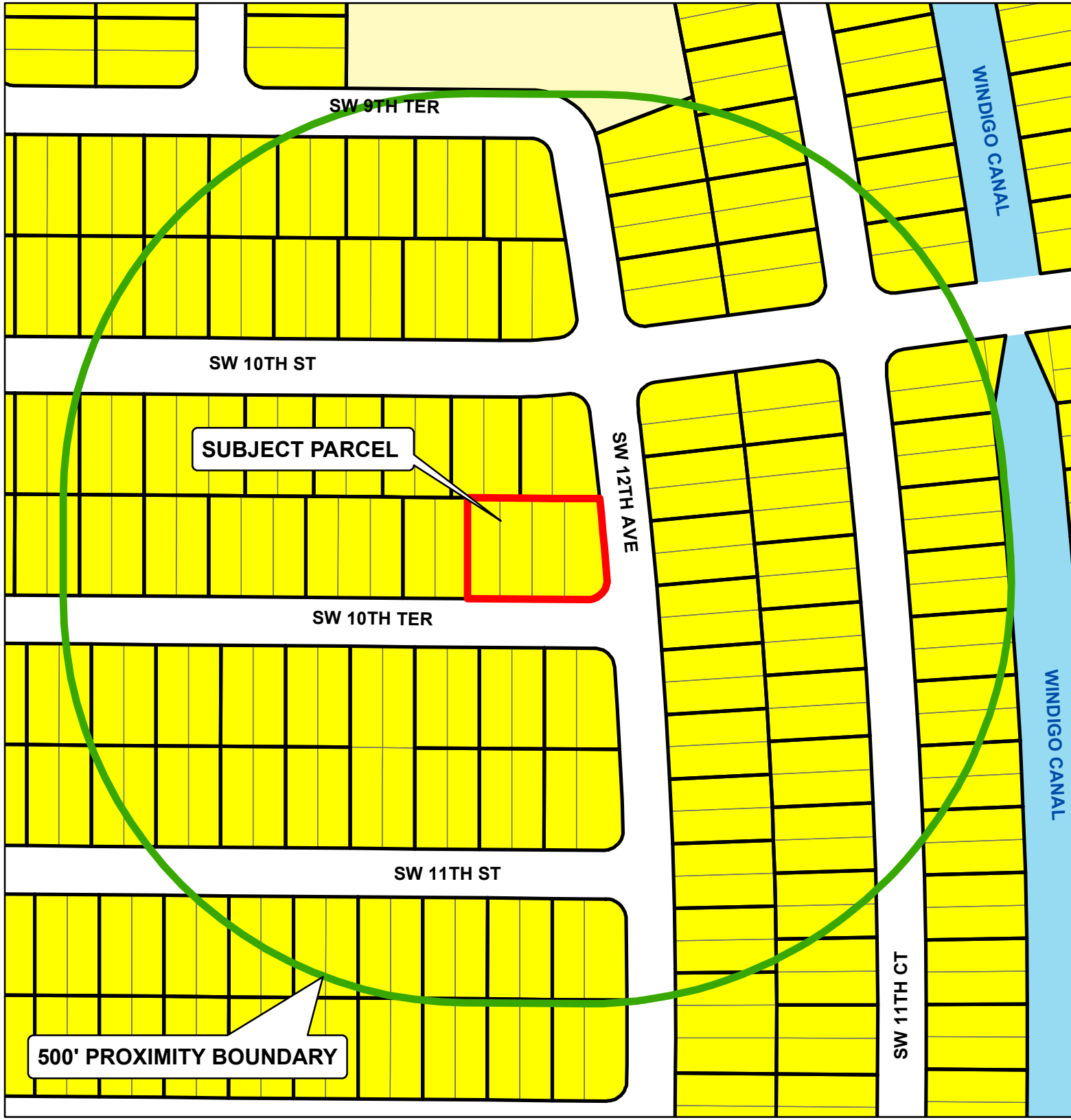
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DECEMBER 7TH, 2018



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Item Number:	3.A.
Meeting Date:	3/19/2019
Item Type:	DATE AND TIME OF NEXT MEETING

**AGENDA REQUEST
FORM**
CITY OF CAPE CORAL



TITLE:

Tuesday, April 2, 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:

LEGAL REVIEW:

EXHIBITS:

PREPARED BY:

Division- Department-

SOURCE OF ADDITIONAL INFORMATION: