



## **AGENDA FOR THE HEARING EXAMINER**

Tuesday, September 10, 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 from March 19, 2019
- B. Case #VA19-0005\*; Address: 4701 NW 32nd Street; Applicant: Fred J. Day & Ann Armstrong Day; Continued from August 20, 2019
- C. Case # SE19-0002; Address: 1707 Cape Coral Pkwy E; Applicant: 1707 Cape Coral, LLC

### **3. DATE AND TIME OF NEXT HEARINGS**

- A. Tuesday, October 1, 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:** 9/10/2019  
**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 from March 19, 2019

**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:**

Continued from 3/19/2019 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:**

**PREPARED BY:**

Division- Department-

**SOURCE OF ADDITIONAL INFORMATION:**

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

**ATTACHMENTS:**

Description	Type
□ Case #VA18-0018*	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 33914

Phone: 102-204-9435

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

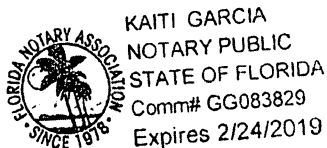
APPLICANT NAME (PLEASE TYPE OR PRINT)

[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.



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

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  
as identification.

n/a



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

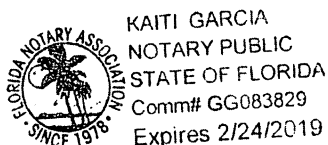
(SIGNATURE MUST BE NOTARIZED)

STATE OF FL COUNTY OF Lee

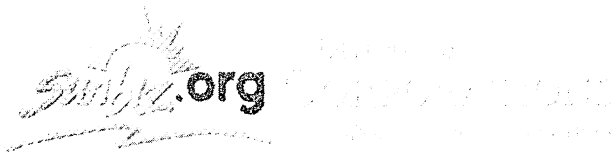
Sworn to (or affirmed) and subscribed before me on this 15 day of August,  
2018 by Paul Beattie, who is personally known or who has produced n/a as  
Identification.

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 44<sup>th</sup> 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 16<sup>th</sup> 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 16<sup>th</sup> 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**.

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**Staff Contact Information**

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

PH: 239-242-3255/Email: [mstruve@capecoral.net](mailto: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 44<sup>th</sup> 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. 44<sup>th</sup> 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 43<sup>rd</sup> 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 44<sup>th</sup> 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 44<sup>th</sup> 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:

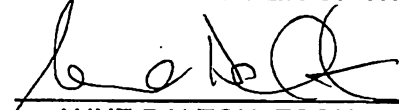
1. *Promotion of Public Health, Safety or Welfare.* The requested Special Exception **is essential to or would promote** the public health, safety or welfare in the zoning district in which it is proposed to be located.
2. *Consideration of Impairment of Integrity or Character of District.* The requested 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](http://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.

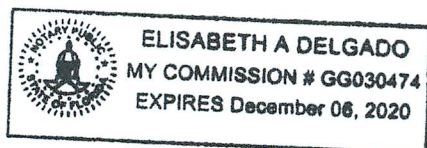
DATED this 31<sup>st</sup> day of December, 2018.

  
Richard Carr

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 31<sup>st</sup> 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

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**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:**

NOTICE OF PUBLIC HEARING

CASE NUMBER: VA18-0018

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

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

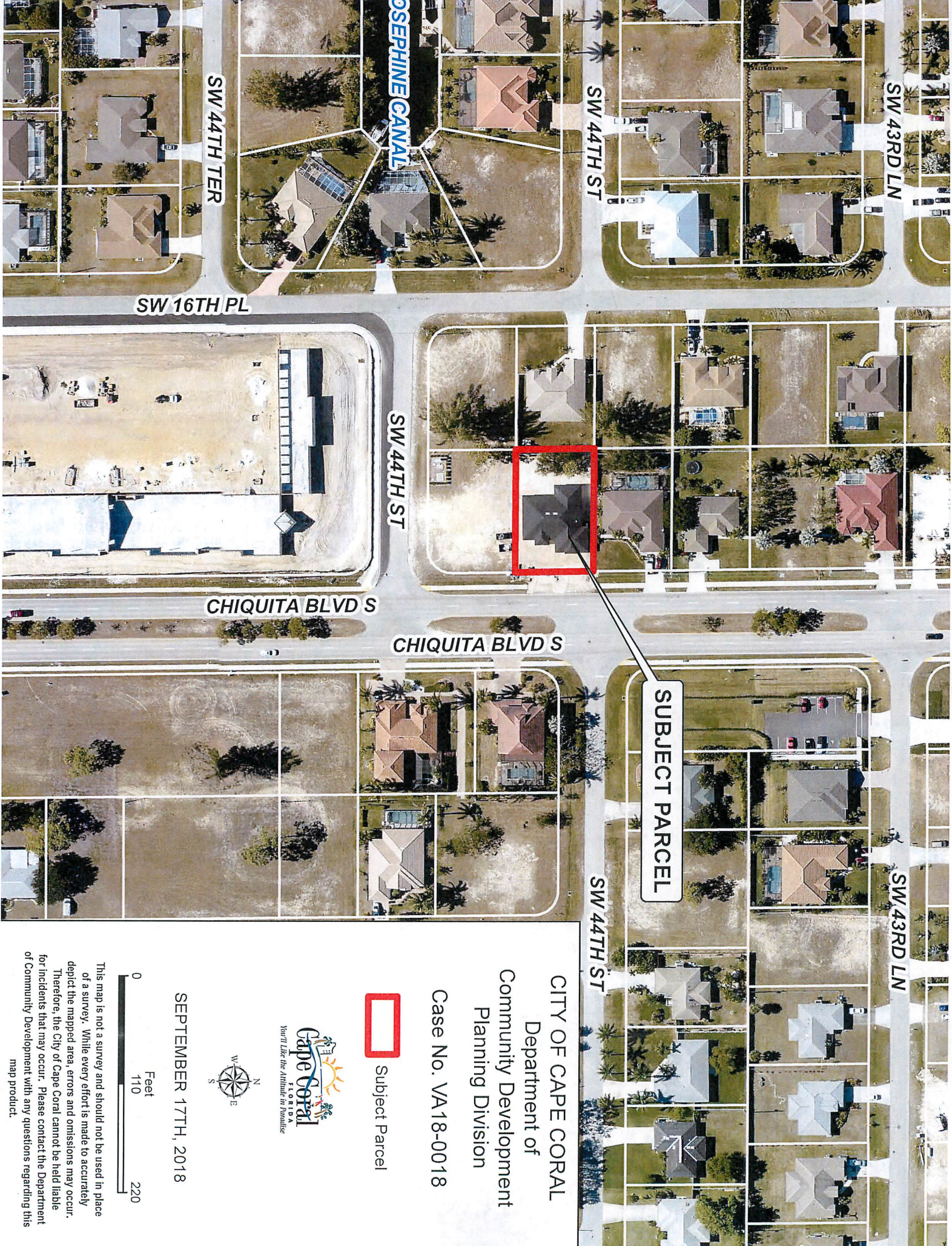
HOW TO CONTACT: Any person may appear at the public hearing and be heard, subject to proper rules of conduct. You are allowed sufficient time to write or appear at the public hearing to voice your objections or approval. Written comments filed with the Director will be entered into the record. Please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

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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

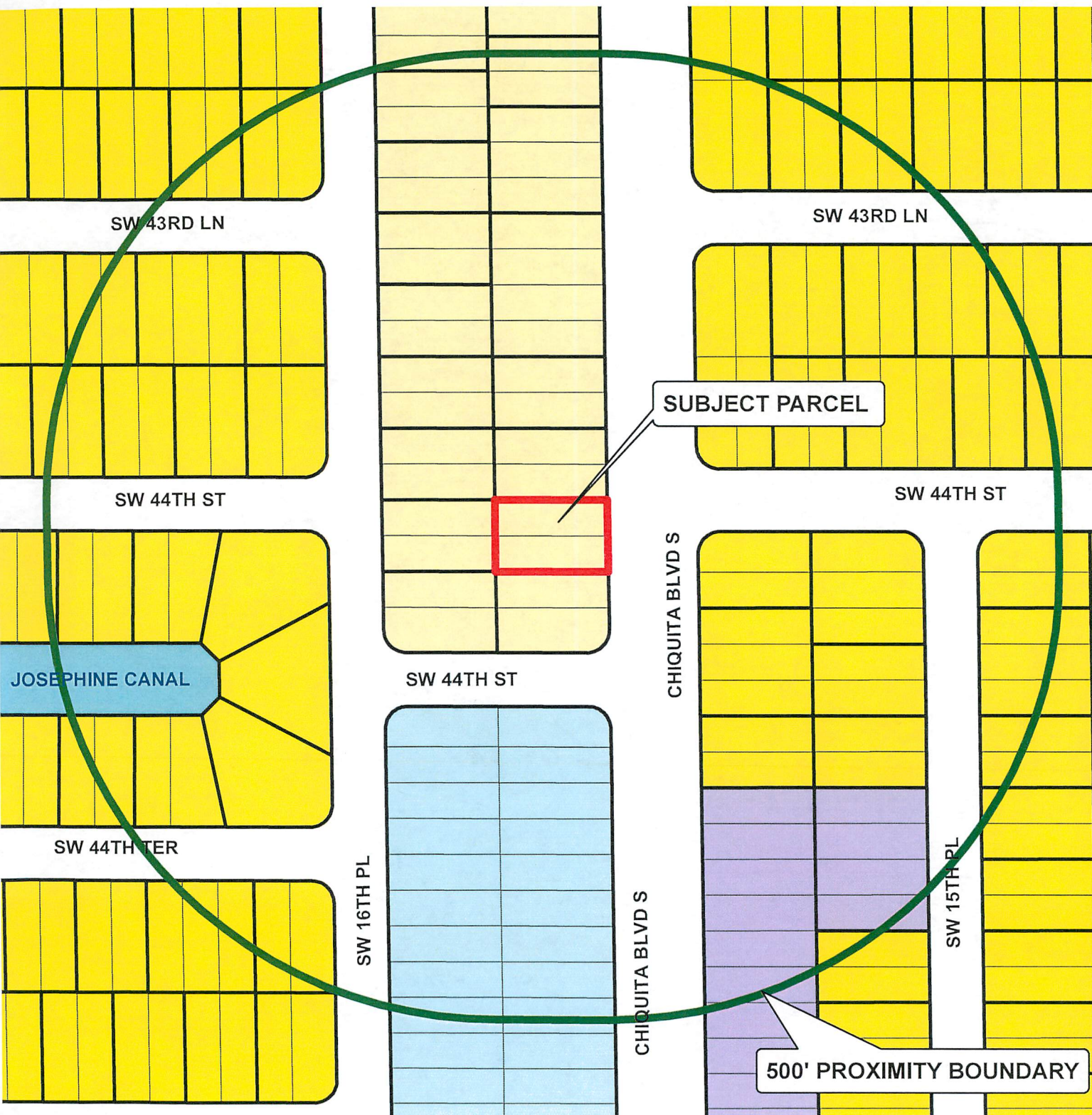
 RD



SEPTEMBER 17TH, 2018



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



**Item Number:** 2.B.  
**Meeting Date:** 9/10/2019  
**Item Type:** HEARINGS

**AGENDA REQUEST FORM**  
CITY OF CAPE CORAL



**TITLE:**

Case #VA19-0005\*; Address: 4701 NW 32nd Street; Applicant: Fred J. Day & Ann Armstrong Day; Continued from August 20, 2019

**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, Fredrick J. Day and Ann Armstrong Day Trust, dated February 17, 1994, seek a dimensional variance of ten feet from the minimum rear setback requirement of 20 feet to permit the construction of a single-family dwelling ten feet from the rear property line of a site in the Single-Family Residential (R-1B) District on property described as Lot 80, Block 5411, Unit 90, Cape Coral Subdivision; property located at 4701 NW 32<sup>nd</sup> Street.

**LEGAL REVIEW:**

**EXHIBITS:**

See Attached Backup Materials

**PREPARED BY:**

Jessica M. Cruz      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
- ▣ Updated information from the Planner and the Applicant Backup Material





DEPARTMENT OF COMMUNITY DEVELOPMENT

APPLICATION FOR VARIANCE

Questions: 239-574-0553

CASE # VA19-0005

REQUEST TO BOARD OF ZONING ADJUSTMENT & APPEAL FOR A DIMENSIONAL 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

Fred J. & Ann Armstrong Day

Address: 3993 E. 226th Street  
City: Cicero State: IN Zip 46034  
Phone: 317-442-5417 or 317-446-9909

APPLICANT

Fred J. Day & Ann Armstrong Day

Address: 3993 E. 226th Street  
City: Cicero State: IN Zip 46034  
Phone: 317-442-5417, 317-446-9909

AUTHORIZED REPRESENTATIVE

Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip \_\_\_\_\_  
Phone: \_\_\_\_\_

Unit 90 Block 5411 Lot(s) 80 Subdivision \_\_\_\_\_  
Address of Property 4701 NW 32nd St Cape Coral, FL 33993  
Current Zoning Residential Single Family Plat Book 32 Page 57  
Strap Number 21-43-2264-05411.0800  
Folio 10006311

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.

Fred J. Day & Ann Armstrong Day  
APPLICANT NAME (PLEASE TYPE OR PRINT)

Fred J. Day  
APPLICANT'S SIGNATURE



DEPARTMENT OF COMMUNITY DEVELOPMENT

APPLICATION FOR VARIANCE

Questions: 239-574-0553

CASE # \_\_\_\_\_

(SIGNATURE MUST BE NOTARIZED)

STATE OF Indiana, COUNTY OF \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me this 19 day of April, 2019 by  
Fred & Ann Day who is personally known or produced Driver's License  
as identification.

Exp. Date: Nov. 8 2022 Commission Number: 556132

Signature of Notary Public:

Printed name of Notary Public:

Darla G. Godby  
Darla G. Godby



DARLA G. GODBY  
Notary Public  
State of Indiana  
Commission No. 556132  
My Commission Expires  
November 8, 2022



DEPARTMENT OF COMMUNITY DEVELOPMENT

APPLICATION FOR VARIANCE

Questions: 239-574-0553

CASE # \_\_\_\_\_

### ACKNOWLEDGEMENT FORM

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

I acknowledge that I or my representative must attend any applicable meetings scheduled for the Planning & Zoning Commission/Local Planning Agency, Board of Zoning Adjustments and Appeals, and 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 that I am responsible for recording the approved Resolution/Ordinance with the Lee County Clerk of Circuit Courts and providing a copy of the recorded Resolution/Ordinance to the City of Cape Coral Planning and Growth Management Division.

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

Fred J. Day Ann Armstrong Day

PROPERTY OWNER (PLEASE TYPE OR PRINT)

PROPERTY OWNER'S SIGNATURE

STATE OF Indiana, COUNTY OF Hamilton

Sworn to (or affirmed) and subscribed before me this 19 day of April, 2019 by

Fred & Ann Day who is personally known or produced DRIVERS LICENSE

as identification.

Exp. Date: Nov. 8, 2022 Commission Number: 556132

Signature of Notary Public:

Printed name of Notary Public:

Darla A. Godby  
Darla A. Godby

My Commission Expires  
November 8, 2022  
Commission No. 556132  
State of Indiana  
Notary Public



DARLA A. GODBY



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

CASE # VA19-0005

AUTHORIZATION TO REPRESENT PROPERTY OWNER(S)

PLEASE BE ADVISED THAT Scott J. Hertz, Esq.

(Name of person giving presentation)

IS AUTHORIZED TO REPRESENT ME IN THE REQUEST TO THE HEARING EXAMINER, OR CITY COUNCIL FOR  
Variance to rear setback requirement

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

UNIT 90 BLOCK 5411 LOT(S) 80 SUBDIVISION Cape Coral

OR LEGAL DESCRIPTION

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

Fred J. Day

PROPERTY OWNER (Please Print)

[Signature]  
PROPERTY OWNER (Signature & Title)

Ann A. Day

PROPERTY OWNER (Please Print)

[Signature]  
PROPERTY OWNER (Signature & Title)

STATE OF Florida, COUNTY OF Lee

Subscribed and sworn to (or affirmed) before me this 3rd day of August, 2019, by  
Scott J. Hertz, Esq. who is personally known or produced  
as identification.

NOTARY PUBLIC  
STATE OF MICHIGAN  
COUNTY OF MACKINAC  
My Commission Expires April 16, 2023  
Acting in the County of \_\_\_\_\_

Exp. Date: 4/16/23 Commission Number: 47

Signature of Notary Public:

Printed name of Notary Public:

[Signature]  
Amy Beckman-Petrie

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



PREPARED BY & RETURN TO:

Name: Grisel Serpa, an employee of  
Selco Title & Escrow Corp.  
Address: 2450 Hollywood Blvd.  
Suite 100  
Hollywood, FL 33020  
File No. 18-1015

Parcel No.: 2443-22C405411-0800

SPACE ABOVE THIS LINE FOR PROCESSING DATA

SPACE ABOVE THIS LINE FOR RECORDING DATA

This **WARRANTY DEED**, made the 20<sup>th</sup> day of February, 2018, by **ESTEBAN ABREU** and **ELSA ABREU**, Husband and Wife, hereinafter called the Grantors, to **FREDERICK J. DAY, AS TRUSTEE OF THE TRUST CREATED BY FREDERICK J. DAY DATED FEBRUARY 17, 1994, 50% and ANN ARMSTRONG DAY, AS TRUSTEE OF THE TRUST CREATED BY ANN ARMSTRONG DAY DATED FEBRUARY 17, 1994, 50%, as joint tenants with the right of survivorship**, whose post office address or principal place of business is 3993 East 226<sup>th</sup> Street Cicero IN 46034, hereinafter called the Grantees:

WITNESSETH: That the Grantors, for and in consideration of the sum of \$10.00 and other valuable consideration, receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, alien, remise, release, convey and confirm unto the Grantees all that certain land situate in City of Cape Coral, County of Lee, State of Florida, viz:

**Lot 80, Block 5411, Unit 90, CAPE CORAL SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 32, at Page 57, of the Public Records of Lee County, Florida.**

TOGETHER WITH all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

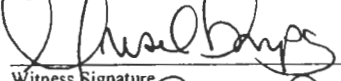
SUBJECT TO TAXES FOR THE YEAR 2018 AND SUBSEQUENT YEARS, RESTRICTIONS, RESERVATIONS, COVENANTS AND EASEMENTS OF RECORD, IF ANY.

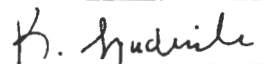
TO HAVE AND TO HOLD the same in fee simple forever.

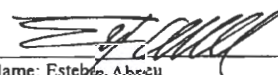
And the Grantors hereby covenant with the Grantees that the Grantors are lawfully seized of said land in fee simple, that the Grantors have good right and lawful authority to sell and convey said land and that the Grantors hereby fully warrant the title to said land and will defend the same against the lawful claims of all persons whomsoever. Grantors further warrant that said land is free of all encumbrances, except as noted herein and except taxes accruing subsequent to December 31, 2017.


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

Signed, sealed and delivered in the presence of:

  
Witness Signature  
Printed Name: Grisel Serpa

  
Witness Signature  
Printed Name: LYUDMILA KOZHENKO

  
Name: Esteban Abreu  
Address: 1850 South Ocean Dr, #1801, Hallandale, FL 33009

  
Name: Elsa Abreu  
Address: 1850 South Ocean Dr, #1801, Hallandale, FL 33009

STATE OF FLORIDA  
CITY OF HOLLYWOOD  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of February, 2018, by Esteban Abreu and Elsa Abreu, who are personally known to me or who have produced FL Driver License as identification.

  
GRISSEL SERPA  
MY COMMISSION # GG 071151  
EXPIRES: April 22, 2021  
Bonded Thru Budget Notary Services

  
Signature of Notary  
Printed Name: Grisel Serpa  
My commission expires: APRIL 22, 2021

**Cape Coral Variance request for 4701 NW 32<sup>nd</sup> St., Cape Coral FL 33993**

(3.a) This letter of intent is from Fred J. and Ann A. Day, owners of lot #80, block 5411, strap number 21-43-22c4-054-11.0800, with an address of 4701 NW 32<sup>nd</sup> Street, Cape Coral Fl. We are requesting a reduction of 12 ft. from the original; 20 ft. setback req. set by the city) on the north boundary lot 80. We acknowledge that Fred J. Day, Ann A Day, or a representative, will be available to attend the board of zoning hearing.

(b.) The reason for this setback is to make room for a gravity fed septic system.

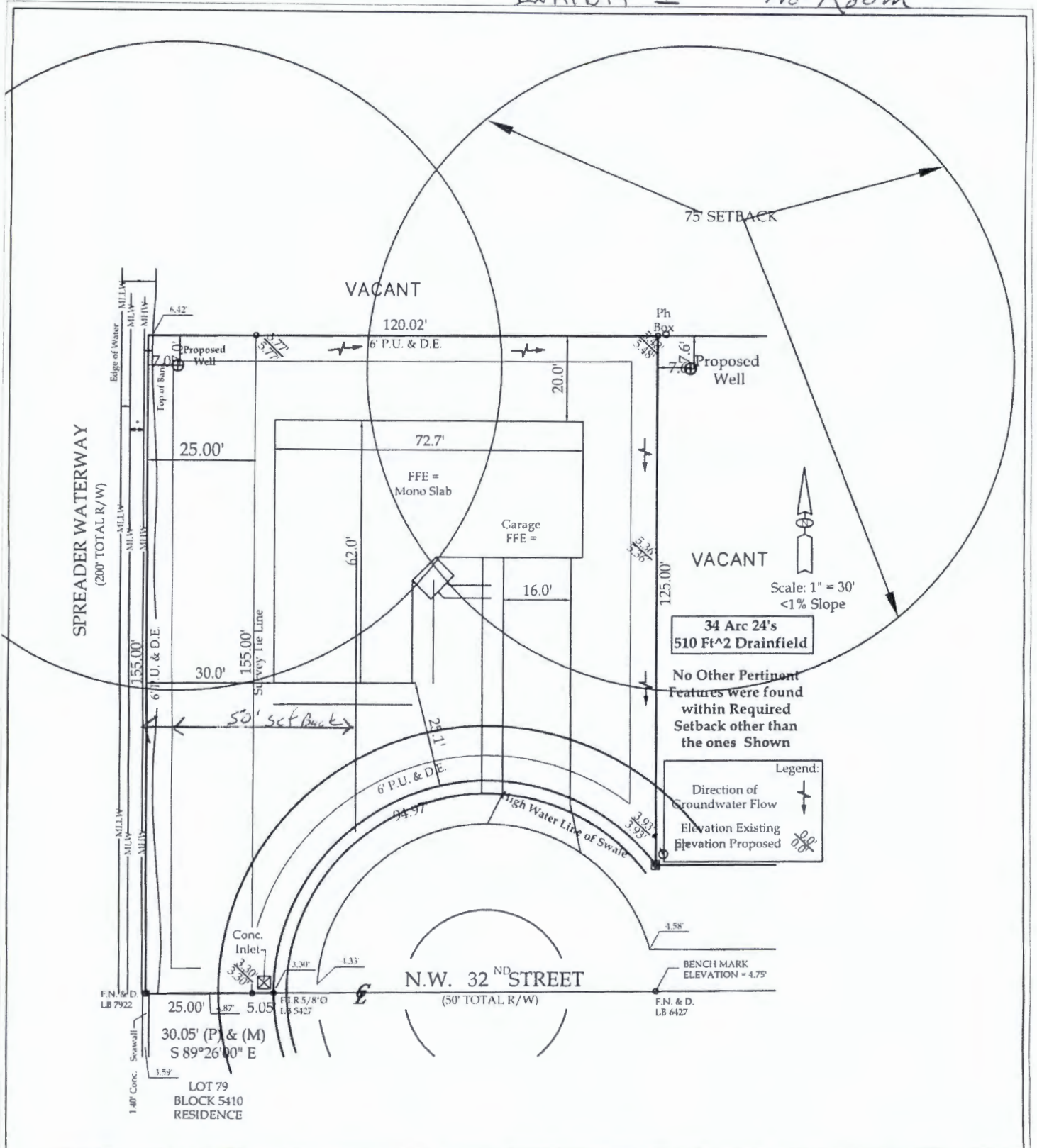
(c.) The current ordinances have reduced our lot size from 19,960 sq. ft. to 6,712.50 sq. ft. for purposes of well and septic placement. Our proposed well, and the neighbor's well placement, along with city channel setbacks rule out any septic locations to the north, west, and east sides of our lot. The only place for a septic field is on the south of our lot. This location is severely cut into by the cul-de-sac setbacks. The cul-de-sac setback has pushed the septic field into the master bathroom foundation. We need and are requesting 12 more feet to our south to accommodate the septic field. This can be accomplished by setting the house back 12 feet to the north side of our lot.

Our lot overlooks the spreader, and nature preserve to the west. We wish to place an aesthetically pleasing; approximately 2300 sq. ft. home on this lot, in keeping with Cape Coral's other fine homes in this area. Without Cape Coral's Development Board's approval of this variance our dream home plans are in jeopardy. There will still be more than 8 feet of setback left to the north boundary line after approval of this setback.

My wife and I bought this lot in January 2018. It's taken us more than a year to complete a seawall. Since completion we have learned that our lot is not nearly the size we thought it was to build on. The adjoining cul-de-sac lots are "triple lots." We unknowingly purchased a double lot. We tried buying the adjoining dry lot, but found it was sold and under construction. The area we envisioned building on has been cut to a fraction of what we thought we had purchased. We cannot build up; as my wife has arthritis of the knees, and we both wish to be able to age in place.

**Please consider the included exhibits:**

# Exhibit 1 No Room



Site Address: 4701 NW 32nd St.  
Cape Coral, FL 33993  
Lots 80 Block 5411 Unit 90

NOTE: THIS DRAWING IS NOT A SURVEY. THIS DRAWING IS TO BE USED FOR SEPTIC SYSTEM PERMITTING AND INSTALLATION ONLY. THE CONTRACTOR SHALL ENSURE THAT ALL STRUCTURES MEET SETBACK REQUIREMENTS AND VERIFY ALL SETBACKS, DIMENSIONS, AND FINISH FLOOR ELEVATION PRIOR TO PERMITTING AND CONSTRUCTION.



Land Perc, Inc.  
5475 Lee Street  
Lehigh Acres, FL 33971  
Unit 302

USE OF ALTERNATIVE STATE APPROVED PRODUCTS IS ACCEPTABLE FOR INSTALLATION PER ENGINEER

DRAWN BY: Drawn By MJC  
19-12512  
Original 03-05-19

CHECKED BY:  
Grant C. Girtman, P.E., PE # 57458 CA # 28397  
Commercial-Residential  
Structural Engineering, Inc.  
10491 Six Mile Cypress Pkwy, Ste 263  
Fort Myers, FL 33966  
239-274-6818



## Mike Struve

---

**From:** Fred Day <fred.day@ciceroinsuranceplans.com>  
**Sent:** Friday, July 19, 2019 8:58 AM  
**To:** Mike Struve  
**Subject:** [EXTERNAL] - Day Lot Survey  
**Attachments:** 4701+NW+32+St.+GWD+Survey (1).pdf

Caution – This email originated from outside of our organization. Please do not open any attachments or click on any links from unknown sources or unexpected email.

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Thank you Mike for emailing me this Variance application. This is the first time I have seen this form. I will work on it over the weekend. In the meantime here is the site survey of our lot. I thought you had this almost two months ago so sorry I did not get it to you earlier. As you can see we though there would be no problem at all building a modest 2200 sq. ft. home on this lot. Overt the last two years we have found that with all the current setbacks, variances, and city regulations we indeed do have a problem. With the approval of our requested 10ft. set back on the northside of our lot we can fit this home and our required septic system on it. The neighbor on our northside seems amenable to our request on the set back. Our goal is to build an aesthetically beautiful home in this Cape Coral neighborhood, one that fits safely in the neighborhood while adding value and prestige to neighboring properties. This can all be accomplished with the additional setback variance of 10ft requested in this email.

Please give me some exact dates when you can on my hearing date. I need a week or two to prepare my trip down.

Thank you Mike,

Fred J. Day

Office: (317) 606-8092 Ext.302  
Cell: (317) 442-5417  
Fax: (317) 606-8233  
Email: [fred.day@ciceroinsuranceplans.com](mailto:fred.day@ciceroinsuranceplans.com)

**From:** Mike Struve <mstruve@capecoral.net>  
**Sent:** Thursday, July 18, 2019 9:14 AM  
**To:** [fred.day@ciceroinsuranceplans.com](mailto:fred.day@ciceroinsuranceplans.com)  
**Subject:** Variance application

Mr. Day,

Attached is a variance application. I think the form you submitted previously was out-of-date. You should fill out page 6 entitled "Authorization to Represent Property Owners" if you and your wife want the option to have someone represent you at public hearing. Just because you identify another individual on this form does not mean that you still cannot speak on your own behalf. You should also fill out the form on page 7 entitled "Documentary Evidence." Please return both forms to me after completion by mail or email.

I also want to call your attention to page 4 of the application entitled "Address the Following Points in your Request." This page includes the five standards (a-e) that staff evaluates for variance requests. Staff must find that each standard has been met to recommend approval of a variance. The Hearing Examiner will review the same five standards in basing a decision on whether to grant a variance.

Thank you for your assistance. Please contact me should you have any questions.

Mike Struve, AICP, LEED Green Associate  
Planning Team Coordinator  
City of Cape Coral  
Department of Community Development  
Planning Division  
PO Box 150027  
Cape Coral, FL 33915-0027  
Phone 239.242.3255  
[mstruve@capecoral.net](mailto:mstruve@capecoral.net)

Florida has a broad public records law and all correspondence, including email addresses, may be subject to disclosure. The Government in the Sunshine Law applies to "any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision" in part, Section 286.011, Florida Statutes.

This transmission may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or use of the information contained herein (including any reliance thereon) is STRICTLY PROHIBITED. If you received this transmission in error, please immediately contact the sender and destroy the material in its entirety, whether in electronic or hard copy format.

# BOUNDARY SURVEY

SCALE 1"=20'

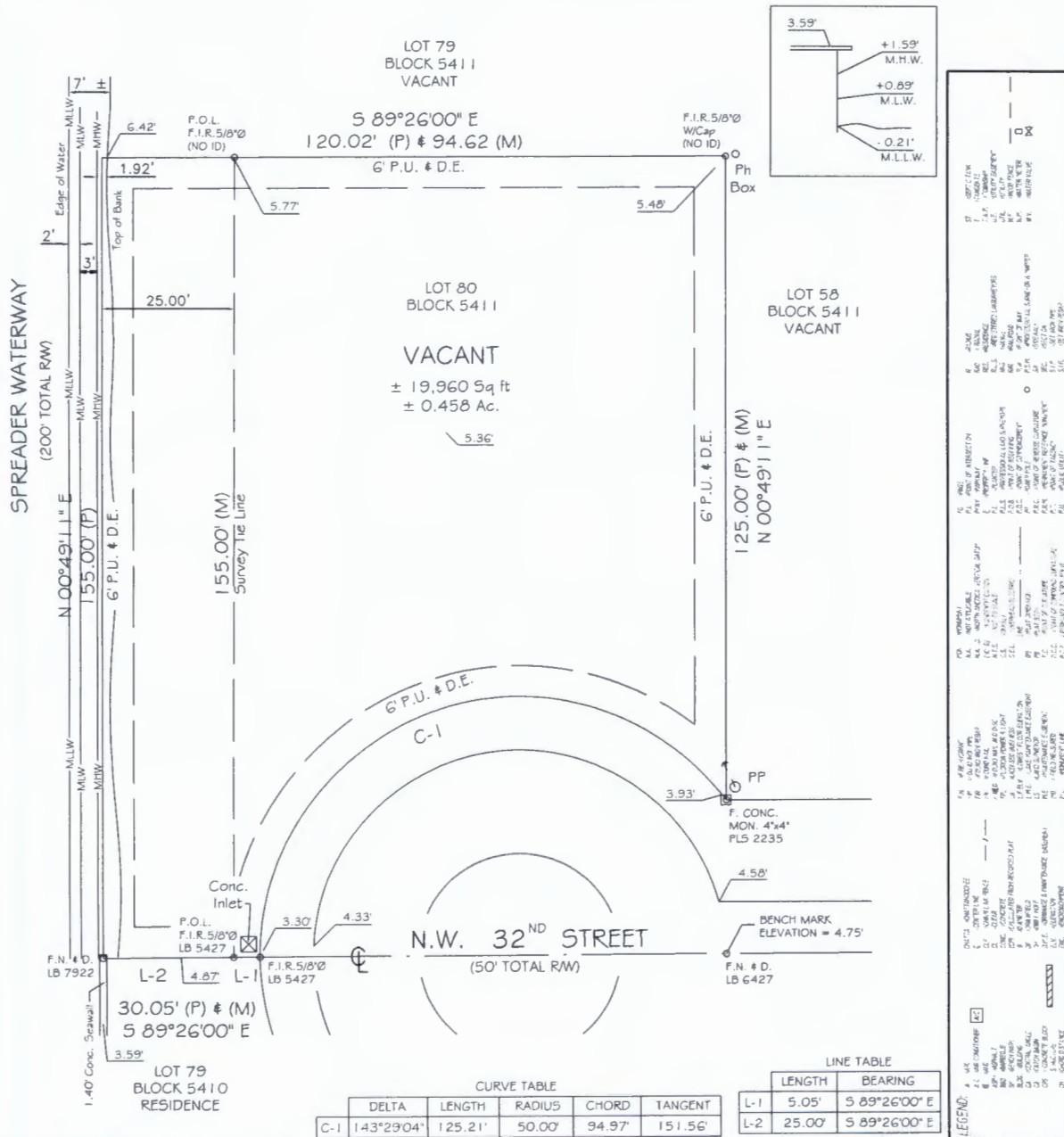


PROPERTY ADDRESS: 4701 N.W. 32nd STREET, CAPE CORAL, FLORIDA 33993.

LEGAL DESCRIPTION: LOT 80, BLOCK 5411, UNIT 90, CAPE CORAL SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF, AS RECORDED IN PLAT BOOK 32, PAGE(S) 48 THROUGH 111, INCLUSIVE, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

## NOTE(S):

- 1- THIS BOUNDARY SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A COMMITMENT FOR TITLE INSURANCE, LEGAL DESCRIPTION PROVIDED BY OTHERS.
- 2- UNLESS SHOWN, UNDERGROUND UTILITIES, IMPROVEMENTS, FOUNDATIONS AND/OR SUBSURFACE STRUCTURES WERE NOT LOCATED BY THIS BOUNDARY SURVEY.
- 3- BEARINGS ARE BASED ON THE CENTER LINE OF N.W. 32ND STREET HAVING A BEARING OF S 89°26'00" E PER RECORDED PLAT BOOK 32, PAGE 57.
- 4- THE PURPOSE OF THIS SURVEY IS FOR USED IN OBTAINING TITLE INSURANCE AND FINANCING AND SHOULD NOT BE USED FOR CONSTRUCTION PURPOSES.
- 5- THE LAND(S) SHOWN HEREON WERE NOT ABSTRACTED FOR EASEMENTS OR OTHER RECORDED ENCUMBRANCES THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THE COUNTY.
- 6- THE EXPECTED USE OF THE LAND, AS CLASSIFIED IN THE STANDARDS OF PRACTICE ( 61G17-6FAC), IS "SUBURBAN". THE MINIMUM RELATIVE DISTANCE ACCURACY FOR THIS TYPE OF BOUNDARY SURVEY IS 1 FOOT IN 7,500 FEET. THE ACCURACY OBTAINED BY MEASUREMENT AND CALCULATION OF A CLOSED GEOMETRIC FIGURE WAS FOUND TO EXCEED THIS REQUIREMENT.
- 7- THIS BOUNDARY SURVEY DOES NOT REFLECT OR DETERMINE OWNERSHIP.
- 8- DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
- 9- ADDITIONS OR DELETIONS TO SURVEY MAPS OR REPORTS BY OTHER THAN THE SIGNING PARTY OR PARTIES IS PROHIBITED WITHOUT WRITTEN CONSENT OF SIGNING PARTY OR PARTIES.



LIST OF ENCROACHMENTS:  
THERE ARE NO VISIBLE ENCROACHMENTS

ORDER No:	FIELD WORK:	REVISIONS:
NB 3304	01/08/2016	
FLOOD INFORMATION:		
(BASED ON THE FLOOD INSURANCE RATE MAP OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY) ELEVATION ARE REFERRED TO N.A.S.D. OF 1989		
F.I.R.M. DATE:	FLOOD ZONE:	BASE ELEVATION:
08/28/2008	AE	8'
COMMUNITY	PANEL NUMBER	SUFFIX:
125095	0230	F

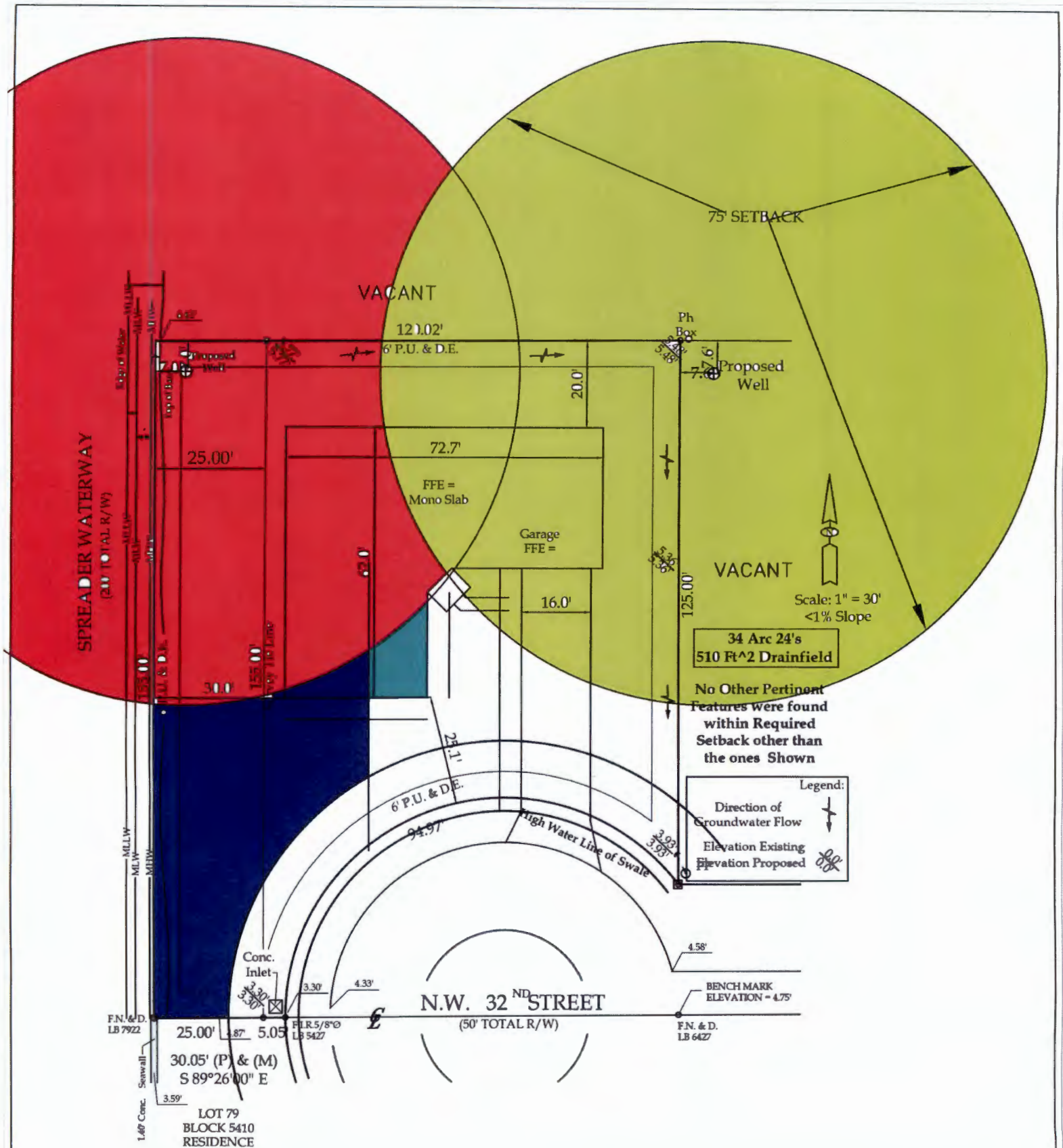
CERTIFIED TO:  
ELIZABETH L. CONNER AND  
MARGARET M. FISHER.  
WFG NATIONAL TITLE INSURANCE COMPANY.  
SELCO TITLE AND ESCROW CORPORATION.

LEGEND:

4. ARE (ENCLOSURE)  
5. ARE (ENCLOSURE)  
6. ARE (ENCLOSURE)  
7. ARE (ENCLOSURE)  
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19. ARE (ENCLOSURE)  
20. ARE (ENCLOSURE)

MIGUEL GARAY  
P.S.M. LS 8592, STATE OF FLORIDA  
NEW BEARINGS, INC.  
1456 S.E. 14TH TERRACE, CAPE CORAL, FL 33990  
Phone: 239-440-7828





Site Address: 4701 NW 32nd St.  
Cape Coral, FL 33993  
Lots 80 Block 5411 Unit 90

NOTE: THIS DRAWING IS NOT A SURVEY. THIS DRAWING IS TO BE USED FOR SEPTIC SYSTEM PERMITTING AND INSTALLATION ONLY. THE CONTRACTOR SHALL ENSURE THAT ALL STRUCTURES MEET SETBACK REQUIREMENTS AND VERIFY ALL SETBACKS, DIMENSIONS, AND FINISH FLOOR ELEVATION PRIOR TO PERMITTING AND CONSTRUCTION.



Land Perc, Inc.  
5475 Lee Street  
Lehigh Acres, FL 33971  
Unit 302

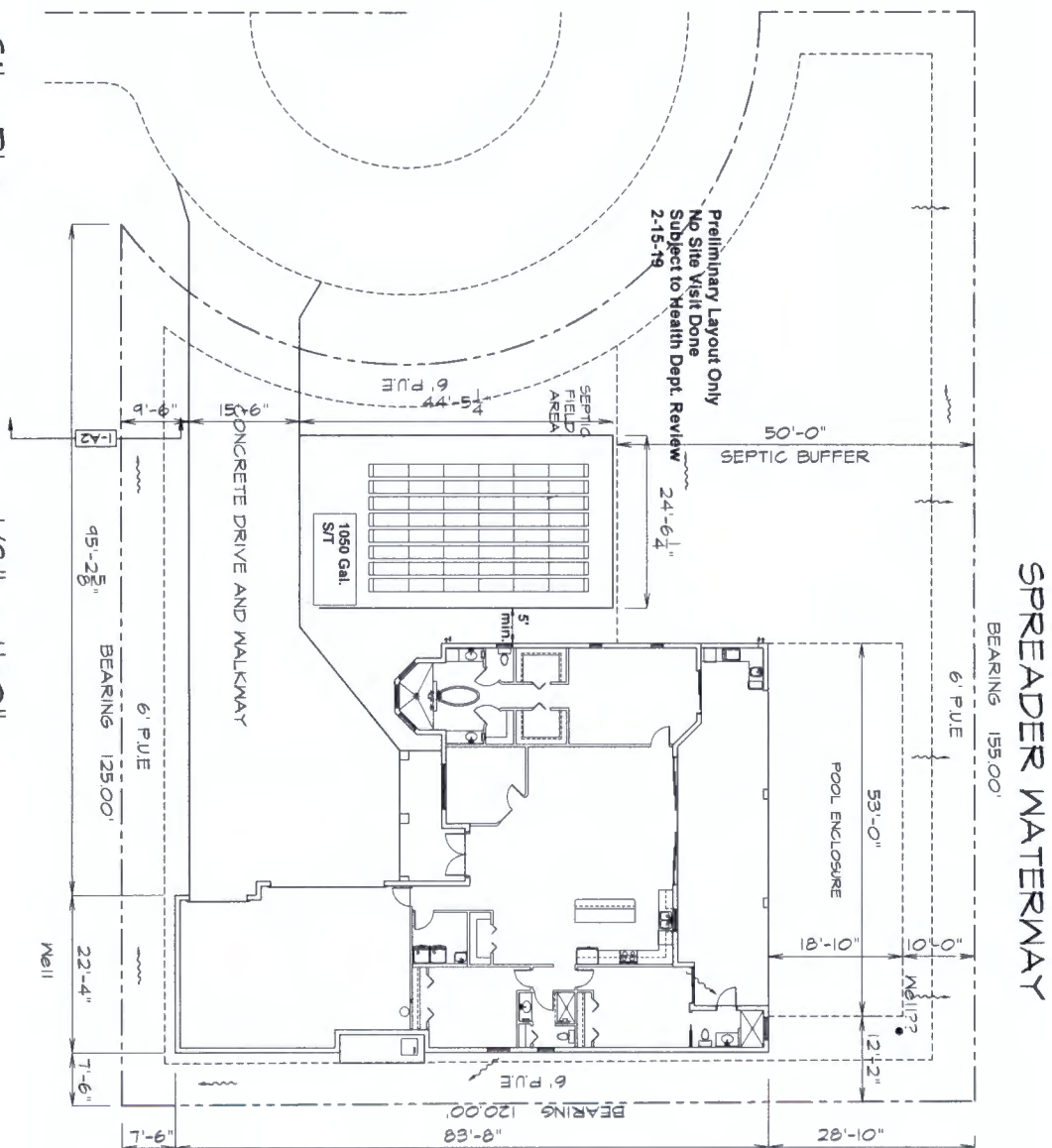
USE OF ALTERNATIVE STATE APPROVED PRODUCTS IS ACCEPTABLE FOR INSTALLATION PER ENGINEER

DRAWN BY: Drawn By MJC  
19-12512  
Original 03-05-19

CHECKED BY:  
Grant C. Girtman, P.E., PE # 57458 CA # 28397  
Commercial-Residential  
Structural Engineering, Inc.  
10491 Six Mile Cypress Pkwy, Ste 283  
Fort Myers, FL 33966  
239-274-6818

Site Plan  
ADDRESS

1/8" = 1'-0"



A2

DATE	3-15-18
SHEET	4 of 5
REV	

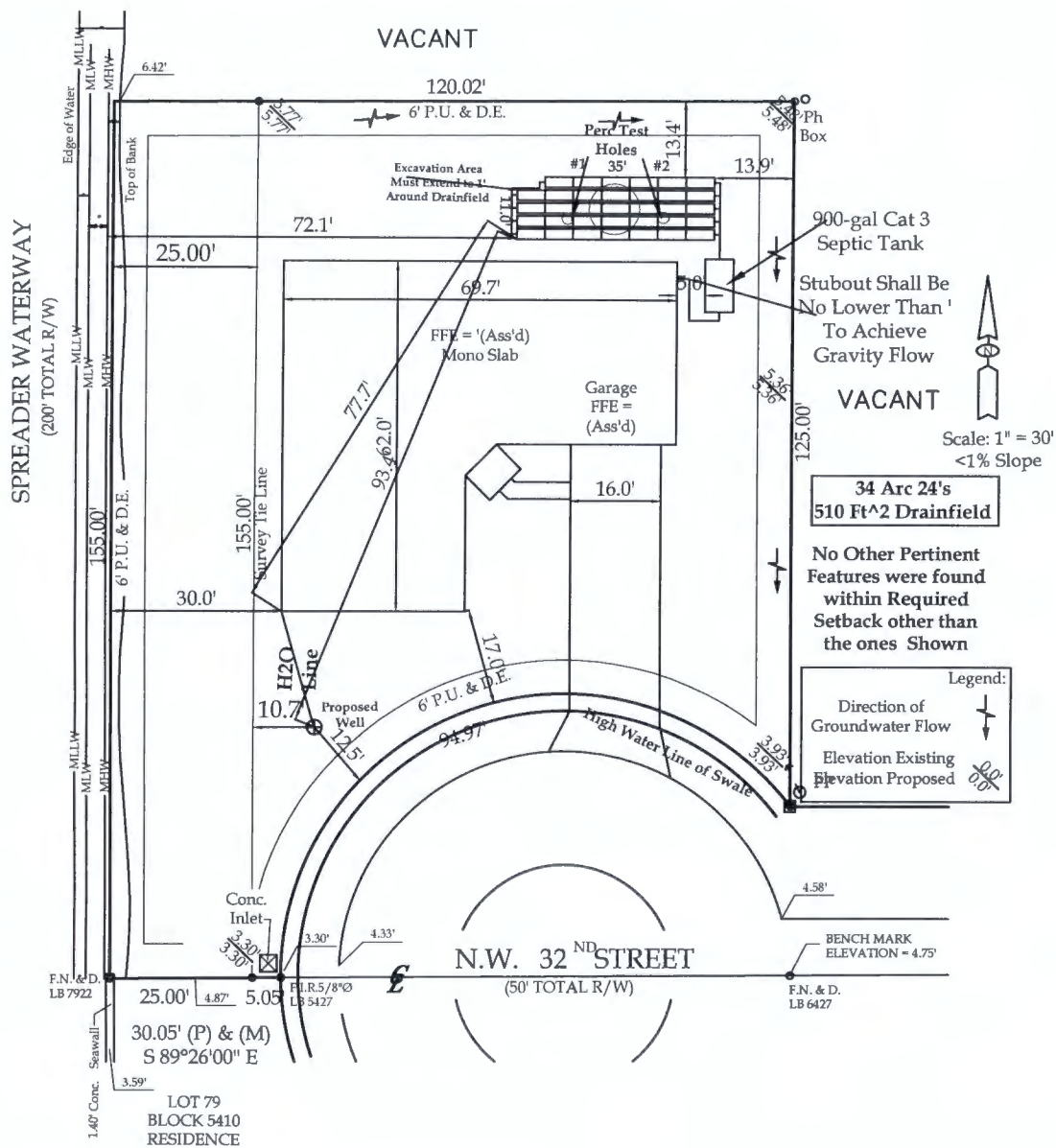
Mr. & Mrs. DAY  
CUSTOM HOME  
4701 NW 32nd Street  
CAPE CORAL, FLORIDA

Prepared by:  
**Coral Isle Builders**  
4049 Del Prado Blvd. South  
Cape Coral, FL 33904

Drawn by:  
**BRIJA AUTOMATED DESIGN**  
PH: (239) 458-6533

**GULF COAST ENGINEERING**  
3002 DEL PRADO BLVD. SOUTH  
CAPE CORAL, FL 33904  
PHONE: (239) 458-6633  
FAX: (239) 458-6733

STRUCTURAL COMPONENTS ONLY  
THE CERTIFICATION IS FOR  
STRUCTURAL COMPONENTS IN  
ACCORDANCE WITH THE  
ELECTRIC BUILDING CODES  
2017 AM TYPICAL FOR  
WIND AND GRAVITY LOADS  
ENCLOSURE  
RECORD SET 8



Site Address: 4701 NW 32nd St.  
Cape Coral, FL 33993  
Lots 80 Block 5411 Unit 90

NOTE: THIS DRAWING IS NOT A SURVEY. THIS DRAWING IS TO BE USED FOR SEPTIC SYSTEM PERMITTING AND INSTALLATION ONLY. THE CONTRACTOR SHALL ENSURE THAT ALL STRUCTURES MEET SETBACK REQUIREMENTS AND VERIFY ALL SETBACKS, DIMENSIONS, AND FINISH FLOOR ELEVATION PRIOR TO PERMITTING AND CONSTRUCTION.



Land Perc, Inc.  
5475 Lee Street  
Lehigh Acres, FL 33971  
Unit 302

USE OF ALTERNATIVE STATE APPROVED PRODUCTS IS ACCEPTABLE FOR INSTALLATION PER ENGINEER

DRAWN BY: MJC  
19-12512  
Original 03-05-19

CHECKED BY:

Grant C. Girtman, P.E., PE # 57458 CA # 28397  
Commercial-Residential  
Structural Engineering, Inc.  
10491 Six Mile Cypress Pkwy, Ste 283  
Fort Myers, FL 33966  
239-274-6818



**Review Date:** August 12, 2019

**Property Owner:** Fredrick J. Day and Ann Armstrong Day Trust dated February 17, 1994  
3993 East 226<sup>th</sup> Street  
Cicero, IN 46034

**Applicant:** Fredrick J. Day and Ann Armstrong Day

**Rep:** Scott J. Hertz, Esq.

**Request:** The applicant requests a variance of ten feet, to the rear setback requirement of 20 feet, to allow a single-family dwelling to be constructed ten feet from the rear property line in the Single Family Residential (R-1B) District.

**Location:** 4701 NW 32<sup>nd</sup> Street  
Cape Coral, FL 33993  
Strap number: 24-43-22-C4-05411.0800  
Unit 90, Block 5411, Lot 80

**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:** Reserve

**Code Compliance Case:** No

## Background:

The ±19,960-sq. ft. site is in northwest Cape Coral. The site has frontage along NW 32<sup>nd</sup> Street. The west side of the site has water frontage along the North Spreader Waterway. Except for a seawall constructed along the west property line, the site is unimproved. Development in this area is sporadic and is limited to single-family dwellings as centralized utilities have not been extended to this area.

The site has a Single Family and Multi-Family Future Land Use Classification (FLUC) as do sites to the north, east, and south. State-owned lands to the west have a Natural Resources/Preservation FLUC. At the time the variance application was filed with the City, the site had Single Family Residential (R-1B) Zoning that was shared by sites to the north, east, and south.<sup>1</sup> State lands to the west are unzoned and uses in these areas are regulated by the FLUC.

The applicant seeks to construct a one-story, single-family residence with a living area of around 2,334 sq. ft. based on a site plan provided by the applicant and appearing in Exhibit A. A pool is proposed along the

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<sup>1</sup> The subject site was rezoned to the Single-Family Residential (R1) District by Ordinance 4-19 that was adopted by the City Council on August 5, 2019.

west side of the dwelling, adjacent to the North Spreader Waterway. Pools are required to be to the rear of the site although pools may a maximum of 10 feet beyond the side of the structure while maintaining side yard setbacks (LDC, Section 5.2.15). The total area of the proposed residence including living area, lanai, and garage is 4,010 sq. ft.

### **Similar Variances Cases within Block 5411**

The applicant has received a cul-de-sac variance of seven feet to allow an 18-foot front setback earlier in 2019. Cul-de-sac variances are governed by LUDR, Section 3.13, and can be approved administratively. City records indicate no other variances have been granted to lot owners in Block 5411.

### **Applicable Regulation:**

LUDR, Section 2.7.1, Table R-1, requires a minimum rear setback of 20 feet for buildings in the R-1B District.

### **Zoning History of the Site**

The site has always had a Single Family and Multi-Family FLUC.

The site was rezoned from the R-1B District to the Single-Family Residential (R1) District by Ordinance 4-19.

### **Analysis:**

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

Staff has reviewed this application based on the five standards in LUDR, Section 8.10.3a-e.

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 analysis: Standard MET by the applicant.**

The site is a cul-de-sac lot that is 19,960 sq. ft. and is relatively flat. A well providing potable water to the proposed residence will be at the northwest corner of the site. An existing well on the adjacent site to the east at 4635 NW 32<sup>nd</sup> Street occupies the northwest corner of that site. Chapter 64E-6, Florida Administrative Code (FAC), requires a minimum 75-foot setback for a septic drain field from a private potable well. The two wells prevent a drain field on the northern half of the site.

FAC also prohibits drain fields within 50 feet of a surface water, like a canal. This regulation prevents a drain field from being placed in the southwest corner of the site near the North Spreader Waterway.

Based on the location of the two wells and North Spreader Waterway, a drain field is restricted to the southeast quadrant of the site. Furthermore, FAC requires drain fields to be a minimum of five feet from a building foundation and five feet from any property line abutting an easement.

The combination of several factors imposes a special circumstance that is peculiar to this site. The cumulative effect of the two wells, the presence of the canal, and the application of the FAC, restrict the drain field to a relatively, small fixed area of the site. Restricting the septic tank and drain field to the southeast portion of the site in turn requires the dwelling to be shifted northward to comply with drain field setbacks from the building foundation.

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 analysis: Standard NOT MET by the applicant.**

The applicant seeks to construct a single-family residence that is around 2,334 sq. ft. The living area of this dwelling is less than the living area of new single-family homes constructed in the City since 2018 that average 2,753 sq. ft. According to the applicant's representative<sup>2</sup>, the site has room to for a building footprint with an area of 2,249 sq. ft. without a variance. A footprint larger than this area would require a septic tank greater than 950 gallons. The drain field needed for a tank of this volume could not be accommodated on this site without a variance.

LUDR, Table R-1 requires a minimum living area for single-family residences for waterfront sites, although minimum living areas may be reduced to 1,400 sq. ft. when a site is adjacent to a canal or lake. In this particular instance, a house with a living area of 2,249 sq. ft., while less than the average living area of a house in the City, is substantially larger than the minimum area of 1,400 sq. ft. required by the R-1B District. In addition, the footprint of the house could be reduced while increasing the total area of the house by constructing a two-story dwelling. In summary, the applicant could construct a house with a slightly smaller footprint than desired or construct a two-story dwelling than would allow for more living area with a similarly sized footprint. Both options would allow the applicant to construct a single-family dwelling on the site without the need for a variance.

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.*

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<sup>2</sup> Personal communication with Scott Hertz, Esq., on August 12, 2019.



**Staff analysis: Standard NOT MET by the applicant.**

The applicant plans to construct a single-family home with a pool on the property. At 19,960 sq. ft, the property is substantially larger than the minimum 10,000 sq. ft. site required by the City for the R-1B District. While several factors influence building placement and design, a relatively small, but adequate, building envelope exists for constructing a single-family dwelling. While the area of the dwelling preferred by the applicant cannot be constructed without a variance, a smaller dwelling as well as other design options are available.

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 analysis: Standard NOT MET by the applicant.**

The floor plan preferred by the owner cannot be built without a variance. However, the design of the single-family home could be modified to conform to the district requirements without a variance. As a result, this request does not constitute the minimum variance required to enjoy reasonable use of this property.

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 analysis: Standard NOT MET by the applicant.**

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

The property owner to the immediate north would potentially be the most affected by the approval of this variance. While a single-family residence has not yet been constructed on this site, a new dwelling will likely to be built on this lot in the future. As individuals make real estate investments in part based on land use requirements, the owner to the north may be aggrieved by a single-family dwelling constructed with a ten foot setback from the rear property line of the site. The granting of a variance of the magnitude requested by the applicant would be a noticeable departure from the rear setback pattern established for buildings in the R-1B District.

**Consistency with the Comprehensive Plan**

This request is consistent with the following objective and policy.

**Future Land Use Element****Policy 1.15a:**

*Single Family and Multi-Family Future Land Use Classification.*

**Staff comment:** When the variance application was filed with the City, the site had R-1B Zoning that was consistent with the Single Family and Multi Family FLUC of the site. The site is 19,960 sq. ft. When the is developed with a single-family home, the site will have a density of 2.18 units per acre that is less than the maximum density of 4.4 units per acre allowed in the FLUC.

**Recommendation:**

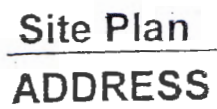
Staff recommends denial of the variance.

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**Staff Contact Information**

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

PH: 239-242-3255/Email: [mstruve@capecoral.net](mailto:mstruve@capecoral.net)


$$1'' = 20'-0''$$

Area Calculations	
Living Area	2,334 Sq. Ft.
Entry	47 Sq. Ft.
Lanal	742 Sq. Ft.
Garage	870 Sq. Ft.
A/C Niche	17 Sq. Ft.
<b>Grand Total</b>	<b>4,010 Sq. Ft.</b>



# CITY OF CAPE CORAL

Department of  
Community Development  
Planning Division

## AERIAL MAP

Case No. VA19-0005

### LEGEND

 Subject Parcel



0 10 20 30 40 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.

**SUBJECT PARCEL**

NW 32ND ST







**CITY OF CAPE CORAL**  
Department of  
Community Development  
Planning Division

**CURRENT ZONING MAP**  
500 Proximity Boundary

Case No. VA19-0005

**LEGEND**

-  Subject Parcel
-  500' Boundary
-  PRES- Regulated by FLU
-  R-1B



0 40 80 120 160 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.

**SUBJECT PARCEL**

NORTH  
SPREADER  
WATERWAY

NW 32ND TER

NW 32ND ST

JACARANDA PKWY W

**500' BOUNDARY**

NW 46T

LONGVIEW LAKE

Department of Community Development  
Planning Division

AFFIDAVIT

IN RE: APPLICATION OF: Frederick J Day Trust + Ann Armstrong Trust

APPLICATION NO: VA19-0005

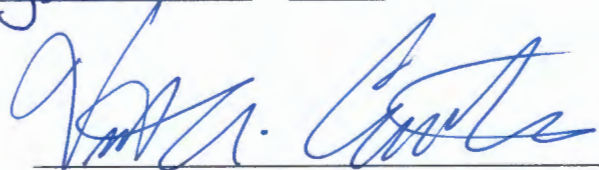
STATE OF FLORIDA       )  
                                      ) §  
COUNTY OF LEE        )

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 12<sup>th</sup> day of August, 2019.

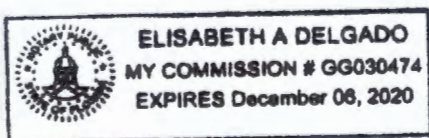


Vincent A. Cautero, AICP

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of August, 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



**Classified Ad Receipt**  
**(For Info Only - NOT A BILL)**

**Customer:** CITY OF CAPE CORAL\_DEPT OF COM

**Ad No.:** 0003725434

**Address:** 1015 CULTURAL PARK BLVD  
CAPE CORAL FL 33990  
USA

**Net Amt:** \$356.24

**Run Times:** 1

**No. of Affidavits:** 1

**Run Dates:** 08/10/19

**Text of Ad:**

NOTICE OF PUBLIC HEARING  
ADVERTISEMENT  
CASE NUMBER: VA19-0005

REQUEST: The applicant, Fredrick J. Day and Ann Armstrong Day Trust, dated February 17, 1994, seek a dimensional variance of ten feet from the minimum rear setback requirement of 20 feet to permit the construction of a single--family dwelling ten feet from the rear property line of a site in the Single--Family Residential (R-1B) District on property described as Lot 80, Block 5411, Unit 90, Cape Coral Subdivision; property located at 4701 NW 32nd Street.

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 August 20, 2019 on the above mentioned case. The public hearing will be held in the City of Cape Coral Council Chambers, 1015 Cultural Park Boulevard, Cape Coral, FL.

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

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

HOW TO CONTACT: Any person may appear at the public hearing and be heard, subject to proper rules of conduct. You are allowed sufficient time to write or appear at the public hearing to voice your objections or approval. Written comments filed with the Director will be entered into the record. Please reference the case number above within your correspondence and mail to: Department of Community Development, Planning Division, P.O. Box 150027, Cape Coral, FL 33915-0027. The public hearing may be continued to a time and date certain by announcement at this public hearing without any further published notice.

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 Flori-

da Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8770 (v) for assistance.

by order of  
Kimberly Bruns, CMC  
City Clerk  
REF # VA19-0005  
LEGAL AD - DCD  
AD# 3725434

August 10, 2019

## Mike Struve

---

**From:** Scott Hertz <shertz@is4law.com>  
**Sent:** Wednesday, August 14, 2019 2:47 PM  
**To:** Mike Struve  
**Cc:** fred.day@ciceroinuranceplans.com; Katherine Woellner; Brian Ludden  
**Subject:** [EXTERNAL] - RE: Final Staff Report for VA19-0005

Caution – This email originated from outside of our organization. Please do not open any attachments or click on any links from unknown sources or unexpected email.

---

Good afternoon Mike,

Per our earlier conversation my clients, Mr. & Mrs. Day are requesting a continuance of the hearing currently scheduled for 8/20/19 due to the discrepancy that has been discovered in the square footage of the lot. We are in the process of having a new survey done and we believe it will show the square footage is approximately 14,856.20 as reflected in the City's GIS records and on the tax rolls.

We understand that it will be most likely be continued to the September 10<sup>th</sup> hearing, but that is not certain. I will be in attendance on August 20<sup>th</sup> to answer any questions the hearing examiner may have about our continuance request.

Please let me know if you need any additional information at this time.

Thank you,

Scott J. Hertz, Esq.  
Intelligent Solutions Law Firm, PLLC  
1222 SE 47<sup>th</sup> Street, STE C1  
Cape Coral, FL 33904  
Direct Phone No.: 239.340.5554  
Email: [shertz@is4law.com](mailto:shertz@is4law.com)  
[www.is4law.com](http://www.is4law.com)

*Both Scott Hertz and Intelligent Solutions intend that this message be used exclusively by the addressee(s). This message may contain information that is privileged, confidential and exempt from disclosure under applicable law. Unauthorized disclosure or use of this information is strictly prohibited. If you have received this communication in error, please permanently dispose of the original message and notify Scott Hertz immediately at 239.244.2346.  
Thank you.*

**From:** Mike Struve <mstruve@capecoral.net>  
**Sent:** Monday, August 12, 2019 5:56 PM  
**To:** Scott Hertz <shertz@is4law.com>  
**Cc:** fred.day@ciceroinuranceplans.com; Katherine Woellner <kwoellner@capecoral.net>  
**Subject:** Final Staff Report for VA19-0005

Scott,

Attached is a copy of the final staff report for VA19-0005. Following our meeting today, I made some slight changes to improve the accuracy of the report based on my understanding of Mr. Day's request and the drain field areas necessary to support a single-family house of various areas. This case has been advertised for the August 20<sup>th</sup> HEX hearing date. Thank you for taking time out of your schedule to meet with me today.

I will need a copy of your presentation no later than 4:00 pm this Thursday to forward to the Hearing Examiner. Please send a copy of your presentation to Katie and myself in the event I am not in the office that day.

Mike Struve, AICP, LEED Green Associate  
Planning Team Coordinator  
City of Cape Coral  
Department of Community Development  
Planning Division  
PO Box 150027  
Cape Coral, FL 33915-0027  
Phone 239.242.3255  
[mstruve@capecoral.net](mailto:mstruve@capecoral.net)

Florida has a broad public records law and all correspondence, including email addresses, may be subject to disclosure. The Government in the Sunshine Law applies to "any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision" in part, Section 286.011, Florida Statutes.

This transmission may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or use of the information contained herein (including any reliance thereon) is STRICTLY PROHIBITED. If you received this transmission in error, please immediately contact the sender and destroy the material in its entirety, whether in electronic or hard copy format.

# BOUNDARY SURVEY

SCALE 1"=20'

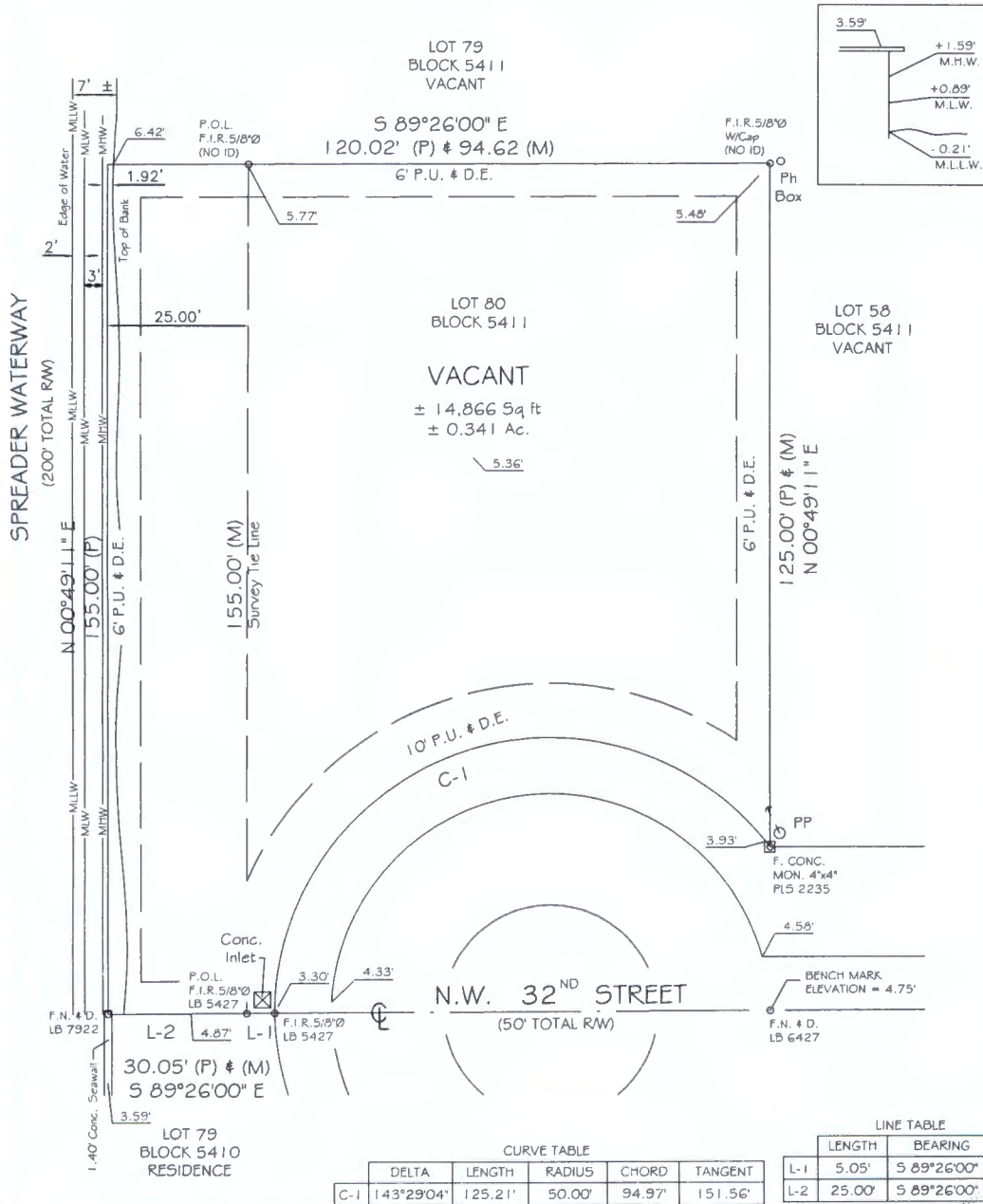


PROPERTY ADDRESS: 4701 N.W. 32nd STREET, CAPE CORAL, FLORIDA 33993.

LEGAL DESCRIPTION: LOT 80, BLOCK 5411, UNIT 90, CAPE CORAL SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF, AS RECORDED IN PLAT BOOK 32, PAGE(S) 48 THROUGH 111, INCLUSIVE, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

## NOTE(S):

- 1- THIS BOUNDARY SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A COMMITMENT FOR TITLE INSURANCE, LEGAL DESCRIPTION PROVIDED BY OTHERS.
- 2- UNLESS SHOWN, UNDERGROUND UTILITIES, IMPROVEMENTS, FOUNDATIONS AND/OR SUBSURFACE STRUCTURES WERE NOT LOCATED BY THIS BOUNDARY SURVEY.
- 3- BEARINGS ARE BASED ON THE CENTER LINE OF N.W. 32ND STREET HAVING A BEARING OF S 89°26'00" E PER RECORDED PLAT BOOK 32, PAGE 57.
- 4- THE PURPOSE OF THIS SURVEY IS FOR USED IN OBTAINING TITLE INSURANCE AND FINANCING AND SHOULD NOT BE USED FOR CONSTRUCTION PURPOSES.
- 5- THE LAND(S) SHOWN HEREON WERE NOT ABSTRACTED FOR EASEMENTS OR OTHER RECORDED ENCUMBRANCES THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THE COUNTY.
- 6- THE EXPECTED USE OF THE LAND, AS CLASSIFIED IN THE STANDARDS OF PRACTICE ( 61G17-6FAC), IS "SUBURBAN". THE MINIMUM RELATIVE DISTANCE ACCURACY FOR THIS TYPE OF BOUNDARY SURVEY IS 1 FOOT IN 7.500 FEET. THE ACCURACY OBTAINED BY MEASUREMENT AND CALCULATION OF A CLOSED GEOMETRIC FIGURE WAS FOUND TO EXCEED THIS REQUIREMENT.
- 7- THIS BOUNDARY SURVEY DOES NOT REFLECT OR DETERMINE OWNERSHIP.
- 8- DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
- 9- ADDITIONS OR DELETIONS TO SURVEY MAPS OR REPORTS BY OTHER THAN THE SIGNING PARTY OR PARTIES IS PROHIBITED WITHOUT WRITTEN CONSENT OF SIGNING PARTY OR PARTIES.



LIST OF ENCROACHMENTS:  
1. THERE ARE NO VISIBLE ENCROACHMENTS.

ORDER No: NB 3304  
FIELD WORK: 01/08/2016  
REVISIONS: 08/14/2019

FLOOD INFORMATION:  
(BASED ON THE FLOOD INSURANCE RATE MAP OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY.) ELEVATION ARE REFERRED TO M.S.L. OF 1989

F.I.R.M. DATE: 08/28/2008  
FLOOD ZONE: AE  
BASE ELEVATION: 8'  
COMMUNITY: 125095  
PANEL NUMBER: 0230  
SUFFIX: F

CERTIFIED TO:  
FREDERICK J DAY TRUST +  
ANN ARMSTRONG DAY TRUST

VERBALLY CERTIFY THAT THE SURVEY OF THE HEREIN DESCRIBED PROPERTY WAS PREPARED UNDER MY DIRECT SUPERVISION AND MEETS THE STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPERS IN CHAPTER 472.022, FLORIDA STATUTES.

No. LS 6594  
MIGUEL J. GARAY, ECF  
P.S.M., L.S. 8594, STATE OF FLORIDA  
PRISMA LAND SURVEYORS, LLC  
1800 E. STATE STREET, SUITE 100  
CAPE CORAL, FL 33904  
PHONE: 239-440-7822  
FAX: 239-440-7823  
E-MAIL: MIGUEL@PRISMA-SURVEYORS.COM  
THE SURVEY MAP OR THE COPIES ARE NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL ENDED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.



**Cape Coral Variance request for 4701 NW 32<sup>nd</sup> St., Cape Coral FL 33993**

(3.a) This is a letter of intent from Fred J. and Ann A. Day. We are the owners of lot #80, block 5411, strap number 21-43-22c4-054-11.0800, with an address of 4701 NW 32<sup>nd</sup> Street, Cape Coral Fl. We are requesting an additional 12 ft., setback, (off of the current 20 ft. setback set by the city) on the north boundary of lot 80.

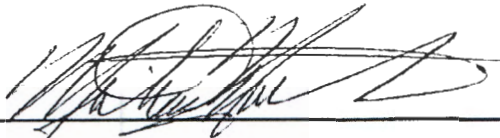
(b.) The reason for this setback is to make room for a gravity fed septic system.

(c.) The current ordinances have reduced our lot size from 19,960 sq. ft. to 6,712.50 sq. ft. for purposes of well and septic placement. Our proposed well, and the neighbor's well placement, along with city channel setbacks rule out any septic locations to the north, west, and east sides of our lot. The only place for a septic field is on the south of our lot. This location is severely cut into by the cul-de-sac setbacks. The cul-de-sac set back has pushed the septic field into the master bathroom foundation. We need and are requesting 10 more feet to our south to accommodate the septic field. This can be accomplished by setting the house back 10 feet to the north side of our lot.

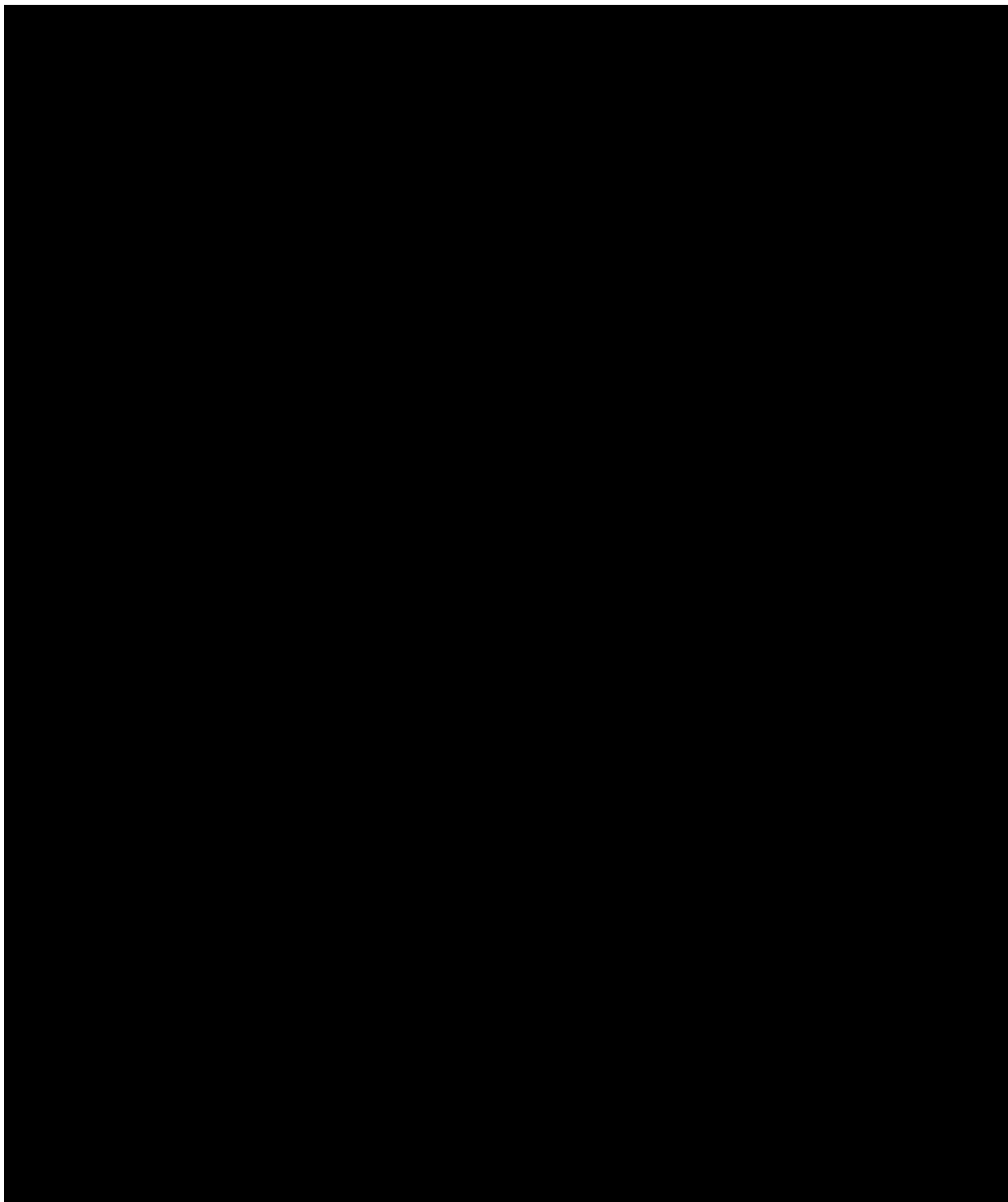
Our lot is a beautiful and expensive one overlooking the spreader to the west. We wish to place an aesthetically pleasing; approximately 2200 sq. ft. home on this lot, in keeping with Cape Coral's other fine homes in this area. Without Cape Coral's Development Board's approval of this variance our dream home plans are in jeopardy. There will still be a 10-foot setback to the north boundary line after approval of this setback.

My wife and I bought this lot in January 2018. It's taken us more than a year to complete a seawall. Since completion we have learned that our lot is not nearly the size we thought it was to build on. The adjoining cul-de-sac lots are "triple lots." We unknowingly purchased a double lot. We tried buying the adjoining dry lot, but found it was sold and under construction. The area we envisioned building on has been cut to a fraction of what we thought we had purchased. We cannot build up; as my wife has arthritis of the knees, and we both wish to be able to age in place.

**My neighbor to my north Michael Newton has indicated by his signature below that he has no objections to this set back.**

 7/31/2019





**Review Date:** August 30, 2019

**Property Owner:** Fredrick J. Day and Ann Armstrong Day Trust dated February 17, 1994  
3993 East 226<sup>th</sup> Street  
Cicero, IN 46034

**Applicants:** Fredrick J. Day and Ann Armstrong Day

**Rep:** Scott J. Hertz, Esq.

**Request:** The applicant requests a variance of five feet, to the rear setback requirement of 20 feet, to allow a single-family dwelling to be constructed 15 feet from the rear property line in the Single Family Residential (R-1B) District.

**Location:** 4701 NW 32<sup>nd</sup> Street  
Cape Coral, FL 33993  
Strap number: 24-43-22-C4-05411.0800  
Unit 90, Block 5411, Lot 80

**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:** Reserve

**Code Compliance Case:** No

### Background:

The ±14,866-sq. ft. site is in northwest Cape Coral and has frontage along NW 32<sup>nd</sup> Street. The west side of the site is adjacent to the North Spreader Waterway. Except for a seawall constructed along the west property line, the site is unimproved. Development in this area is sporadic and is limited to single-family dwellings as centralized utilities have not been extended to this area.

The site has a Single Family and Multi-Family Future Land Use Classification (FLUC) as do sites to the north, east, and south. State-owned lands to the west have a Natural Resources/Preservation FLUC. At the time the variance application was filed with the City on April 29, 2019, the site had Single Family Residential (R-1B) Zoning that was shared by sites to the north, east, and south.<sup>1</sup> State lands to the west are unzoned and uses in these areas are regulated by the FLUC.

---

<sup>1</sup> The subject site and surrounding residential sites were rezoned from R-1B to the Single-Family Residential (R-1) District by Ordinance 4-19 that was adopted by the City Council on August 5, 2019.

The applicant seeks to construct a one-story, single-family residence with a living area of around 2,334 sq. ft. based on a site plan provided by the applicant and appearing in Exhibit A. Living area accounts for space that is air-conditioned and would therefore not include areas devoted to a garage, lanai, porch, and entryway. A pool is proposed along the west side of the dwelling, adjacent to the North Spreader Waterway. Pools are required to be to the rear of the site although pools may extend a maximum of 10 feet beyond the side of a house while maintaining side yard setbacks (LDC, Section 5.2.15). The total area of the proposed residence including living area, lanai, and garage based on plans provided by the owner is 4,010 sq. ft.

### **Similar Variances Cases within Block 5411**

The applicants received administrative approval for a cul-de-sac variance of seven feet to allow an 18-foot front setback earlier in 2019. City records indicate no other variances have been granted to lot owners in Block 5411.

### **Applicable Regulation:**

LUDR, Section 2.7.1, Table R-1, requires a minimum rear setback of 20 feet for buildings in the R-1B District. The recently adopted R-1 District also requires a minimum 20-foot rear setback for buildings.

### **Zoning History of the Site**

The site has always had a Single Family and Multi-Family FLUC.

The site was rezoned from the R-1B to the Single-Family Residential (R-1) District by Ordinance 4-19.

### **Analysis:**

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

Staff has reviewed this application based on the five standards in LUDR, Section 8.10.3a-e.

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 analysis: Standard MET by the applicant.**

The site is a cul-de-sac lot that is 14,866 sq. ft. and is relatively flat. A well providing potable water to the proposed residence will be at the northwest corner of the site. An existing well on the adjacent site to the east at 4635 NW 32<sup>nd</sup> Street occupies the northwest corner of that site. Chapter 64E-6, Florida Administrative Code (FAC), requires a minimum 75-foot setback for a septic drain field from a private potable well. The two wells collectively prevent a drain field on the northern half of the site.

FAC also prohibits drain fields within 50 feet of a surface water, like a canal. This regulation prevents a drain field near the southwest corner of the site next to North Spreader Waterway.

Based on the location of the two wells and North Spreader Waterway, a drain field is restricted to the southeast quadrant of the site. Furthermore, FAC requires drain fields to be a minimum of five feet from a building foundation and five feet from any property line abutting an easement.

The combination of several factors imposes a special circumstance that is peculiar to this site. The cumulative effect of the two wells, the presence of the canal, and the application of the FAC, restrict the drain field to a relatively, small fixed area of the site. Restricting the septic tank and drain field to the southeast portion of the site in turn requires the dwelling to be shifted northward to comply with drain field setbacks from the building foundation.

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 analysis: Standard NOT MET by the applicant.**

The applicants seek to construct a single-family residence around 2,334 sq. ft. The living area of this dwelling is less than the living area of single-family homes constructed in the City since 2018 that average 2,753 sq. ft. According to the applicant's representative,<sup>2</sup> the site has room for a building footprint of 2,249 sq. ft. without a variance. A footprint larger than this area would require a septic tank greater than 950 gallons. In turn, the drain field needed for a tank that exceeds 950 gallons could not be accommodated on this site without a variance.

LUDR, Table R-1 requires a minimum living area for single-family residences of 1,800 sq. ft. for waterfront sites, although this area may be reduced to 1,400 sq. ft. when a site is adjacent to a canal or lake. In this particular instance, a house with a living area of 2,249 sq. ft., while less than the average living area of a house in the City, is substantially larger than the minimum area of 1,400 sq. ft. required by the R-1B District for an off-river site. In addition, other design options appear available. For example, one option could involve reducing the area of the garage or lanai to accommodate a larger drain field while providing the living area sought by the applicants. In summary, the applicants could construct a house with a slightly smaller footprint than desired or re-design the house for this site. Such options would allow the applicants to construct a single-family dwelling without requiring a variance.

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 analysis: Standard NOT MET by the applicant.**

---

<sup>2</sup> Personal communication with Scott Hertz, Esq., on August 12, 2019.

The applicants plan to construct a single-family home with a pool on the property. At 14,866 sq. ft, the property is 48.7% larger than the minimum 10,000 sq. ft. site required by the City for the R-1B District. While several factors influence building placement and design, a relatively modest, but adequate, building envelope exists for constructing a single-family dwelling. While the design of the dwelling preferred by the applicant cannot be constructed without a variance, a smaller dwelling as well as other design options are available.

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 analysis: Standard NOT MET by the applicant.**

The floor plan preferred by the owner cannot be built without a variance. However, the design of the single-family home could be modified to conform to the district requirements without a variance. As a result, this request does not constitute the minimum variance required to enjoy reasonable use of this property.

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 analysis: Standard MET by the applicant.**

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

The property owner to the immediate north at 4640 NW 32<sup>nd</sup> Terrace, Mr. Michael Newton, would potentially be the most affected by the approval of this variance. Mr. Newton owns a site that is 24,897 sq. ft. The rear property line of this site is 200 feet long and extends 80 feet eastward of the applicant's site. The applicants have provided a signed statement from Mr. Michael Newton, indicating he has no objection to a 10-foot rear setback variance. Since the applicants have recently revised their request to seek a lesser variance of five feet, the neighbor to the north would be less affected by the five-foot variance, and for this reason, would presumably not object to the revised request. The location of the site at the end of a cul-de-sac street, adjacent to a canal, makes it likely that other property owners will not be negatively affected by the granting of the variance. While the requested variance is not inconsequential, the locational factors discussed above will mitigate any detrimental effects this variance might otherwise have on surrounding sites. For these reasons, staff does not foresee this variance will be detrimental to the public welfare and would be in harmony with the general intent and purpose of the Land Use and Development Regulations.

### **Consistency with the Comprehensive Plan**

This request is consistent with the following objective and policy.

#### Future Land Use Element



**Policy 1.15a:**

*Single Family and Multi-Family Future Land Use Classification.*

**Staff comment:** When the variance application was filed with the City, the site had R-1B Zoning that was consistent with the Single Family and Multi Family FLUC of the site. The site is 14,866 sq. ft. When developed with a single-family home, the site will have a density of 2.93 units per acre that is less than the maximum density of 4.4 units per acre allowed in the FLUC.

**Recommendation:**

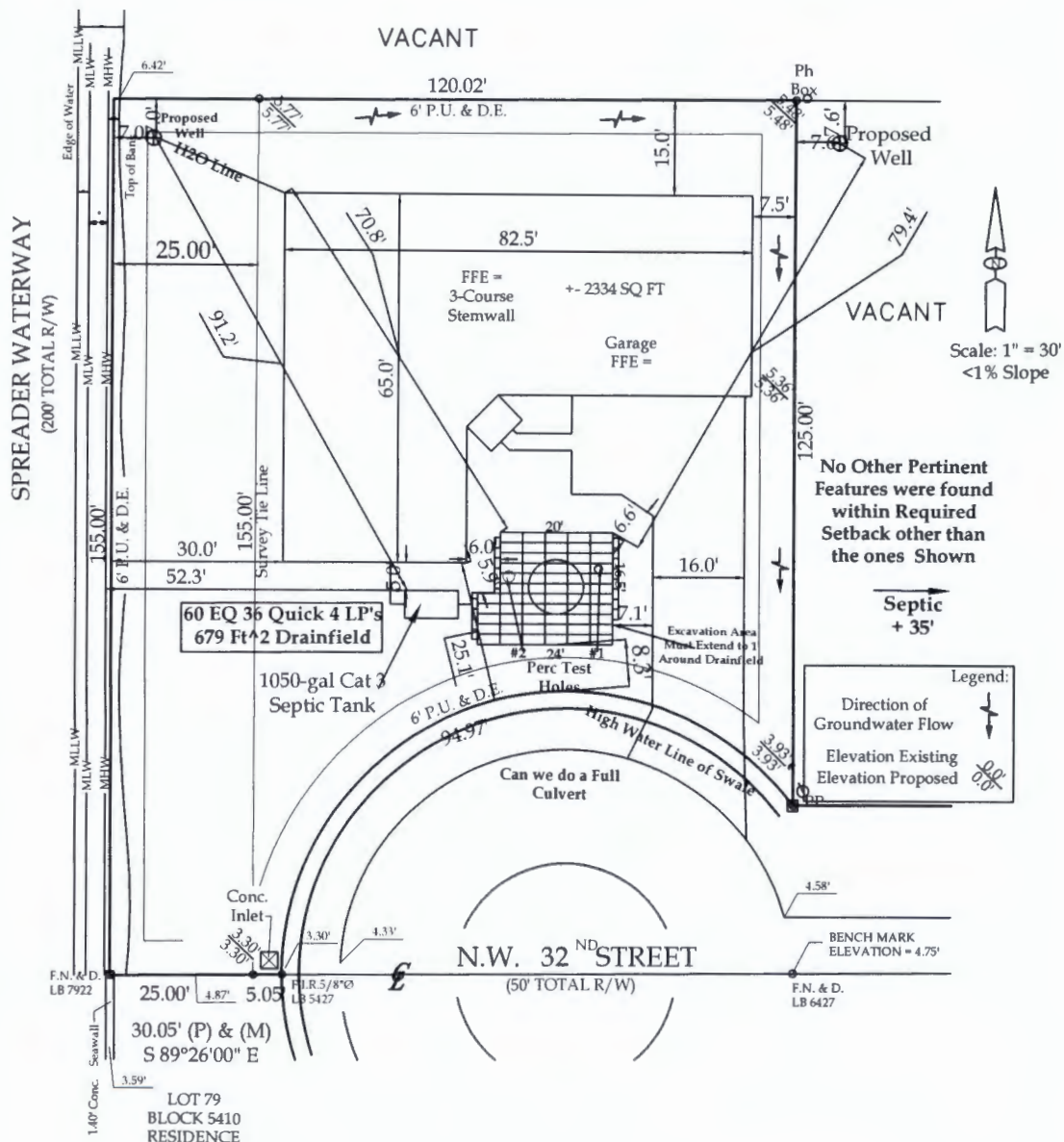
Since the requested variance fails to meet all five standards, staff recommends denial.

---

**Staff Contact Information**

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

PH: 239-242-3255/Email: [mstruve@capecoral.net](mailto:mstruve@capecoral.net)



Site Address: 4701 NW 32nd St.  
Cape Coral, FL 33993  
Lots 80 Block 5411 Unit 90



Land Perc, Inc.  
5475 Lee Street  
Lehigh Acres, FL 33971  
Unit 302

NOTE: THIS DRAWING IS NOT A SURVEY. THIS DRAWING IS TO BE USED FOR SEPTIC SYSTEM PERMITTING AND INSTALLATION ONLY. THE CONTRACTOR SHALL ENSURE THAT ALL STRUCTURES MEET SETBACK REQUIREMENTS AND VERIFY ALL SETBACKS, DIMENSIONS, AND FINISH FLOOR ELEVATION PRIOR TO PERMITTING AND CONSTRUCTION.

USE OF ALTERNATIVE STATE APPROVED  
PRODUCTS IS ACCEPTABLE FOR  
INSTALLATION PER ENGINEER

DRAWN BY: Drawn By MJC  
19-12512  
Revised 08-13-19

CHECKED BY:

Grant C. Girtman, P.E., PE # 57458 CA # 28397  
Commercial-Residential  
Structural Engineering, Inc.  
10491 Six Mile Cypress Pkwy, Ste 283  
Fort Myers, FL 33966  
239-274-6818

**Item Number:** 2.C.  
**Meeting Date:** 9/10/2019  
**Item Type:** HEARINGS

**AGENDA REQUEST FORM**  
CITY OF CAPE CORAL



**TITLE:**

Case # SE19-0002; Address: 1707 Cape Coral Pkwy E; Applicant: 1707 Cape Coral, 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:**

To amend the site plan and landscaping plans associated with Resolution 108-15 which approved an automotive service establishment use in the South Cape Downtown (SC) District for the Downtowner Carwash. The amendment seeks to alter the front façade of the carwash by reducing the wall height from nine feet to three feet.

**LEGAL REVIEW:**

**EXHIBITS:**

See attached backup materials.

**PREPARED BY:**

Jessica M. Cruz      Division- Planning      Department- Community Development

**SOURCE OF ADDITIONAL INFORMATION:**

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

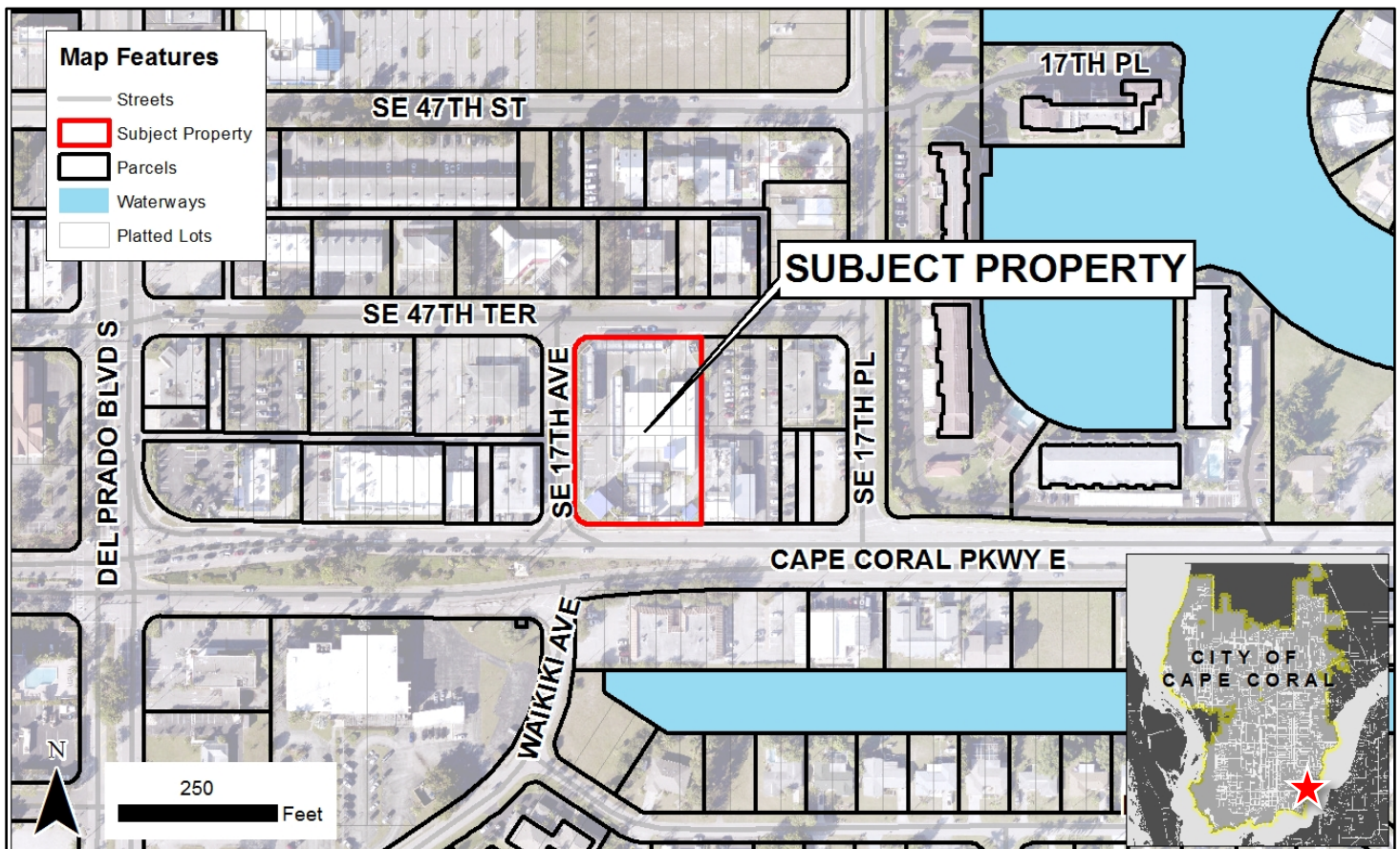
**ATTACHMENTS:**

Description	Type
Backup Material	Backup Material



## PLANNING DIVISION CASE REPORT

SE19-0002



**HEARING DATE:** September 10, 2019

**REQUEST:** To amend the site plan and landscaping plans associated with Resolution 108-15 which approved an automotive service establishment use in the South Cape Downtown (SC) District for the Downtowner Carwash. The amendment seeks to alter the front façade of the carwash by reducing the wall height from nine feet to three feet.

**SITE ADDRESS:** 1707 Cape Coral Pkwy E

**STRAP NUMBER:** 08-45-24-C4-00363.0010

**LEGAL DESCRIPTION:** CAPE CORAL UT 7 BLK 363 PB 12 PG 113 LOTS 1 THRU 7 + 24 THRU 30 ADJ + VACATED ALLEY AS PER INST# 2016000023899

**APPLICANT:** 1707 Cape Coral, LLC

**PROPERTY OWNER:** 1707 Cape Coral, LLC

**AUTHORIZED AGENT:** Linda Miller, Avalon Engineering, Inc.

**FUTURE LAND USE:** Downtown Mixed (DM)

**ZONING DESIGNATION:** South Cape Downtown (SC)

**CODE COMPLIANCE CASE NO.:** N/A

**PREPARED BY:** Katherine Woellner, Planner

**APPROVED BY:** Mike Struve, AICP, LEED Green Associate, Planning Team Coordinator

**RECOMMENDATION:** Denial



## BACKGROUND

The 1.35-acre site is in the CRA and has a zoning designation of South Cape Downtown (SC) and a Future Land Use classification of Downtown Mixed (DM). The Downtowner Carwash is on the site. Carwashes are classified as an automotive service establishment which requires special exception approval in the SC District. This amendment will not change the use of the property; instead it is intended to alter the approved plans associated with the project.

## ZONING HISTORY

The site is in the Community Redevelopment Area which was established in 1987 through Ordinance 47-87 by City Council. In July of 2012 the site was rezoned from Downtown Gateway (DG) to SC (ZA12-0001), which remains on the site.

In December of 2014, the property owners applied for a Vacation of Plat (VP14-0005) and a Special Exception (SE14-0018) to develop a carwash on the property. The special exception was denied in May of 2015 by the Board of Zoning Adjustments and Appeals. The property owner appealed this decision to the City Council (AP15-0001) who approved the use to on August 10, 2015 with conditions. See staff analysis section for details.

The vacation of plat request was concurrently approved with the 2015 appeal.

City staff received a site plan application (SP15-0044) for the carwash in November of 2015 that was consistent with the site plan provided for the appeal process; however, planning staff indicated that the proposed site plan was deficient in required parking spaces. Subsequently, the property owner applied for a Deviation (DE16-0014) to allow a reduction in parking spaces. The deviation was approved on June 30, 2016 with a condition to include a bike rack with a minimum capacity of five bicycles.

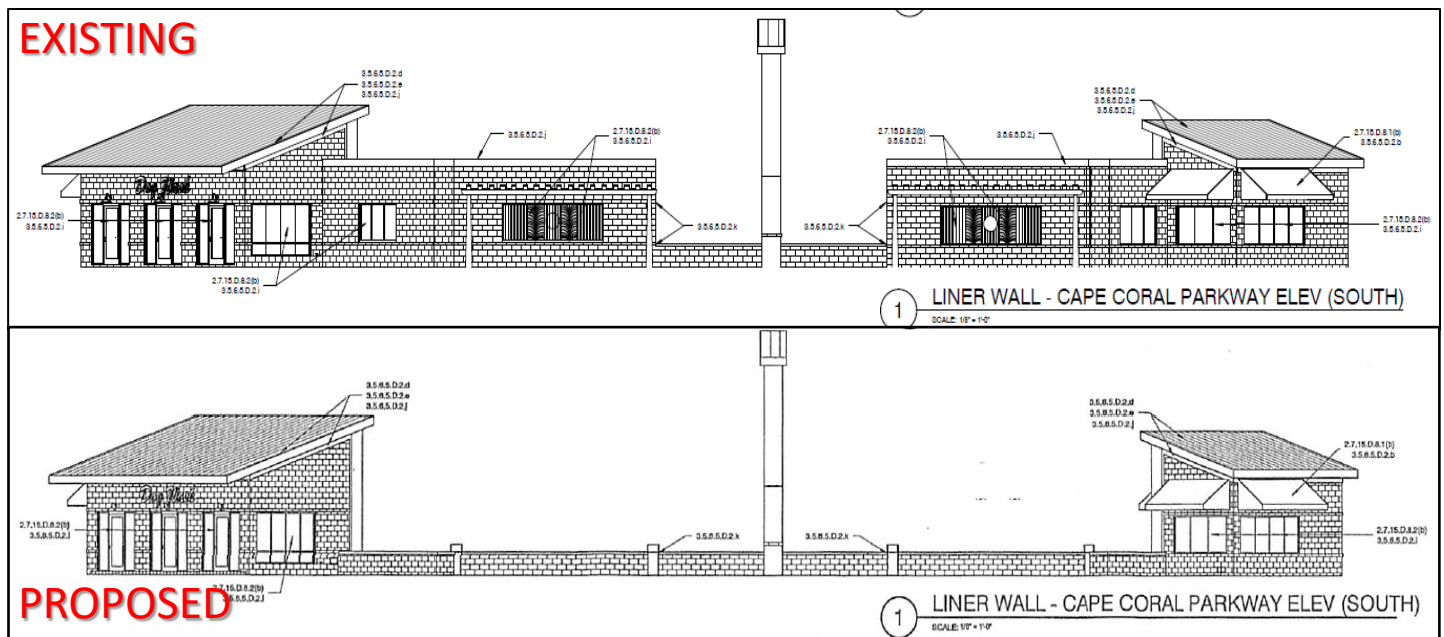


Figure 1: Elevation drawings of the existing frontage vs the proposed

## REQUEST

The applicant requests an amendment to the site and landscape plans dated May 28, 2015 to alter the front façade of the site along Cape Coral Parkway. The applicant has indicated that this request is intended to increase visibility of the carwash from the street.



The applicant proposes to reduce the height of the wall along Cape Coral Parkway East from nine feet to three feet. With the wall-height reduction, the two existing trellises and decorative “windows” will be removed. See Figure 2 below for a comparison of the existing and the proposed elevations. The applicant proposes adding two additional rows of shrubs in lieu of the existing architectural elements.



Figure 2: Photograph of the existing building (top) versus a rendering of the proposed (Included in Application Materials)

## ANALYSIS

Staff reviewed the request in relation to Resolution 108-15, The City of Cape Coral Comprehensive Plan, CRA Redevelopment Plan, and Land Use and Development Regulations.

### Resolution 108-15

City Council approved the carwash use through Resolution 108-15 which included three conditions of approval:

1. *The project shall be developed in accordance with the site plan and landscaping plan dated May 28, 2015, provided by Avalon Engineering.*
2. *No vehicular ingress to or egress from the site directly onto or from Cape Coral Parkway shall be allowed.*
3. *No development on the site shall be allowed unless and until the City approves a vacation of plat for the alley running through the site and the applicant relocates the associated utilities.*

This amendment conflicts with the first condition of approval, as the applicant is requesting to alter the site plan and landscaping plan associated with the approved project design. Additionally, the alteration being requested will make the special exception use *more* visible than it was approved for and currently designed.

A 20ft tall and 9.6ft wide freestanding sign exists on the site along Cape Coral Parkway. See Figure 3 below. The sign includes a 4.1-foot by 7.75-foot electronic sign and additional lighting that can easily be seen from the road. The sign is in front of the existing wall, perpendicular to Cape Coral Parkway. This sign will remain. Lowering the wall will not change the size of the sign; instead it will expose more of the actual carwash use. See Exhibit A for site pictures illustrating the visibility of the carwash from the street. While there are some visibility issues driving east on Cape Coral Parkway, adjusting the wall height will not make the property more visible.

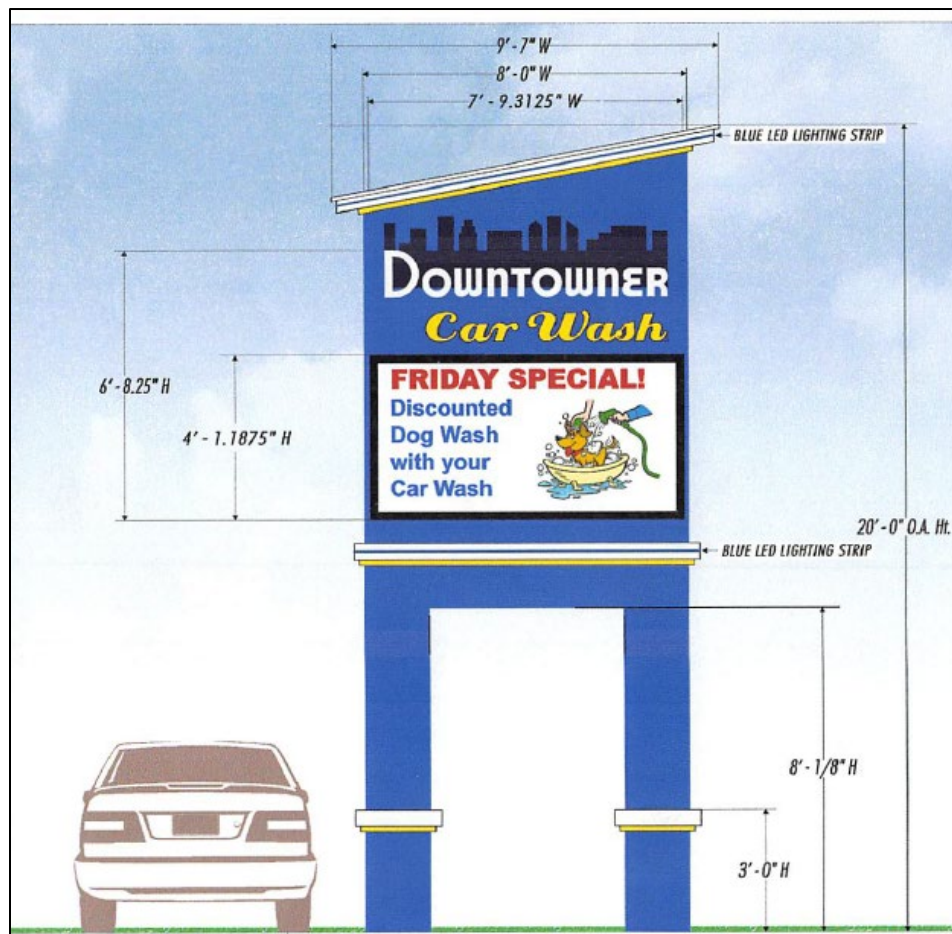


Figure 3: Diagram from Sign Permit (B16-12530)

In addition to the freestanding sign, the carwash also has a sign on one of the building facades for the dog wash. This sign will also remain. Lowering the wall will not impact this sign either.

### **City of Cape Coral Comprehensive Plan**

The Future Land Use element of the Comprehensive Plan addresses growth and development in the City of Cape Coral. The Future Land Use Element contains a goal which is supported by objectives that are further defined by policies.

**Policy 1.15.I: Downtown Mixed:** *Intended primarily for the Downtown Community Redevelopment Area, to provide, a vibrant, walkable, mixed-use district in the historical heart of Cape Coral, mixed-use projects containing commercial and professional uses in conjunction with multi-family housing opportunities where practical and feasible are encouraged.*

The existing wall provides a visual buffer along the right-of-way for pedestrians and adjacent businesses. Because the wall is built towards the front of the property and includes architectural features, it gives the illusion that there is a building at the property line instead of queueing for cars. Urban design is often characterized by having buildings close to the road with vehicle-use areas behind the front façade of the building. The existing design creates this effect. Lowering the wall would break-up the building façade—created by the subject property and the adjacent properties-- along Cape Coral Parkway.

***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 developments (such as loading docks, rooftop equipment, service entrances, trash containers, parking areas and exterior storage) through the extensive use 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 subject property is surrounded by properties zoned SC, however residential uses are allowed in the SC district. The existing wall and landscaping help conceal the vehicle queue for the carwash as well as provide some barrier for sound from the machinery used in the carwash to the adjacent properties.

#### **CRA Redevelopment Plan**

***4.5 General Streetscape and the Public Realm:** Further, the character of streetscapes is highly influenced by adjacent development. Ideally, buildings (rather than parking lots, service areas, exposed waste receptacles, etc.) front the sidewalk. While, the prevailing pattern of development in the South Cape is the opposite, new infill development can begin to establish this character. Existing development can add additional landscaping and dedicate outdoor areas to amenities such as cafe seating to the degree possible.*

The existing wall and landscaping give the appearance of a pedestrian-friendly building. The existing architectural and landscape elements also provide a different streetscape experience for pedestrians than vehicle queue lines. The proposed wall-height reduction will remove architectural features that enhance the streetscape along Cape Coral Parkway.

#### **Land Use and Development Regulations (LUDR)**

The subject property has a zoning designation of South Cape Downtown (SC). Within the SC district, permitted uses are determined by the street classification. The site is bound by three rights-of-way: Cape Coral Parkway to the south, SE 17<sup>th</sup> Ave to the west, and SE 47<sup>th</sup> Terrace to the north. In this section of the SC district, Cape Coral Parkway is considered a “secondary” street and SE 17<sup>th</sup> and SE 47<sup>th</sup> are considered “tertiary” streets. An automotive service establishment is a special exception use on both secondary and tertiary street classification.

Per LUDR Section 8.8 regarding special exceptions, a special exception is defined as:

*A use which is essential to, or would promote the, public health, safety or welfare in one or more districts, 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 in the Land Use and Development Regulations.*

LUDR Section 8.8.5 outlines the standards for special exception uses as:

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



The existing development complies with LUDR requirements and the special exception approval from City Council.

- 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 façade along Cape Coral Parkway, as it exists, is more compatible with the adjacent buildings than a reduced wall height would be. The existing wall provides the illusion of a continuous, pedestrian-friendly street frontage along Cape Coral Parkway because it is at a similar height and setback to the adjacent building. The existing wall also includes architectural features such as trellises, faux windows, and banding that emulate the requirements of the City's non-residential design standards found in LUDR Section 5.6.

Reducing the wall height would expose the carwash queue and canopy that are 16.25 feet off the property line along Cape Coral Parkway. This property has almost 200 feet of frontage on Cape Coral Parkway; approximately 120 feet of that would be impacted by this amendment. Reducing the wall-height would completely change the existing streetscape.

- 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 Hearing Examiner.*

The proposed amendment does not impact any access points.

- 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.*

No change is being proposed to the setbacks of the building.

- 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 Hearing Examiner shall also require that the premises be permanently screened from adjoining and contiguous properties by a fence, evergreen hedge and/or other approved enclosure when deemed appropriate to buffer the special exception use from surrounding uses.*

When the special exception was approved in 2015, City Council added a condition that the project be developed according to the plans shown at the meeting. The existing wall was part of those plans. The applicant is requesting an amendment to the approved plans to make the carwash more visible at the right-of-way despite having 200 feet of street frontage and an animated sign on Cape Coral Parkway.

## RECOMMENDATION

Staff finds the request to amend the special exception is inconsistent with Resolution 108-15, the CRA vision of the South Cape, the intent or vision of the Downtown Mixed Future Land Use category in the Comprehensive Plan, and the South Cape zoning district regulations.

Staff recommends **DENIAL** of the special exception amendment.

Email: [kwoellner@capecoral.net](mailto:kwoellner@capecoral.net)

**EXHIBIT A: Site Pictures of the Existing Façade**

**Picture 1:** Taken from the corner of SE 17<sup>th</sup> Place and Cape Coral Parkway. The Downtowner sign is visible from the road with right-turn access to the site at the next cross-street.

**Picture 2:** Taken from the beginning of the right turn land on Cape Coral Parkway before SE 17<sup>th</sup> Place. The sign is visible from the road with at least two right-turns that would provide access to the site.

**Picture 3:** Taken from Cape Coral Parkway, just past Del Prado Boulevard. The sign can be seen through the median trees at the intersection, but it is difficult. However, it is clearly visible once the median terminates. There is a center turn lane that gives drivers access to SE 17<sup>th</sup> Place just after the median terminates.











**Avalon Engineering, Inc.**  
2503 Del Prado Boulevard South, Suite 200  
Cape Coral, Florida 33904  
Phone: (239) 573-2077 Fax: (239) 573-2076  
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February 12, 2019

Mr. Robert Pederson, Planning Manager  
Department of Community Development  
City of Cape Coral  
1015 Cultural Park Boulevard  
Cape Coral, Florida 33990

PROJECT: BLOCK 363, LOTS 1-7 & 24-30 PLUS VACATED ALLEY  
STRAP #: 08-45-24-C4-00363.0010  
1707 CAPE CORAL PARKWYA EAST

SUBJECT: SITE PLAN AMENDMENT FOR A SPECIAL EXCEPTION USE

Dear Mr. Pederson:

On behalf of the property owner, 1707 Cape Coral LLC, and as provided for in Section 8.8 of the City of Cape Coral's Land Use and Development Regulations, we hereby request approval to Amend the Site Plan, which was approved as part of the Special Exception, by Resolution 108-15, for the Downtowner Car Wash located at 1707 Cape Coral Parkway East.

As part of the terms and conditions of approval of Resolution 108-15, the City of Cape Coral City Council required that the development of the proposed Downtowner Car Wash to built in accordance with the site plan and landscaping plans dated May 28, 2015.

The applicant is requesting approval to amend the site plan dated May 28, 2015, in order to reduce the height of the wall that was provided along Cape Coral Parkway. The applicant is requesting to reduce the height of the existing wall from nine (9) feet to three (3) feet for ninety-six (96) linear feet and remove the two (2) trellises between the office and dog wash along Cape Coral Parkway.

The site will maintain a 3' high wall along Cape Coral Parkway to screen the parking spaces provided on the site that are visible from Cape Coral Parkway, as required by Section 5.2.C.3.d.(1)(b) and (c) of the City's Land Use and Development Regulations.

The Downtowner Car Wash redeveloped a 1.3 acre unoccupied commercial site located on the corner of SE 17<sup>th</sup> Avenue and Cape Coral Parkway in Downtown Cape Coral in 2015. The site is zoned SC (South Cape Downtown District) and has a Land Use designation of DM (Downtown Mixed).

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 request to reduce the height of the wall along Cape Coral Parkway will not change this development's compliance with the development standards within the South Cape Zoning District, the City of Cape Coral's Landscaping Regulations, the City's Non - Residential Design Standards and the City's Comprehensive Plan at the time of development.***

***A three (3) foot high opaque fence is required along Cape Coral Parkway for the screening of the parking spaces provided that are visible from Cape Coral Parkway. The nine (9) foot high wall that was constructed along Cape Coral Parkway was not a requirement of the South Cape Zoning District, the City of Cape Coral's Landscaping Regulations, or specified as a staff condition of approval for the Special Exception use within the staff report for this case.***

***The proposed reduction of the height of the wall along Cape Coral Parkway between the dog wash building and the office building will not effect this development's compliance with all of the City of Cape Coral's Land Use and Development Regulations nor will this amendment grant this use any special privilege that is denied by the City's Regulations to other sites, buildings or structures in the same 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 proposed reduction to the height of the wall along Cape Coral Parkway will meet the intent of the Land Development Regulations and will allow this development to be consistent with other new developments within the South Cape Zoning District which front of Cape Coral Parkway, such as Culvers, Starbucks, Panera Bread, 7-Eleven, Dollar General, Family Dollar, and the Chase Bank, that either have no screening along Cape Coral Parkway or provide a 3 foot opaque fence. None of these new developments in the South Cape Zoning District provide a 3 foot or higher wall. The extra wall height that was provided by the Downtowner Car Wash provides a visibility disadvantage for this development. A reduction to the height of the wall for this site will improve this business's visibility while providing the required screening along Cape Coral Parkway.***

- 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 proposed site plan change will not modify the access points approved for this site. This development closed two existing driveways on to Cape Coral Parkway to improve traffic safety and movement for this Car Wash Facility.***

- 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 Buildings and Site elements were designed and constructed to comply with the setback requirements within the South Cape Zoning District. The amendment to the approved site plan will not change the locations of the existing buildings or any other site facilities except for the height of the wall along Cape Coral Parkway.***

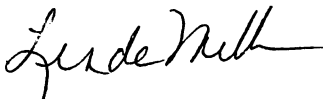
- e. *Screening and buffering.* A continuous strip of properly maintained landscaped area should be provided along all property lines and along all streets serving the premises. Such continuous strip of properly maintained landscaped area may, however, be allowed to contain walkway(s) and driveway entrances. 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.

***The proposed site plan change will not modify the landscaping plan approved within Resolution 108-15 and installed per SPP B15-23026. The site was developed with the required landscaping at the time of construction. The reduction of the height of the wall will permit more visibility of the landscaping provided along Cape Coral Parkway.***

We respectfully request approval of this Amendment to the Site Plan for this Special Exception use. If you have any questions or require additional information please let me know.

Sincerely,

AVALON ENGINEERING, INC.



Linda Miller, AICP  
Senior Planner

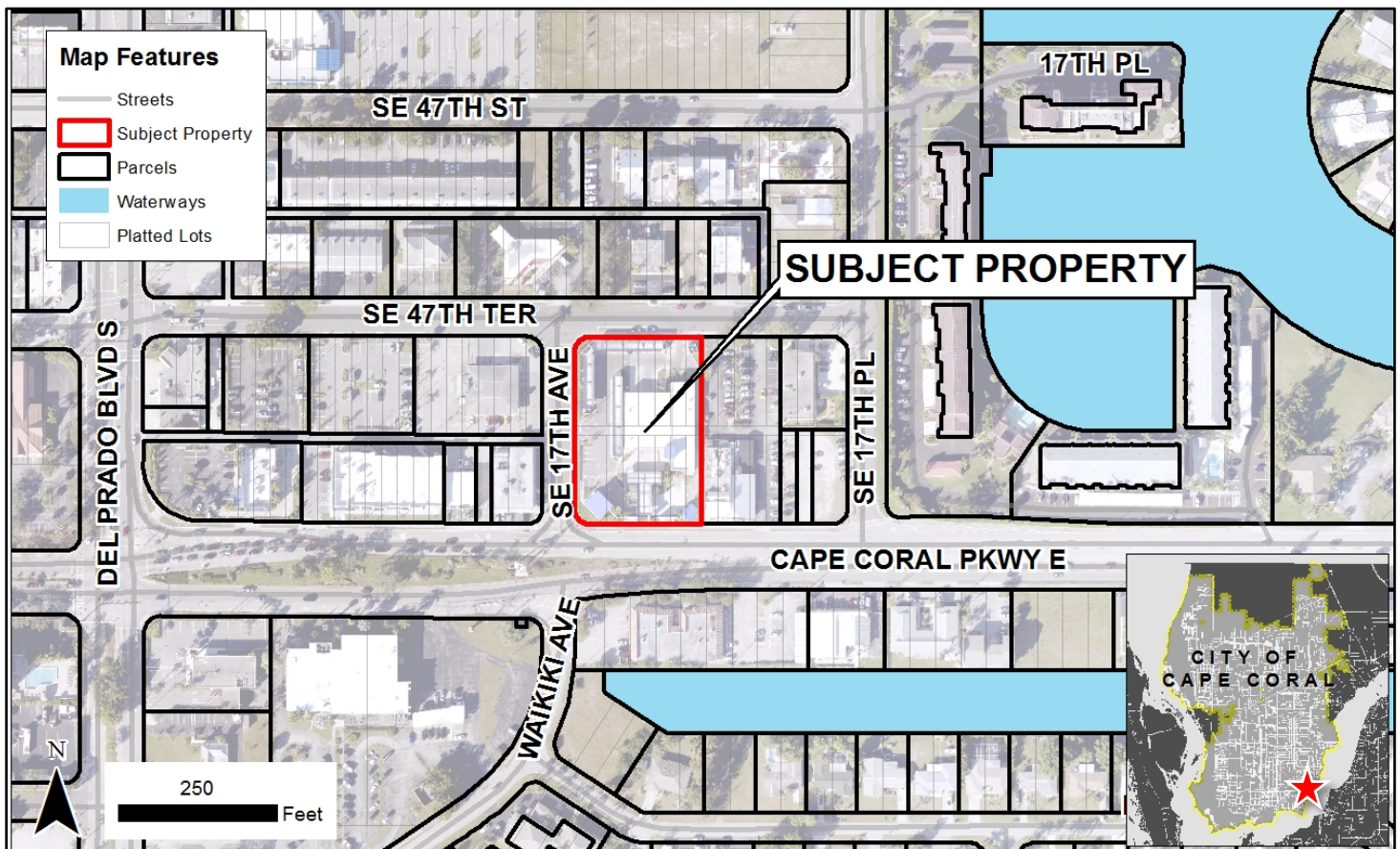
c: Jay Montpetit, Downtowner Car Wash





## PLANNING DIVISION CASE REPORT

SE19-0002



**HEARING DATE:** September 10, 2019

**REQUEST:** To amend the site plan and landscaping plans associated with Resolution 108-15 which approved an automotive service establishment use in the South Cape Downtown (SC) District for the Downtowner Carwash. The amendment seeks to alter the front façade of the carwash by reducing the wall height from nine feet to three feet.

**SITE ADDRESS:** 1707 Cape Coral Pkwy E

**STRAP NUMBER:** 08-45-24-C4-00363.0010

**LEGAL DESCRIPTION:** CAPE CORAL UT 7 BLK 363 PB 12 PG 113 LOTS 1 THRU 7 + 24 THRU 30 ADJ + VACATED ALLEY AS PER INST# 2016000023899

**APPLICANT:** 1707 Cape Coral, LLC

**PROPERTY OWNER:** 1707 Cape Coral, LLC

**AUTHORIZED AGENT:** Linda Miller, Avalon Engineering, Inc.

**FUTURE LAND USE:** Downtown Mixed (DM)

**ZONING DESIGNATION:** South Cape Downtown (SC)

**CODE COMPLIANCE CASE NO.:** N/A

**PREPARED BY:** Katherine Woellner, Planner

**APPROVED BY:** Mike Struve, AICP, LEED Green Associate, Planning Team Coordinator

**RECOMMENDATION:** Denial



## BACKGROUND

The 1.35-acre site is in the CRA and has a zoning designation of South Cape Downtown (SC) and a Future Land Use classification of Downtown Mixed (DM). The Downtowner Carwash is on the site. Carwashes are classified as an automotive service establishment which requires special exception approval in the SC District. This amendment will not change the use of the property; instead it is intended to alter the approved plans associated with the project.

## ZONING HISTORY

The site is in the Community Redevelopment Area which was established in 1987 through Ordinance 47-87 by City Council. In July of 2012 the site was rezoned from Downtown Gateway (DG) to SC (ZA12-0001), which remains on the site.

In December of 2014, the property owners applied for a Vacation of Plat (VP14-0005) and a Special Exception (SE14-0018) to develop a carwash on the property. The special exception was denied in May of 2015 by the Board of Zoning Adjustments and Appeals. The property owner appealed this decision to the City Council (AP15-0001) who approved the use to on August 10, 2015 with conditions. See staff analysis section for details.

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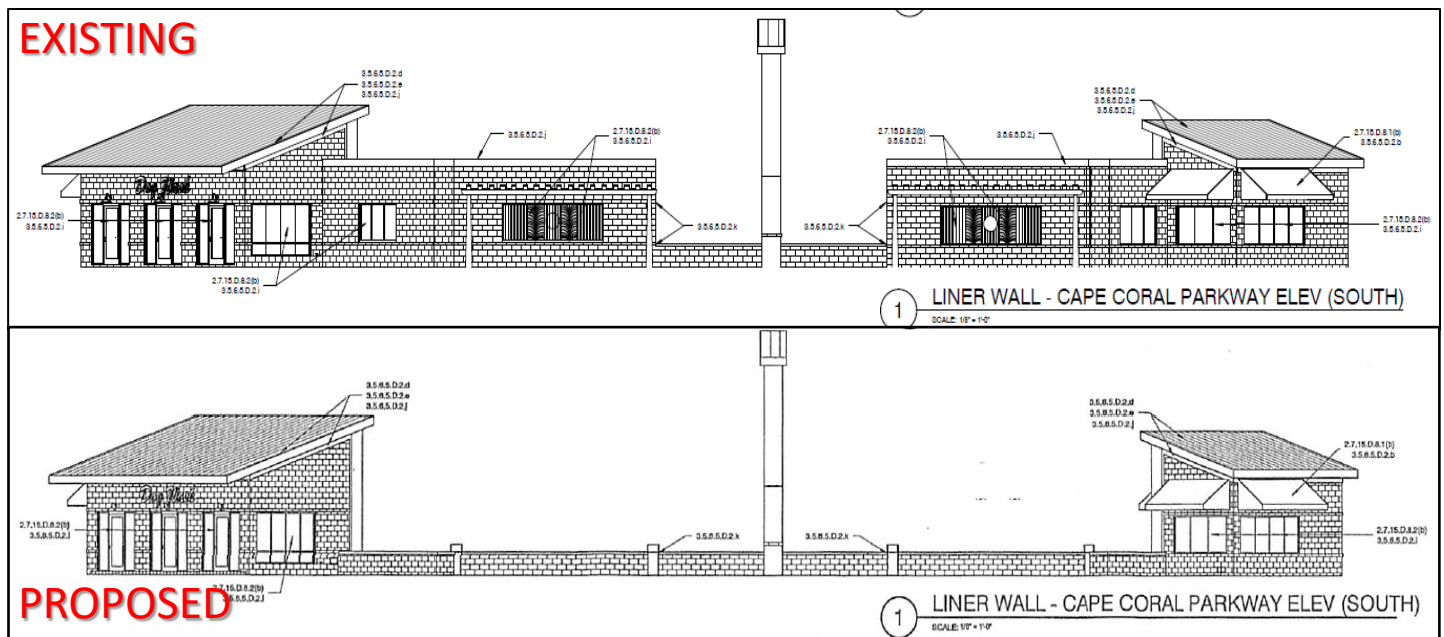


Figure 1: Elevation drawings of the existing frontage vs the proposed

## REQUEST

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The applicant proposes to reduce the height of the wall along Cape Coral Parkway East from nine feet to three feet. With the wall-height reduction, the two existing trellises and decorative “windows” will be removed. See Figure ## on Page ## for a comparison of the existing and the proposed elevations. The applicant proposes adding two additional rows of shrubs in-lieu-of the existing architectural elements.



Figure 2: Photograph of the existing building (top) versus a rendering of the proposed (Included in Application Materials)

## ANALYSIS

Staff reviewed the request in relation to Resolution 108-15, The City of Cape Coral Comprehensive Plan, CRA Redevelopment Plan, and Land Use and Development Regulations.

### **Resolution 108-15**

City Council approved the carwash use through Resolution 108-15 which included three conditions of approval:

1. *The project shall be developed in accordance with the site plan and landscaping plan dated May 28, 2015, provided by Avalon Engineering.*
2. *No vehicular ingress to or egress from the site directly onto or from Cape Coral Parkway shall be allowed.*
3. *No development on the site shall be allowed unless and until the City approves a vacation of plat for the alley running through the site and the applicant relocates the associated utilities.*



This amendment conflicts with the first condition of approval, as the applicant is requesting to alter the site plan and landscaping plan associated with the approved project design. Additionally, the alteration being requested will make the special exception use *more* visible than it was approved for and currently designed.

A 20ft tall and 9.6ft wide freestanding sign exists on the site along Cape Coral Parkway. See Figure 3 below. The sign includes a 4.1-foot by 7.75-foot electronic sign and additional lighting that can easily be seen from the road. The sign is in front of the existing wall, perpendicular to Cape Coral Parkway. This sign will remain. Lowering the wall will not change the size of the sign; instead it will expose more of the actual carwash use. See Exhibit A for site pictures illustrating the visibility of the carwash from the street. While there are some visibility issues driving east on Cape Coral Parkway, adjusting the wall height will not make the property more visible.

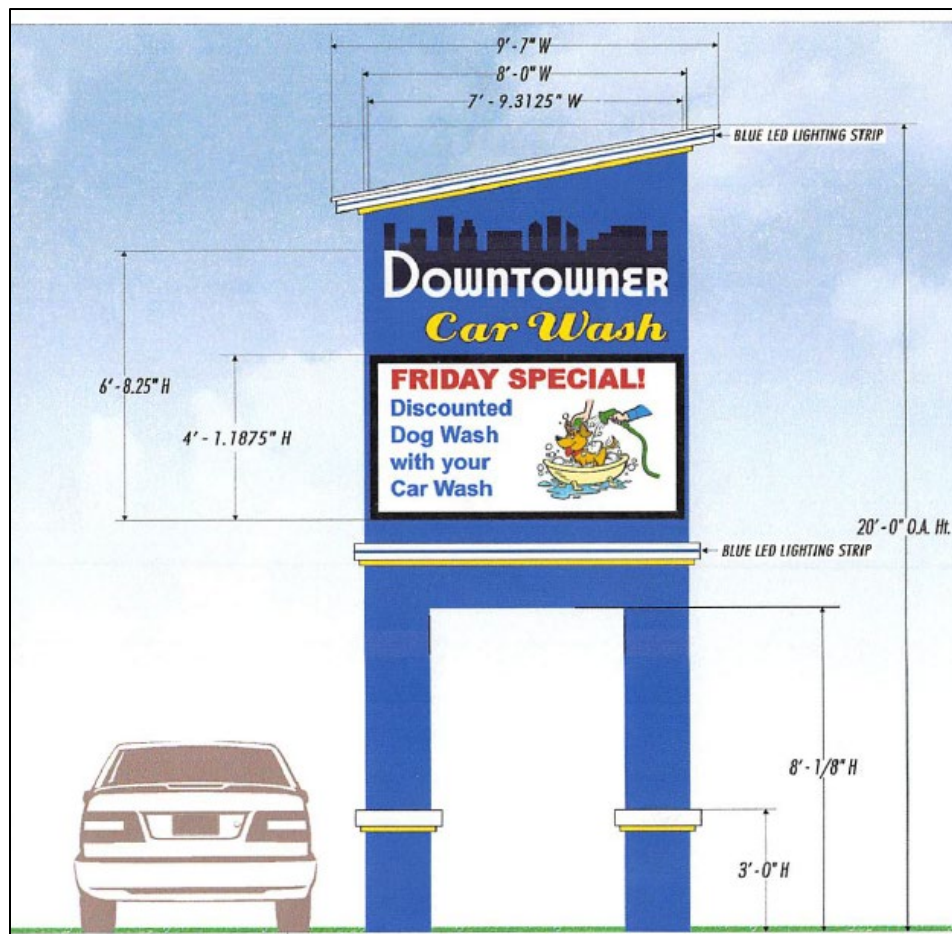


Figure 3: Diagram from Sign Permit (B16-12530)

In addition to the freestanding sign, the carwash also has a sign on one of the building facades for the dog wash. This sign will also remain. Lowering the wall will not impact this sign either.

### **City of Cape Coral Comprehensive Plan**

The Future Land Use element of the Comprehensive Plan addresses growth and development in the City of Cape Coral. The Future Land Use Element contains a goal which is supported by objectives that are further defined by policies.

**Policy 1.15.I: Downtown Mixed:** *Intended primarily for the Downtown Community Redevelopment Area, to provide, a vibrant, walkable, mixed-use district in the historical heart of Cape Coral, mixed-use projects containing commercial and professional uses in conjunction with multi-family housing opportunities where practical and feasible are encouraged.*

The existing wall provides a visual buffer along the right-of-way for pedestrians and adjacent businesses. Because the wall is built towards the front of the property and includes architectural features, it gives the illusion that there is a building at the property line instead of queueing for cars. Urban design is often characterized by having buildings close to the road with vehicle-use areas behind the front façade of the building. The existing design creates this effect. Lowering the wall would break-up the building façade—created by the subject property and the adjacent properties-- along Cape Coral Parkway.

***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 developments (such as loading docks, rooftop equipment, service entrances, trash containers, parking areas and exterior storage) through the extensive use 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 subject property is surrounded by properties zoned SC, however residential uses are allowed in the SC district. The existing wall and landscaping help conceal the vehicle queue for the carwash as well as provide some barrier for sound from the machinery used in the carwash to the adjacent properties.

#### **CRA Redevelopment Plan**

***4.5 General Streetscape and the Public Realm:** Further, the character of streetscapes is highly influenced by adjacent development. Ideally, buildings (rather than parking lots, service areas, exposed waste receptacles, etc.) front the sidewalk. While, the prevailing pattern of development in the South Cape is the opposite, new infill development can begin to establish this character. Existing development can add additional landscaping and dedicate outdoor areas to amenities such as cafe seating to the degree possible.*

The existing wall and landscaping give the appearance of a pedestrian-friendly building. The existing architectural and landscape elements also provide a different streetscape experience for pedestrians than vehicle queue lines. The proposed wall-height reduction will remove architectural features that enhance the streetscape along Cape Coral Parkway.

#### **Land Use and Development Regulations (LUDR)**

The subject property has a zoning designation of South Cape Downtown (SC). Within the SC district, permitted uses are determined by the street classification. The site is bound by three rights-of-way: Cape Coral Parkway to the south, SE 17<sup>th</sup> Ave to the west, and SE 47<sup>th</sup> Terrace to the north. In this section of the SC district, Cape Coral Parkway is considered a “secondary” street and SE 17<sup>th</sup> and SE 47<sup>th</sup> are considered “tertiary” streets. An automotive service establishment is a special exception use on both secondary and tertiary street classification.

Per LUDR Section 8.8 regarding special exceptions, a special exception is defined as:

*A use which is essential to, or would promote the, public health, safety or welfare in one or more districts, 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 in the Land Use and Development Regulations.*

LUDR Section 8.8.5 outlines the standards for special exception uses as:

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

The existing development complies with LUDR requirements and the special exception approval from City Council.

- 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 façade along Cape Coral Parkway, as it exists, is more compatible with the adjacent buildings than a reduced wall height would be. The existing wall provides the illusion of a continuous, pedestrian-friendly street frontage along Cape Coral Parkway because it is at a similar height and setback to the adjacent building. The existing wall also includes architectural features such as trellises, faux windows, and banding that emulate the requirements of the City's non-residential design standards found in LUDR Section 5.6.

Reducing the wall height would expose the carwash queue and canopy that are 16.25 feet off the property line along Cape Coral Parkway. This property has almost 200 feet of frontage on Cape Coral Parkway; approximately 120 feet of that would be impacted by this amendment. Reducing the wall-height would completely change the existing streetscape.

- 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 Hearing Examiner.*

The proposed amendment does not impact any access points.

- 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.*

No change is being proposed to the setbacks of the building.

- 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 Hearing Examiner shall also require that the premises be permanently screened from adjoining and contiguous properties by a fence, evergreen hedge and/or other approved enclosure when deemed appropriate to buffer the special exception use from surrounding uses.*

When the special exception was approved in 2015, City Council added a condition that the project be developed according to the plans shown at the meeting. The existing wall was part of those plans. The applicant is requesting an amendment to the approved plans to make the carwash more visible at the right-of-way despite having 200 feet of street frontage and an animated sign on Cape Coral Parkway.

## RECOMMENDATION

Staff finds the request to amend the special exception is inconsistent with Resolution 108-15, the CRA vision of the South Cape, the intent or vision of the Downtown Mixed Future Land Use category in the Comprehensive Plan, and the South Cape zoning district regulations.

Staff recommends **DENIAL** of the special exception amendment.



Email: [kwoellner@capecoral.net](mailto:kwoellner@capecoral.net)

**EXHIBIT A: Site Pictures of the Existing Façade**

**Picture 1:** Taken from the corner of SE 17<sup>th</sup> Place and Cape Coral Parkway. The Downtowner sign is visible from the road with right-turn access to the site at the next cross-street.

**Picture 2:** Taken from the beginning of the right turn land on Cape Coral Parkway before SE 17<sup>th</sup> Place. The sign is visible from the road with at least two right-turns that would provide access to the site.

**Picture 3:** Taken from Cape Coral Parkway, just past Del Prado Boulevard. The sign can be seen through the median trees at the intersection, but it is difficult. However, it is clearly visible once the median terminates. There is a center turn lane that gives drivers access to SE 17<sup>th</sup> Place just after the median terminates.









**Classified Ad Receipt**  
**(For Info Only - NOT A BILL)**

**Customer:** CITY OF CAPE CORAL\_DEPT OF COM

**Ad No.:** 0003761699

**Address:** 1015 CULTURAL PARK BLVD  
CAPE CORAL FL 33990  
USA

**Net Amt:** \$359.93

**Run Times:** 1

**No. of Affidavits:** 1

**Run Dates:** 08/31/19

**Text of Ad:**

NOTICE OF PUBLIC HEARING ADVERTISEMENT  
CASE NUMBER: SE19-0002

REQUEST: To amend the site plan and landscaping plans associated with Resolution 108-15 which approved an automotive service establishment use in the South Cape Downtown (SC) District for the Downtowner Carwash. The amendment seeks to alter the front façade of the carwash by reducing the wall height from nine feet to three feet.

LOCATION: 1707 Cape Coral Pkwy E.  
CAPE CORAL STAFF CONTACT: Katherine Woellner, Planner, 239-574-0605, kwoellner@capecoral.net

PROPERTY OWNER(S): 1707 Cape Coral, LLC

AUTHORIZED REPRESENTATIVE: Linda Miller, Avalon Engineering, Inc.

UPCOMING PUBLIC HEARING: Notice is hereby given that the City of Cape Coral Hearing Examiner will hold a public hearing at 9:00 A.M. on Tuesday September 10, 2019 on the above mentioned case. The public hearing will be held in the City of Cape Coral Council Chambers, 1015 Cultural Park Boulevard, Cape Coral, FL.

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

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

HOW TO CONTACT: Any person may appear at the public hearing and be heard, subject to proper rules of conduct. You are allowed sufficient time to write or appear at the public hearing to voice your objections or approval. Written comments filed with the Director will be entered into the record. Please reference the case number above within your correspondence and mail to: Department of Community Development, Planning Division, P.O. Box 150027, Cape Coral, FL 33915-0027. The public hearing may be continued to a time and date certain by announcement at this public hearing without any further published notice.

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  
City Clerk  
AD#3761699 8/31/2019

Department of Community Development  
Planning Division

AFFIDAVIT

IN RE: APPLICATION OF: 1707 Cape Coral, LLC

APPLICATION NO: SE19-0002

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 3<sup>rd</sup> day of September, 2019.



Vincent A. Cautero, AICP

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of September 2019, by Vincent A. Cautero, AICP, who is personally known to me and who did not take an oath.

Exp. Date 11/6/20 Commission # 96030474



Signature of Notary Public

Elisabeth A. Delgado  
Print Name of Notary Public








# CITY OF CAPE CORAL

Department of  
Community Development  
Planning Division

CURRENT ZONING MAP  
500 Proximity Boundary

Case No. SE19-0002

## LEGEND

-  Subject Parcel
-  500' Boundary
-  R-1B
-  R-3
-  SC

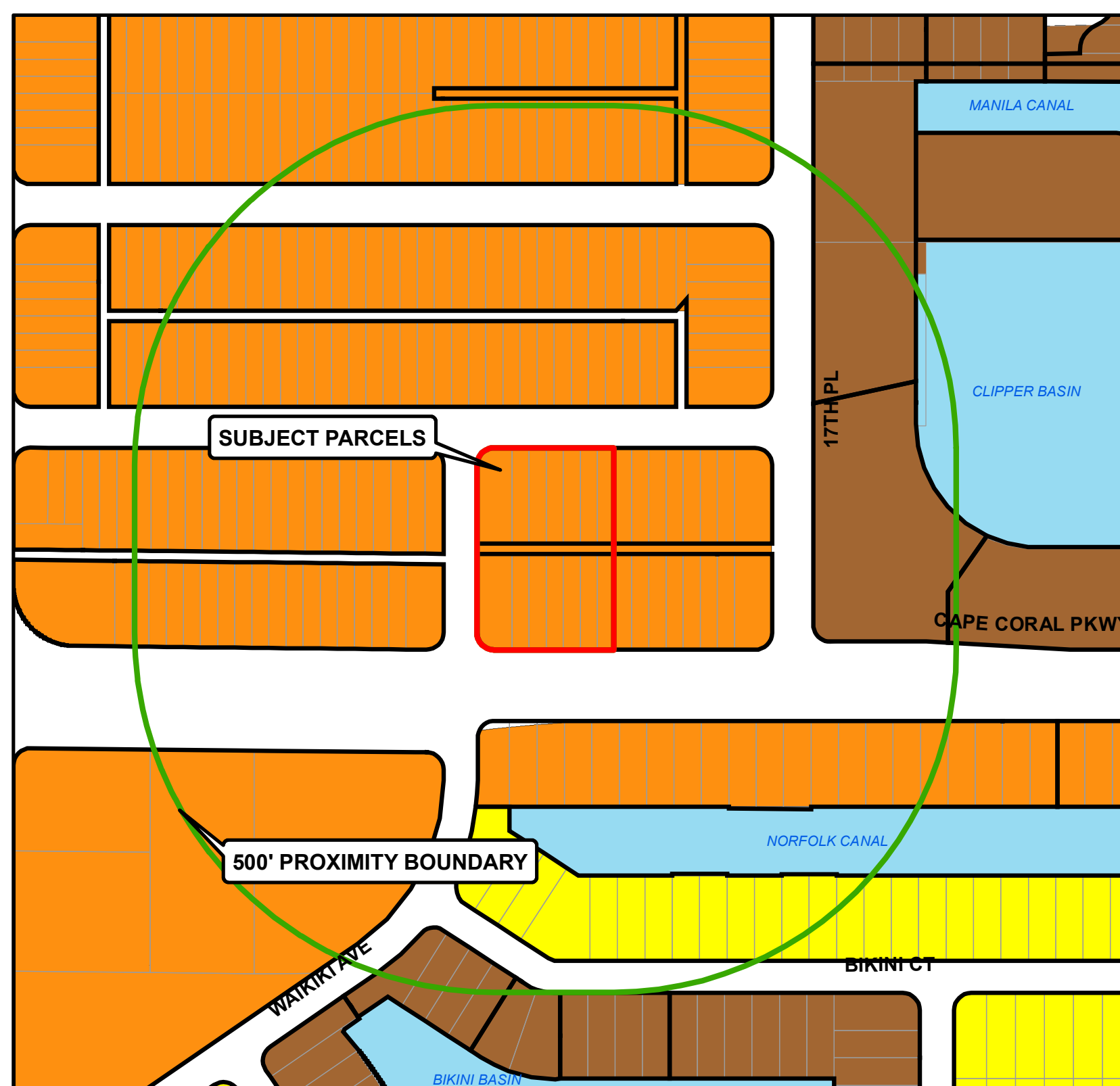


APRIL 4, 2019

0 75 150 225 300 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



Item Number:	3.A.
Meeting Date:	9/10/2019
Item Type:	DATE AND TIME OF NEXT MEETING

**AGENDA REQUEST  
FORM**  
CITY OF CAPE CORAL



**TITLE:**

Tuesday, October 1, 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:**