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**BONITA SPRINGS, FLORIDA  
COMMUNITY DEVELOPMENT DEPARTMENT  
ZONING DIVISION  
STAFF REPORT**

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**PROJECT NAME: 26659 HICKORY BLVD. RESIDENTIAL VARIANCE**

**TYPE OF CASE: VARIANCE (SETBACK)**

**CASE NUMBER: VAR22-97621-BOS**

**HEARING DATE: JUNE 16, 2023**

**PLANNER: MARY ZIZZO, AICP, ESQ.**

**REQUEST AND STAFF RECOMMENDATION**

A variance from LDC Section 4-2399(c)(2), which requires a setback of 5 feet, to allow a setback of 3.1 feet along the northern side property line for a cantilevered structure on a residential property in Bonita Springs.

Staff recommends APPROVAL of the variance as requested.

**I. APPLICATION SUMMARY:**

A. Applicant: James M Foley

B. Agent: Lindsay Robin, AICP, Morris-Depew & Associates, Inc.  
Amy Thibaut, Esq., Pavese Law Firm

C. Request: A variance from LDC Section 4-2399(c)(2), which requires a setback of 5 feet, to allow a setback of 3.1 feet along the northern side property line for a cantilevered structure on a residential property in Bonita Springs.

D. Location: 26659 Hickory Blvd., Bonita Springs, FL 34134

E. Future Land Use Plan Designation, Current Zoning and Use of Property:

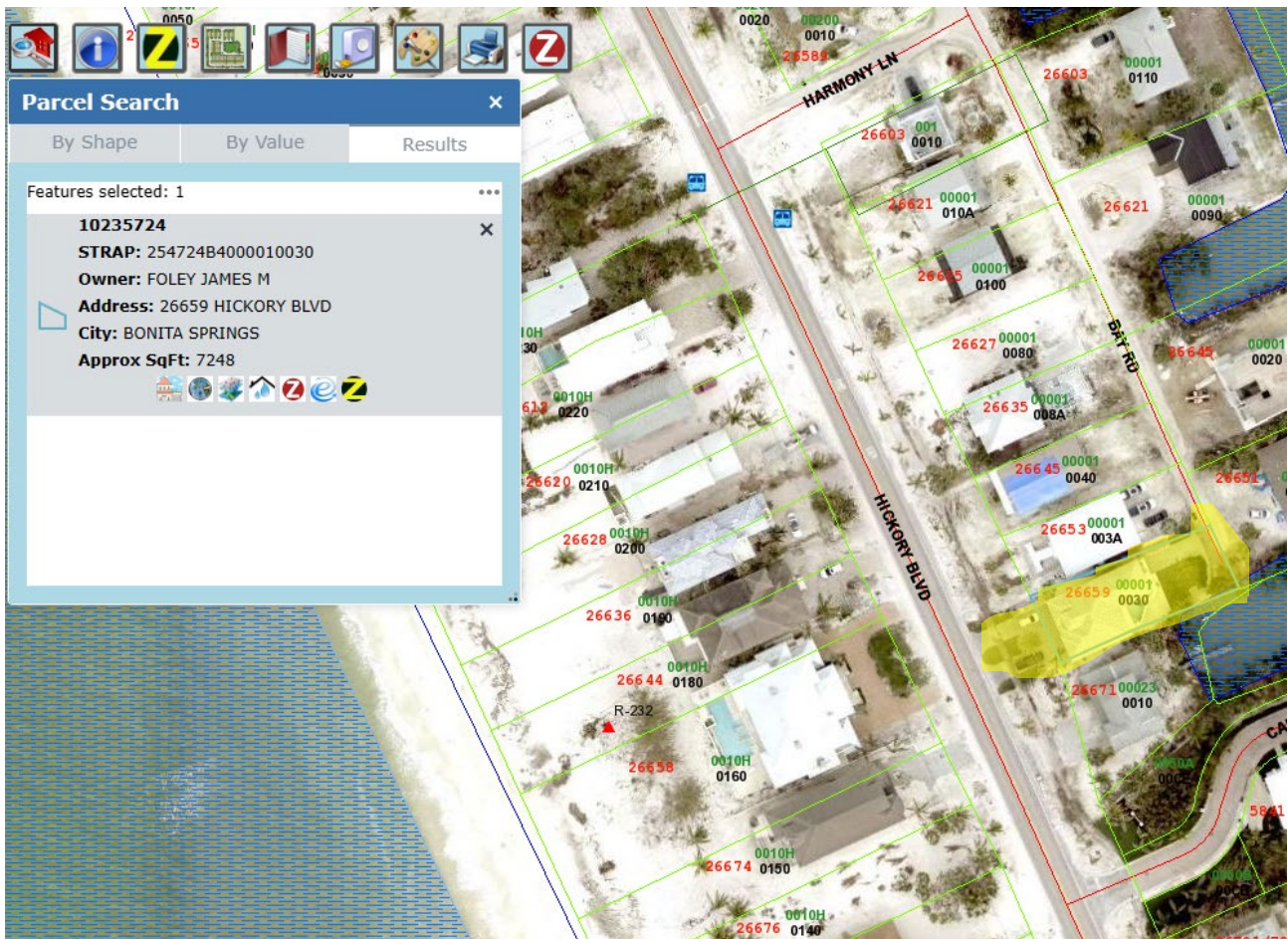
Future Land Use: Moderate Density Residential

Current Zoning: RS-1, Residential Single-Family

Current Use: Single-Family Residential

F. Surrounding Land Use:

<u>Existing Zoning &amp; Land Use</u>	<u>Future Land Use Designation</u>
North: RS-1, Single-Family Residential Single-Family Residence	Moderate Density Residential
East: TFC-2, Two-Family Conservation District; Single-Family Residence	Medium Density Residential
South: RS-1, Single-Family Residential; Single-Family Residence	Moderate Density Residential
West: RS-1, Single-Family Residential; Hickory Blvd, followed by Single-Family Residences	Moderate Density Residential

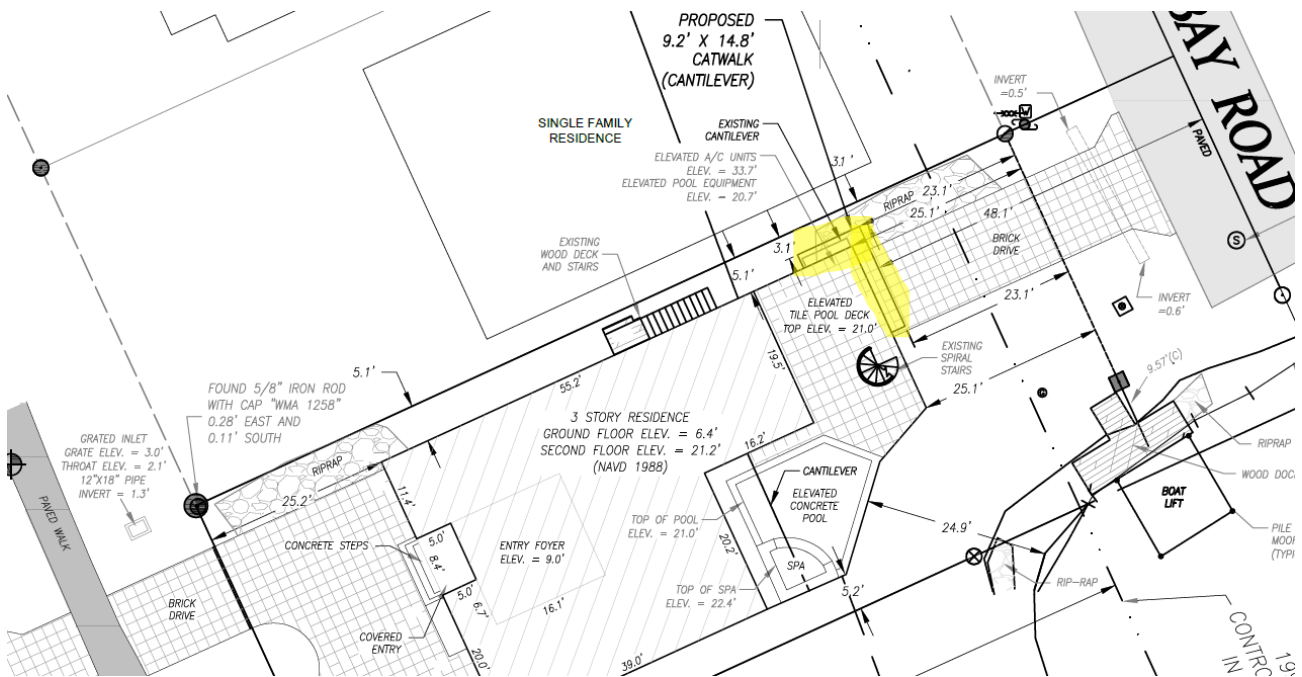


## II. BACKGROUND AND INFORMATIONAL ANALYSIS:

### Introduction/Synopsis

The property is located at 26659 Hickory Blvd. The property is currently occupied by a single-family residence, which was constructed in 2019. The Applicant is the current owner of the property, which was most recently purchased on December 30, 2020.

Since September of 2021, there has been discussion of the troubles this property is having finding a pool company willing to service the pool due to the pool equipment location. The pool equipment is elevated and recessed within the residential structure. The pool equipment is accessible only via ladder. As part of the drainage plan for the existing residential structure to accommodate the grade change from the adjacent property, rip rap exists along the northern side property line. Due to the rip rap located where the ladder would safely go to access this equipment, the Applicant indicates that pool companies are not willing to service the pool, claiming unsafe conditions. Therefore, the Applicant is requesting to install a cantilevered structure, described as a catwalk, to allow the pool to be serviced via a balcony structure, which would require encroaching into the side and street setbacks by approximately 1.9 feet.





### Variance Review Criteria – Analysis

As outlined in LDC 4-131(b)(3), the following standard of review is applied to variance cases:

- (3) *Findings. Before making a recommendation to grant any variance, the zoning board must find that all of the following exist:*
  - a. *There are exceptional or extraordinary conditions or circumstances that are inherent to the property in question;*
  - b. *The exceptional or extraordinary conditions or circumstances are not the result of actions of the applicant taken subsequent to the adoption of the ordinance (any action taken by an applicant pursuant to lawfully adopted regulations preceding the adoption of the ordinance from which this chapter is derived will not be considered self-created);*
  - c. *The variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to their property;*
  - d. *The granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and*
  - e. *The condition or situation of the specific piece of property, or the intended use of the property, for which the variance is sought is not of a general or recurrent nature so as to make it more reasonable and practical to amend the ordinance.*

It is Staff's opinion the applicant has demonstrated compliance with all of the criteria listed above.

### Surrounding Zoning

The subject property is in an area surrounded by other single-family residences on nonconforming lots.

### Neighborhood Compatibility

The proposed variance would not change the character of the neighborhood. There are several other setback variances throughout Hickory Blvd. that have been processed by Lee County or Bonita Springs in accordance with the variance criteria outlined in the Land Development Code.

### Comprehensive Plan Considerations

The subject property is located in the Moderate Density Residential future land use category according to the City's Future Land Use Map. The Future Land Use Element of the Comprehensive Plan describes the Moderate Density Residential future land use as follows:

***Policy 1.1.7: Moderate Density Residential - Intended to accommodate and preserve single-family residential development at a maximum density of up to 5.8 dwelling units per gross acre and approximately 1,977 acres of gross land area in the land use category; planned unit developments at a maximum density of six units per acre; group homes and foster care facilities; public schools and other public, semi-public and recreational uses on a limited basis.***

- a. *Appropriate residential housing types include conventional and modular constructed single-family homes on permanent foundations.*
- b. *Maximum allowable height of structures shall be 35 feet from the base flood elevation to the eaves.*

The proposed variance will not increase density or provide for additional development. It is Staff's opinion that the proposed variance does not conflict with the Moderate Density Residential future land use category.

**Findings & Conclusions:**

Based upon an analysis of the application and the standards for approval of a variance, Staff makes the following findings and conclusions:

1. There are exceptional or extraordinary conditions or circumstances inherent to the subject property, specifically the width of the parcel (approx. 44.15' along the Bay Rd. right-of-way) which does not meet the current code minimum of 75' of width.
2. The exceptional or extraordinary conditions or circumstances are not the result of actions of the Applicant taken subsequent to the adoption of the ordinance. This lot as configured was recorded in the Official Records of Lee County in 1957, in Deed Book 273, Page 385, before zoning rules were in place. This configuration was not created or altered by the owner.
3. The variance, if granted, is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulations in question to the subject property. The proposed catwalk is the minimum relief requested to accommodate the existing conditions within this unique area subject to tidal influence and rip rap as stabilization for the existing grade. The variance, if granted, would allow for the servicing of the pool equipment that is placed within the required setbacks for the zoning district.
4. The granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare. Further, no opposition was received after notices were sent out to surrounding properties.

5. The condition or situation of the specific piece of property, or the intended use of the property, for which the variance is sought is not of a general or recurrent nature to make it more reasonable and practical to amend the ordinance.

**III. RECOMMENDATION:**

Staff recommends **APPROVAL** of the applicant’s requested variances from the setback requirements to allow for reductions as outlined below. This recommendation of approval is based on the *Findings & Conclusions* contained herein and is subject to the following conditions:

1. The variance is limited to the lot in question, known as 26659 Hickory Blvd., STRAP #25-47-24-B4-00001.0030, as shown in the attached legal description and boundary survey, “Exhibit A”, attached hereto.
2. The variances granted to the property development regulations are as follows:

Setback Location	Requested
Bay Road- Catwalk	23.1’
Side, north- Catwalk	3.1’

3. The use of the lot in its current configuration is limited to one single-family home with accessory structures and shall be generally consistent with the site plan attached herein (Attachment A).
4. All other portions of the land development code and applicable building codes, unless specifically altered by this variance approval, remain in full force and effect.

**IV. SUBJECT PROPERTY**

The Applicant indicates the STRAP number is: 25-47-24-B1-00001.0030.

**V. EXHIBITS**

- A. Map of Boundary Survey and Catwalk Site Plan
- B. Proposed Site Plan and Elevations

**VI. ATTACHMENTS**

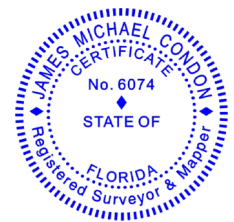
- A. Application and Backup

# EXHIBIT A

## MAP OF BOUNDARY SURVEY AND CATWALK SITE PLAN OF A LOT OR PARCEL OF LAND LYING IN SECTION 25, TOWNSHIP 47 SOUTH, RANGE 24 EAST, AND SECTION 30, TOWNSHIP 47 SOUTH, RANGE 25 EAST LEE COUNTY, FLORIDA

















### SURVEYOR'S NOTES

1. BEARINGS SHOWN HEREON ARE GRID BEARINGS BASED UPON THE NORTH AMERICAN DATUM OF 1983, 1990 ADJUSTMENT (NAD83/90) FLORIDA WEST ZONE. DISTANCES SHOWN ARE GROUND DISTANCES MEASURED IN FEET. COORDINATES SHOWN ARE GRID COORDINATES. DATUM BASED UPON DEPARTMENT OF NATURAL RESOURCES CONTROL MONUMENTS 12-83-A46 AND 12-83-A47 HAVING NAD83/90 GRID COORDINATES AS SHOWN.
2. NO UNDERGROUND IMPROVEMENTS OR FOUNDATIONS WERE LOCATED UNDER THE SCOPE OF THIS SURVEY.
3. ELEVATIONS SHOWN HEREON ARE REFERENCED TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 1988). ELEVATIONS ARE BASED UPON BENCHMARK "872 5283 TIDAL 4" HAVING A RECORD ELEVATION OF 13.23' (NAVD 1988) AS GIVEN IN THE NATIONAL GEODETIC SURVEY CONTROL POINT DATABASE.
4. THIS PARCEL LIES IN FLOOD ZONE "VE" WITH A BASE FLOOD ELEVATION OF 16.0' (NAVD 1988) AS SHOWN FEMA FLOOD INSURANCE RATE MAP PANEL 12071C0651 F, DATED AUGUST 28, 2008. FLOOD ZONE LIMIT LINES DEPICTED HEREON WERE OBTAINED FROM THE LEE COUNTY GEOGRAPHIC INFORMATION SYSTEM (GIS) DEPARTMENT.
5. BOUNDARY INFORMATION SHOWN HEREON IS BASED UPON THE RECORD PLAT AND LEGAL DESCRIPTION PROVIDED. NO SEARCH OF THE PUBLIC RECORD WAS PERFORMED BY THIS SURVEYOR. THERE MAY BE OTHER SETBACKS AND/OR EASEMENTS NOT KNOWN TO THIS SURVEYOR.
6. THE 1991 COASTAL CONSTRUCTION CONTROL LINE SHOWN HEREON IS AS RECORDED IN PLAT BOOK 48, PAGES 15 THROUGH 34, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.
7. THE 1978 COASTAL CONSTRUCTION SETBACK LINE SHOWN HEREON IS AS SHOWN ON EXHIBIT "A" OF LEE COUNTY ORDINANCE 76-10, AS RECORDED ON APRIL 17, 1978, IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.
8. MEAN HIGH WATER ELEVATION OF 0.30' (NAVD 1988) IS BASED ON AN EXTENSION OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION TIDE INTERPOLATION POINT NUMBER 100234.
9. THE STREET ADDRESS IS:  
26659 HICKORY BOULEVARD  
BONITA SPRINGS, FLORIDA 34134
10. THIS PARCEL CONTAINS 0.163 ACRE MORE OR LESS.
11. THERE IS A 50' ROAD EASEMENT OVER THE NORTHERLY 25' OF THIS PARCEL FOR BAY ROAD. THE CURRENT DEED RECORDED AS INSTRUMENT NO. 2006000242840 DOES NOT REFERENCE THIS EASEMENT. THIS EASEMENT IS REFERENCED IN INSTRUMENT NO. 2013000063551 AND IS SUPPORTED BY FOUND MONUMENTATION AS SHOWN.



# MAP OF BOUNDARY SURVEY AND CATWALK SITE PLAN OF A LOT OR PARCEL OF LAND LYING IN SECTION 25, TOWNSHIP 47 SOUTH, RANGE 24 EAST, AND SECTION 30, TOWNSHIP 47 SOUTH, RANGE 25 EAST LEE COUNTY, FLORIDA

## LEGEND

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li> = BENCHMARK, FOUND PK NAIL AND DISK - "LB 6896"</li> <li> = FOUND 5/8" REBAR - NO IDENTIFICATION</li> <li> = FOUND 1/2" REBAR BENT WITH CAP - LB 4919</li> <li> = FOUND 5/8" REBAR AND CAP - "D&amp;W LB 6896"</li> <li> = FOUND 5/8" REBAR AND CAP - "PORTELLA LB2503"</li> <li> = FOUND 4" X 4" CONCRETE MONUMENT NO IDENTIFICATION</li> <li>(C) = CALCULATED DATA</li> <li>(D) = LEGAL DESCRIPTION DATA</li> <li>(M) = FIELD MEASURED DATA</li> <li>(P) = RECORD PLAT DATA</li> <li>RCP = REINFORCED CONCRETE PIPE</li> <li>W.F. = WOOD FENCE</li> </ul> | <ul style="list-style-type: none"> <li> = WOOD UTILITY POLE</li> <li> = GUY ANCHOR</li> <li> = WATER METER</li> <li> = WATER VALVE</li> <li> = WATER VALVE BOX</li> <li> = BACKFLOW PREVENTER</li> <li> = FIRE HYDRANT</li> <li> = SANITARY SEWER CLEAN-OUT</li> <li> = SANITARY SEWER MANHOLE - SSMH</li> <li> = GAS VALVE</li> </ul> |
|---|---|

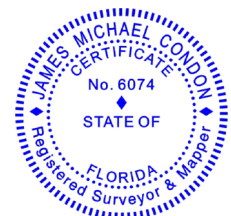
## LEGAL DESCRIPTION

LOT H, AS SHOWN IN SURVEY RECORDED IN DEED BOOK 273, PAGE 385, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A LOT OR PARCEL OF LAND LYING IN SECTION 25, TOWNSHIP 47 SOUTH, RANGE 24 EAST, AND SECTION 30, TOWNSHIP 47 SOUTH, RANGE 25 EAST, WHICH LOT OR PARCEL IS DESCRIBED AS FOLLOWS:

FROM THE SOUTHEASTERLY CORNER OF LOT 16, BLOCK H, BONITA BEACH, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 8, PAGE 65, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, RUN NORTH 63°40' EAST, PERPENDICULAR TO HICKORY BOULEVARD, FOR 100 FEET TO THE POINT OF BEGINNING OF THE LANDS HEREIN DESCRIBED: FROM SAID POINT OF BEGINNING CONTINUE NORTH 63°40' EAST FOR 145 FEET; THENCE RUN NORTH 26°20' WEST PARALLEL TO HICKORY BOULEVARD FOR 50 FEET; THENCE RUN SOUTH 63°40' WEST PERPENDICULAR TO SAID BOULEVARD FOR 145 FEET; THENCE RUN SOUTH 26°20' EAST ALONG SAID BOULEVARD FOR 50 FEET TO THE POINT OF BEGINNING.

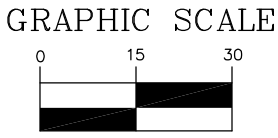
LINE TABLE		
LINE	BEARING (M)	DISTANCE (M)
L1	N40°41'28"E	6.34'
L2	N54°02'40"E	15.66'
L3	N64°43'26"E	14.65'
L4	N24°41'04"W	44.15'
L5	N25°30'59"W	8.77'
L6	N24°41'04"W	36.79'
L7	S24°41'04"E	50.00'
LINE TABLE		
LINE	BEARING (D)	DISTANCE (D)
L4	N26°20'W	50.00'
L7	S26°20'00"E	50.00'



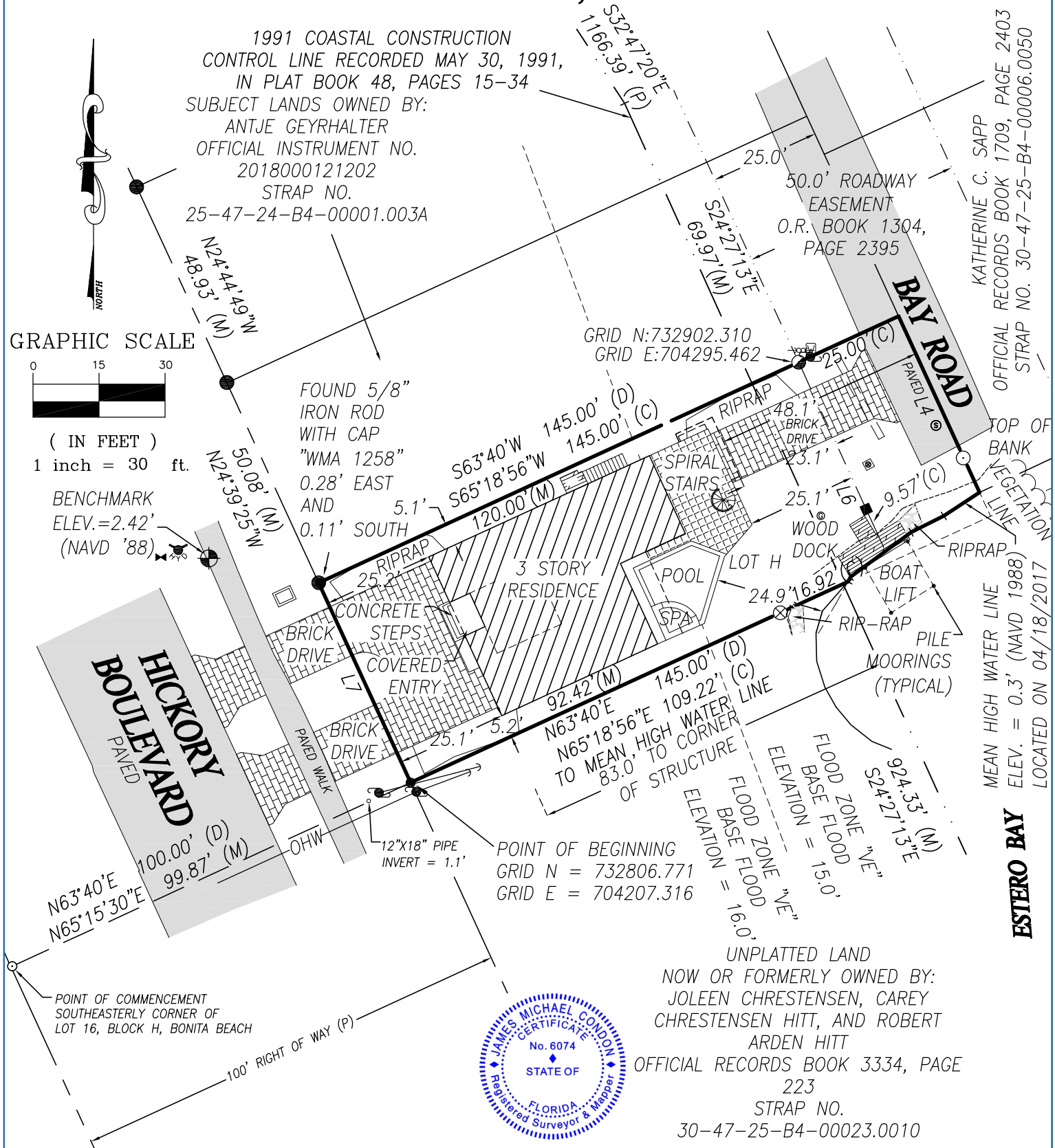


# MAP OF BOUNDARY SURVEY AND CATWALK SITE PLAN OF A LOT OR PARCEL OF LAND LYING IN SECTION 25, TOWNSHIP 47 SOUTH, RANGE 24 EAST, AND SECTION 30, TOWNSHIP 47 SOUTH, RANGE 25 EAST LEE COUNTY, FLORIDA

1991 COASTAL CONSTRUCTION  
CONTROL LINE RECORDED MAY 30, 1991,  
IN PLAT BOOK 48, PAGES 15-34  
SUBJECT LANDS OWNED BY:  
ANTJE GEYRHALTER  
OFFICIAL INSTRUMENT NO.  
2018000121202  
STRAP NO.  
25-47-24-B4-00001.003A



( IN FEET )  
1 inch = 30 ft.  
BENCHMARK  
ELEV.=2.42'  
(NAVD '88)

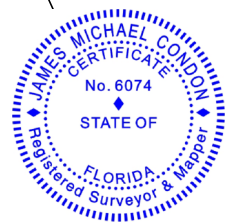


KATHERINE C. SAPP  
OFFICIAL RECORDS BOOK 1709, PAGE 2403  
STRAP NO. 30-47-25-B4-00006.0050

MEAN HIGH WATER LINE  
ELEV. = 0.3' (NAVD 1988)  
LOCATED ON 04/18/2017

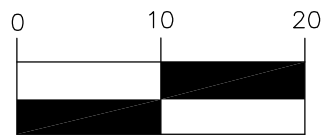
**ESTERO BAY**

UNPLATTED LAND  
NOW OR FORMERLY OWNED BY:  
JOLEEN CHRESTENSEN, CAREY  
CHRESTENSEN HITT, AND ROBERT  
ARDEN HITT  
OFFICIAL RECORDS BOOK 3334, PAGE  
223  
STRAP NO.  
30-47-25-B4-00023.0010





# GRAPHIC SCALE



( IN FEET )

1 inch = 20 ft.

50.0' ROADWAY EASEMENT  
O.R. BOOK 1304,  
PAGE 2395

# ROAD BAY

PROPOSED  
9.2' X 14.8'  
CATWALK  
(CANTILEVER)

EXISTING  
CANTILEVER

ELEVATED A/C UNITS  
ELEV. = 33.7'  
ELEVATED POOL EQUIPMENT  
ELEV. = 20.7'  
ELEVATED TILE POOL DECK  
TOP ELEV. = 21.0'

WOOD DECK  
AND STAIRS

GRID N:732902.310  
GRID E:704295.462

50.00' (N)  
N24°39'25" W

120.00' (M)  
56°3'40" W 145.00' (D)  
56°5'18" 56" W 145.00' (C)

BRICK DRIVE

RIPRAP

3 STORY RESIDENCE  
GROUND FLOOR ELEV=6.4'  
SECOND FLOOR ELEV=21.2'  
(NAVD 1988)

ELEVATED  
CONCRETE  
POOL

SPA

LOT H

SPIRAL STAIRS

BOAT LIFT

PILE MOORINGS  
(TYPICAL)

BRICK DRIVE

CONCRETE STEPS

COVERED ENTRY

ENTRY FOYER

TOP OF SPA  
ELEV. = 22.4'

39.0'

92.42' (M)  
N6°3'40" E 145.00' (D)  
N65°18'56" E 109.22' (C) TO MEAN HIGH WATER LINE  
124.5' TO CORNER  
OF STRUCTURE

PAVED WALK

BRICK DRIVE

POINT OF BEGINNING  
GRID N = 732806.771  
GRID E = 704207.316

12"X18" PIPE  
INVERT = 1.1'

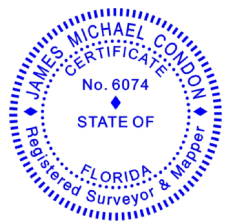
FLOOD ZONE "A"  
BASE FLOOD  
ELEVATION = 15.0'  
FLOOD FLOOD  
BASE FLOOD  
ELEVATION = 19.0'  
ELEVATION = 19.0'

92.45' (M)  
S74°27'13" E

# HICKORY BOULEVARD

# HOUSE DETAIL

1" = 20'



THIS MAP PREPARED BY:  
CERTIFICATE OF AUTHORIZATION NO. LB 6896  
NOT VALID WITHOUT THE SIGNATURE  
AND SEAL OF A FLORIDA  
LICENSED SURVEYOR AND MAPPER

JAMES M. CONDON, PSM  
*James M. Condon*  
Professional Surveyor & Mapper Fla. License No. 6074

COMPUTER FILE: 22230 0411  
DRAWING SCALE: 1" = 20'  
SURVEY DATE: 03/10/2023  
REVISION DATE: 10/14/2023



10081 Bonita Beach Road SE  
Bonita Springs, Florida 34135  
339-350-9085  
www.chwi-inc.com  
est. 1988 FLORIDA  
C-2071

DRAWN BY: FA  
CHECKED BY: JC  
FIELD BOOK: N/A

CERTIFIED TO:  
JIM & JENNIFER FOLEY

JOB NO.: 17133  
SHEET NO.: 4 OF 4







New Cable Railing

Bahama Style  
Equipment Screens

14' - 9 $\frac{1}{2}$ "

9' - 2"

General Notes

No.	Revision/Issue	Date

*West Coast*  
*Florida Enterprises, Inc.*  
8090 Supply Drive  
Fort Myers, Florida 33912  
239-433-9777

**Foley Res.**  
**26659 Hickory Blvd.**  
**Bonita Springs, FL.**

Date	12/20/21	Sheet
Revision		1
Scale		



# PUBLIC HEARING APPLICATION FOR VARIANCES

Community Development Department | 9220 Bonita Beach Road, Suite 111 | Bonita Springs, FL 34135 | Phone: (239) 444-6150 | Fax: (239) 444-6140

Applicant's Name: James Foley Phone #: N/A

Email: N/A

Project Name: 26659 Hickory Blvd. Variance

STRAP Number: 25-47-24-B4-00001.0030

Application Form:  Computer Generated\*  City Printed

**\* By signing this application, the applicant affirms that the form has not been altered.**

\*\*\*\*\*

### STAFF USE ONLY

Case Number: \_\_\_\_\_

Date of Application: \_\_\_\_\_

Fee: \_\_\_\_\_

Current Zoning: \_\_\_\_\_

Land Use Classification(s): \_\_\_\_\_

Comp. Plan Density: \_\_\_\_\_

Date of Zoning Public Hearing: \_\_\_\_\_

Date of City Council Public Hearing: \_\_\_\_\_

Planner Assigned: \_\_\_\_\_

Staff Recommendation: \_\_\_\_\_

\*\*\*\*\*



**PART I**  
**APPLICANT\PROPERTY OWNERSHIP INFORMATION**

A. Name of applicant: James Foley  
Mailing Address: Street: 26659 Hickory Blvd.  
City: Bonita Springs State: FL Zip: 34104  
Contact Person: James Foley  
Phone Number: Area Code: 703 Number: 217-8787 Ext. \_\_\_\_\_  
Fax Number: Area Code: \_\_\_\_\_ Number: \_\_\_\_\_  
E-mail: N/A

B. Relationship of applicant to property:

Owner      \_\_\_\_\_ Trustee\*      \_\_\_\_\_ Option holder\*      \_\_\_\_\_ Lessee\*  
\_\_\_\_\_ Contract Purchaser\*      \_\_\_\_\_ Other (indicate)\* \_\_\_\_\_

\*If applicant is NOT the owner, submit a **notarized** Authorization Form from the owner to the applicant labeled Exhibit I-B.

C. Name of owner of property: Same as Applicant  
Mailing Address: Street: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone Number: Area Code: \_\_\_\_\_ Number: \_\_\_\_\_ Ext. \_\_\_\_\_  
Fax Number: Area Code: \_\_\_\_\_ Number: \_\_\_\_\_  
Email: \_\_\_\_\_

D. Date property was acquired by present owner(s): 12/30/2020

E. Is the property subject to a sales contract or sales option?  NO \_\_\_\_\_ YES

F. Are owner(s) or contract purchasers required to file a disclosure form?  NO \_\_\_\_\_ YES  
If yes, please complete and submit Exhibit I-F (attached).

G. Authorized Agent(s): List names of authorized agents.

Name: Morris-Depew & Associates, Inc.  
Address: 2914 Cleveland Ave, Fort Myers, FL 33901  
Contact Person: Lindsay F. Robin, AICP  
Phone: 239-337-3993 Fax: \_\_\_\_\_  
E-mail: LROBIN@M-DA.COM

Attach list if more space is required.

PART II

GENERAL INFORMATION

A. Legal Description: Is property within a platted subdivision recorded in the official Plat Books of Lee County?

NO. Attach a legible copy of the legal description (labeled Exhibit II-A-1.) and a certified sketch of description as set out in Chapter 5J-17.053., Florida Administrative Code, unless the subject property consists of one or more undivided platted lots. (labeled Exhibit II-A-2.) If the application includes multiple abutting parcels, the legal description must describe the perimeter boundary of the total area, but need not describe each individual parcel. However, the STRAP number for each parcel must be included.

YES. Property is identified as:

Subdivision Name: \_\_\_\_\_

Plat Book: \_\_\_\_\_ Page: \_\_\_\_\_ Unit: \_\_\_\_\_ Block: \_\_\_\_\_ Lot: \_\_\_\_\_

Submit an actual copy of the Plat Book page with subject property clearly marked. Label this Exhibit II-A-3.

STRAP NUMBER: 25-47-24-B4-00001.0030

B. Project Street Address: 26659 HICKORY BLVD

C. General Location of Property: East of Hickory Blvd, west of Bay St, located to the north of Cape Hickory Court, and south of Harmony Lane

D. Vehicular route to the site from the nearest arterial road: The property abuts a segment of Hickory Blvd., which is identified as county-maintained arterial roadway

E. Is this hearing requested as a result of a code violation?  NO  YES

F. Nature of Request: (Check and complete the applicable answer)

Variance from:

(Zoning) LDC Section TABLE 4-2399(c)(2)

(Docks and Shoreline) LDC Section \_\_\_\_\_

(Development Standards) LDC Section \_\_\_\_\_

(Signs) LDC Section \_\_\_\_\_

G. Specific Variance Request (attach sheet if more space needed)

Ordinance Section: 4-2399(c)(2) Variance is:

FROM: LDC Section 4-2399(c)(2), which requires nonconforming single-family lots to have a 5-foot minimum side setback

TO: allow for a 3.1-foot side setback where a catwalk is being installed to access pool equipment on the northern property line of the property located at 26659 Hickory Blvd.

H. Property Dimensions

- 1. Width (average if irregular parcel): 50 Feet
- 2. Depth (average if irregular parcel): 120 Feet
- 3. Frontage on road or street: 50 Feet
- 4. Width along waterbody (If applicable): 50 Feet
- 5. Total land area: .163 Acres or Square Feet

I: Facilities

- 1. Fire District: Bonita Springs Fire Control and Rescue District
- 2. Sewer Service Supplier: Bonita Springs Utilities
- 3. Water Service Supplier: Bonita Springs Utilities

J. Present Use of Property: Is the property vacant?  Yes  No

Except for City-initiated requests, if the property is not vacant, the owner or applicant's signature on this application indicates that the Owner agrees to either remove all existing buildings and structures, OR that the use of the building or structure(s) will be in compliance with all applicable requirements of the land development code.

Briefly describe current use of the property:

The property is currently fully developed with a single family home on it.

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K. Has a Development Order application been filed on the subject property?  NO  YES

D.O. Number: LDO21-84076-BOS

AFFIDAVIT

I, James Foley, certify that I am the owner or authorized representative of the property described herein, and that all answers to the questions in this application and any sketches, data or other supplementary matter attached to and made a part of this application, are honest and true to the best of my knowledge and belief. I also authorize the staff of the City of Bonita Springs Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application.

*James Foley*

10/31/22  
Date

Signature of owner or owner-authorized agent

James Foley

Typed or printed name

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was certified and subscribed before me this 31<sup>st</sup> day of October 20 22 by James Foley, who is personally known to me or who has produced FL Drivers License as identification.

(SEAL)

*Lindsay Horn*

Signature of notary public

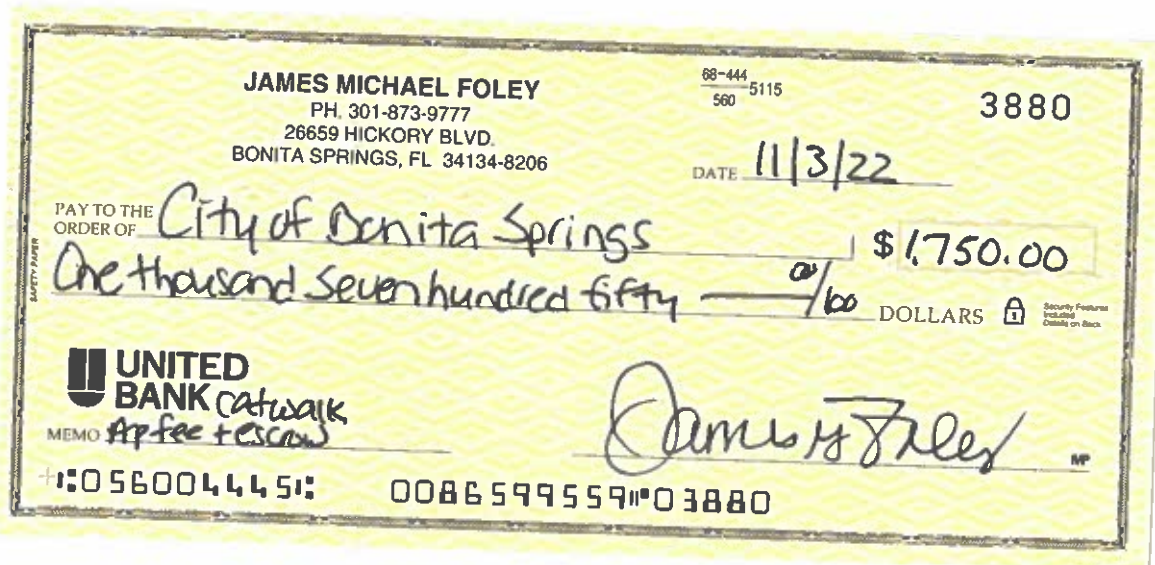
Lindsay Horn

Printed name of notary public

01/18/2026



LINDSAY HORN  
Commission # HH 217340  
Expires January 18, 2026



**EXHIBIT I-F  
DISCLOSURE OF INTEREST FORM FOR:**

**STRAP NO.** 25-47-24-B4-00001.0030

**CASE NO.** TBD

1. If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address	Percentage of Ownership
James Foley	100%
26659 Hickory Blvd.	
Bonita Springs, FL 34134	

2. If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

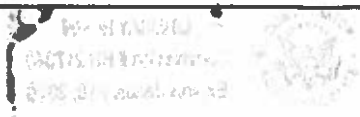
Name, Address, and Office	Percentage of Stock

3. If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address	Percentage of Interest

4. If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

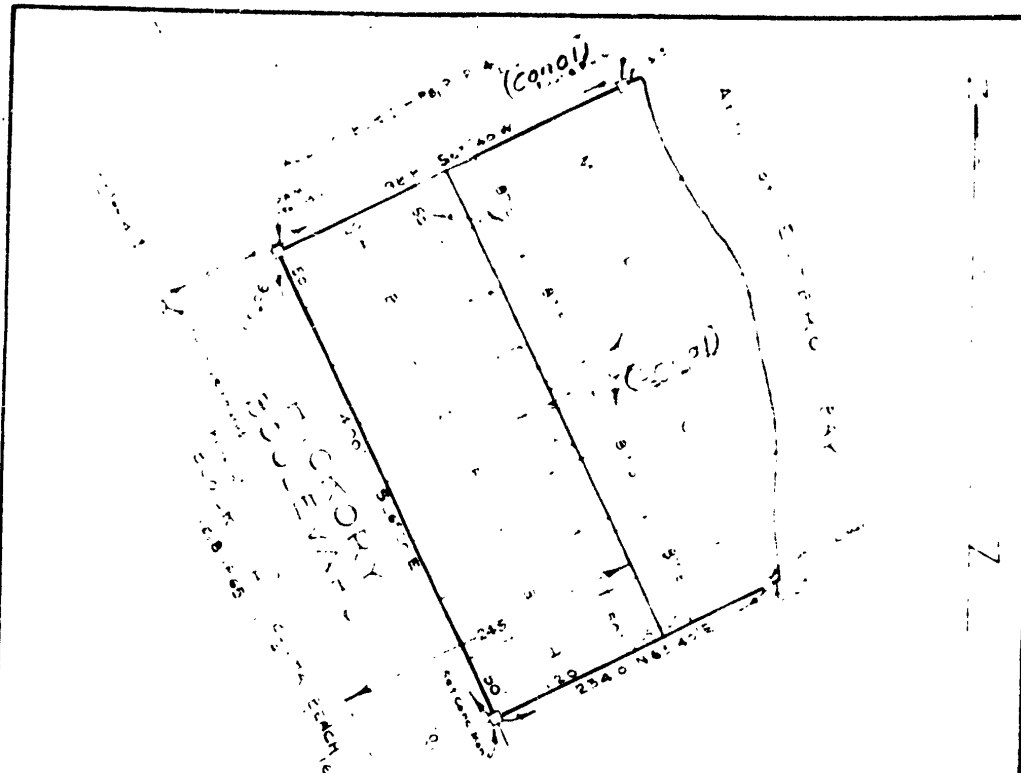
Name and Address	Percentage of Ownership





# EXHIBIT II-A-3

DEED 273 PAGE 385



### DESCRIPTION

A parcel of land in Section 25, Township 47 South, Range 25 East and Section 30, Township 47 South, Range 25 East, lying between Hickory Boulevard and an arm of Estero Bay said parcel being more particularly described as follows:  
 From the southeasterly corner of Lot 16, Block H, Bonita Beach according to a plat thereof recorded in Plat Book 8 at page 65 of the public records of Lee County run N.63°40'E perpendicular to Hickory Boulevard for 100 feet to the northeasterly side of said Boulevard and the point of beginning. From said point of beginning, run N.26°20'W along said Boulevard for 400 feet to a point on the southeasterly line of Park H as shown on the plat of Addition to Block I of Bonita Beach recorded in Plat Book 9 at page 14 of said public records; thence run N.63°40'E along said southeasterly line for 314 feet more or less to the waters of an arm of Estero Bay; thence run southeasterly along said waters to an intersection with a line perpendicular to Hickory Boulevard through the point of beginning; thence run S.63°40'W along said line for 246 feet more or less to the point of beginning.  
 All bearings hereinabove mentioned are calculated from those shown on said plat of Bonita Beach.

Survey of  
 PARCEL BETWEEN HICKORY BOULEVARD AND ESTERO BAY  
 NORTHEASTERLY OF LOTS 16-23, BLOCK H, BONITA BEACH  
 (According to Plat Recorded Plat Book 8, Page 65)  
 IN SECTION 25, T. 47 S., R. 25 E.  
 AND SECTION 30, T. 47 S., R. 25 E.  
 LEE COUNTY, FLORIDA



for  
 MR. KINLEY ENOVAISON  
 F.B. 43, P.27

November 1956

Scale: 1" = 100'

### CERTIFICATE

I hereby certify that this plat is a true and correct representation of a recent survey made and plotted under my direction.

CARL E. JOHNSON  
 Fort Myers, Florida

Revised 6-19-67  
 to show driveway and  
 easement.

*Carl E. Johnson*  
 Registered Professional Surveyor  
 Florida Certificate No. 351

## EXHIBIT IV-A PROPERTY OWNERS LIST AND MAILING LIST

GULF COAST AFFAIRS LLC  
3665 BONITA BEACH RD STE 1  
BONITA SPRINGS FL 34134

GIANESI KERRY COE TR  
53360 CORWIN DR  
GRANGER IN 46530

GEIS ALFRED I TR  
26692 HICKORY BLVD  
BONITA SPRINGS FL 34134

PETERSON VERNA M L/E  
1617 NE 4TH PL  
FORT LAUDERDALE FL 33301

HITT CAREY CHRESTENSEN  
26671 HICKORY BLVD  
BONITA SPRINGS FL 34134

WISE JUNE TR  
26674 HICKORY BLVD  
BONITA SPRINGS FL 34134

PRICE MARY N TR  
26658 HICKORY BLVD  
BONITA SPRINGS FL 34134

CHAPMAN BEVERLY C TR  
26644 HICKORY BLVD  
BONITA SPRINGS FL 34134

DEVINE MICHAEL F III &  
26636 HICKORY BLVD  
BONITA SPRINGS FL 34134

MCNEIL TAMRA S TR  
26628 HICKORY BLVD  
BONITA SPRINGS FL 34134

LOCKE WILLIAM S & JANE A TR  
26620 HICKORY BLVD  
BONITA SPRINGS FL 34134

THOMPSON TERRY R TR  
800 PALISADES DR  
LAKE OZARK MO 65049

STAEHLE WILMA B TR  
26604 HICKORY BLVD  
BONITA SPRINGS FL 34134

DUCHARDT JOHN J TR  
529 S BALLAS RD  
SAINT LOUIS MO 63122

GEYRHALTER ANTJE  
MIESBACHER PLATZ 4  
MUNICH 81547  
GERMANY

MOBLEY JOSEPH V & NINA JANE  
1016 CHARLES ST  
LOUISVILLE KY 40204

WAGNER RANDAL SCOTT &  
24311 PRODUCTION CIR  
BONITA SPRINGS FL 34135

NOVAK DONNA  
2447 CARDINAL DR  
RED WING MN 55066

HITT CAREY C  
26671 HICKORY BLVD  
BONITA SPRINGS FL 34134

SHARKEY AMANDA J  
26625 HICKORY BLVD  
BONITA SPRINGS FL 34134

RUELLE QUINN  
6008 CAJEPUT LN  
BONITA SPRINGS FL 34134

BENING MARY A TR  
8876 OVERLOOK POINT  
SAINT JOHN IN 46373

QUILLEN GREG G TR  
26708 HICKORY BLVD  
BONITA SPRINGS FL 34134

SAPP KATHERINE C  
26651 BAY RD  
BONITA SPRINGS FL 34134

ME HICKORY A LLC  
1419 BURGUNDY CT  
ANN ARBOR MI 48105

ME HICKORY B LLC  
1419 BURGUNDY CT  
ANN ARBOR MI 48105

CAPE MAY BEACH TO BAY LLC  
26708 HICKORY BLVD  
BONITA SPRINGS FL 34134

CAPE MAY BEACH TO BAY 2 LLC  
26708 HICKORY BLVD  
BONITA SPRINGS FL 34134

HITT CAREY CHRESTENSEN  
26671 HICKORY BLVD  
BONITA SPRINGS FL 34134

PRICE DOUGLAS E III TR  
9545 CREAMWOOD FOREST  
WILLOUGHBY OH 44094

ANDREWS CHARLES MELVIN  
35110 EUCLID AVE  
WILLOUGHBY OH 44094

LAVELLE PARTNERS LP  
951 MUIRFIELD RD  
INVERNESS IL 60067

PRICE DOUGLAS E III TR  
9545 CREAMWOOD FRST  
WILLOUGHBY OH 44094

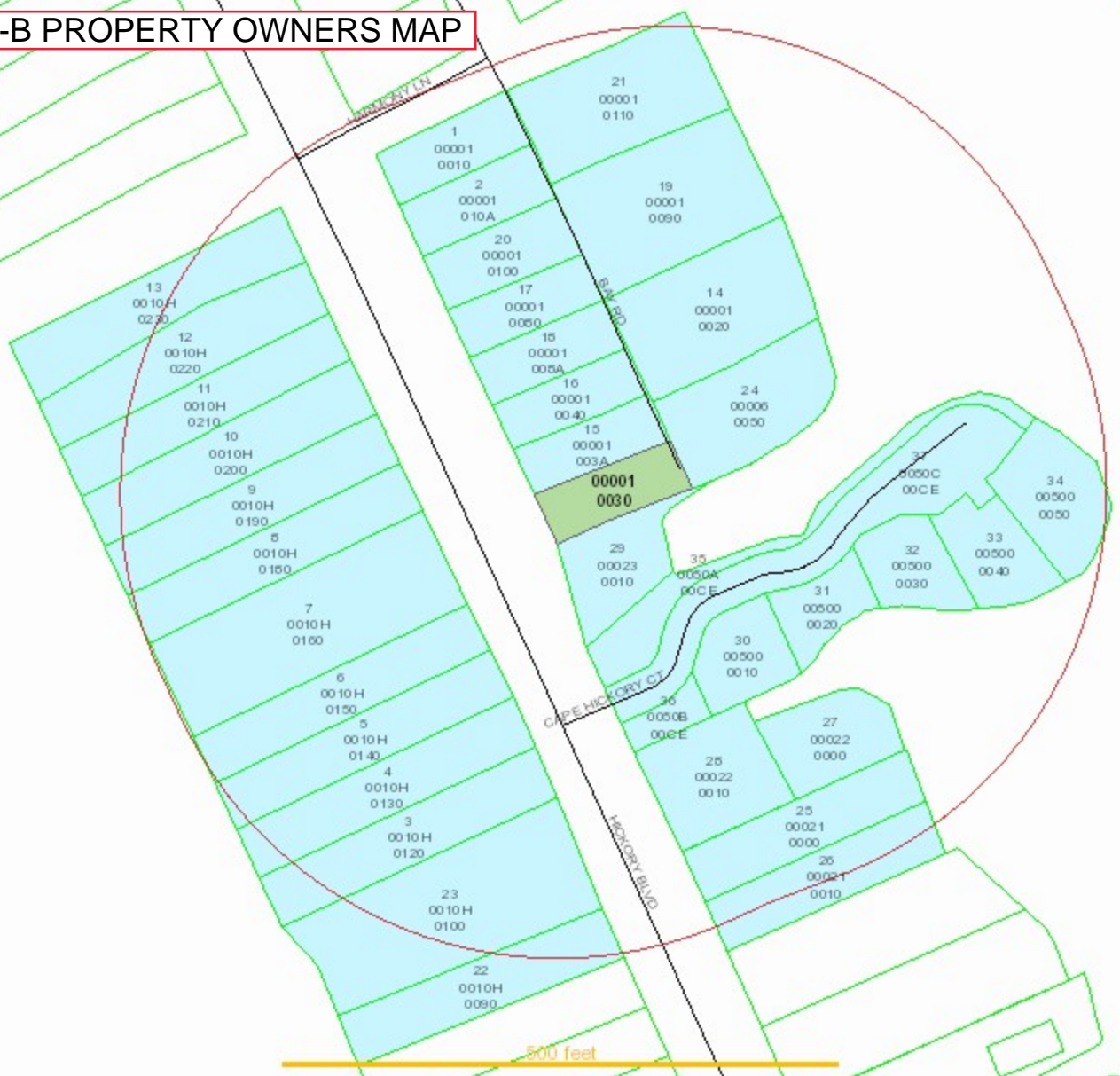
SCHUMAN THOMAS A II &  
3583 BUCKEYE TRACE  
CLEVES OH 45002

CAPE HICKORY HOMEOWNERS  
5801 CAPE HICKORY CT  
BONITA SPRINGS FL 34134

CAPE HICKORY HOMEOWNERS  
5801 CAPE HICKORY CT  
BONITA SPRINGS FL 34134

CAPE HICKORY HOMEOWNERS  
5801 CAPE HICKORY CT  
BONITA SPRINGS FL 34134

# EXHIBIT IV-B PROPERTY OWNERS MAP



500 feet

New Cable Railing

Bahama Style  
Equipment Screens

14' - 9 $\frac{1}{2}$ "

9' - 2"

General Notes

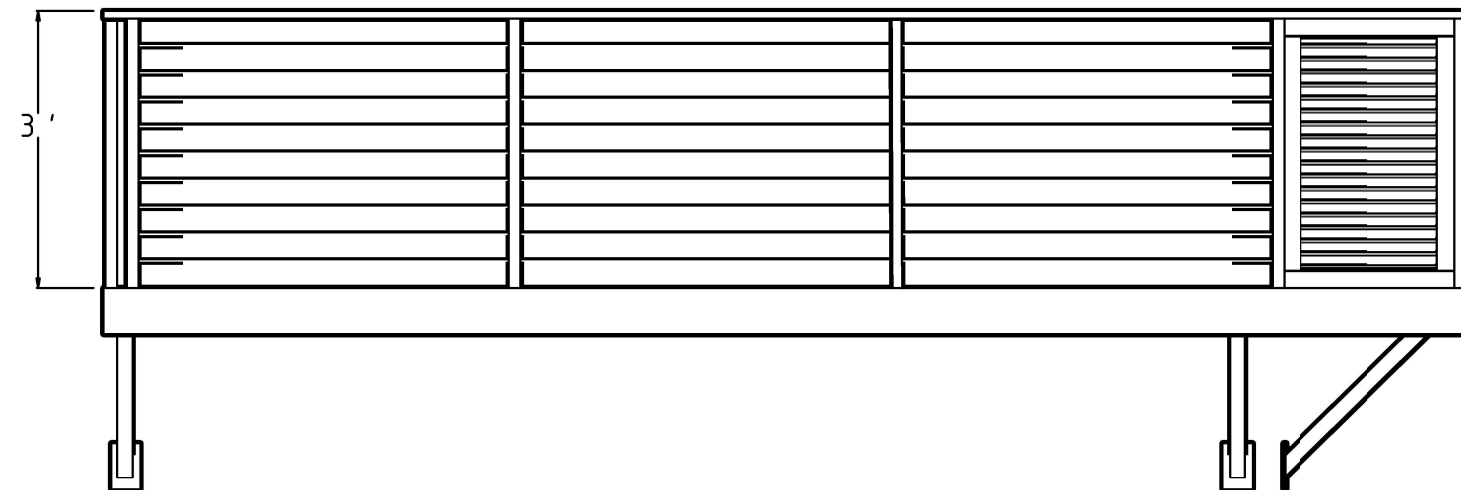
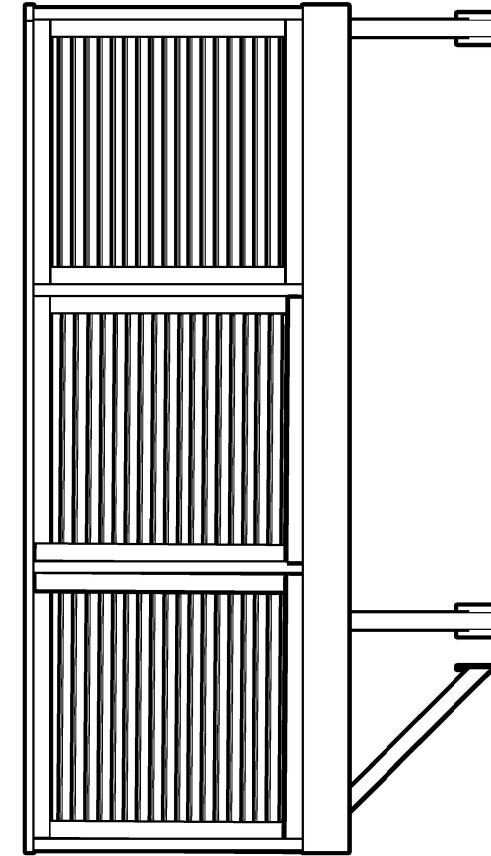
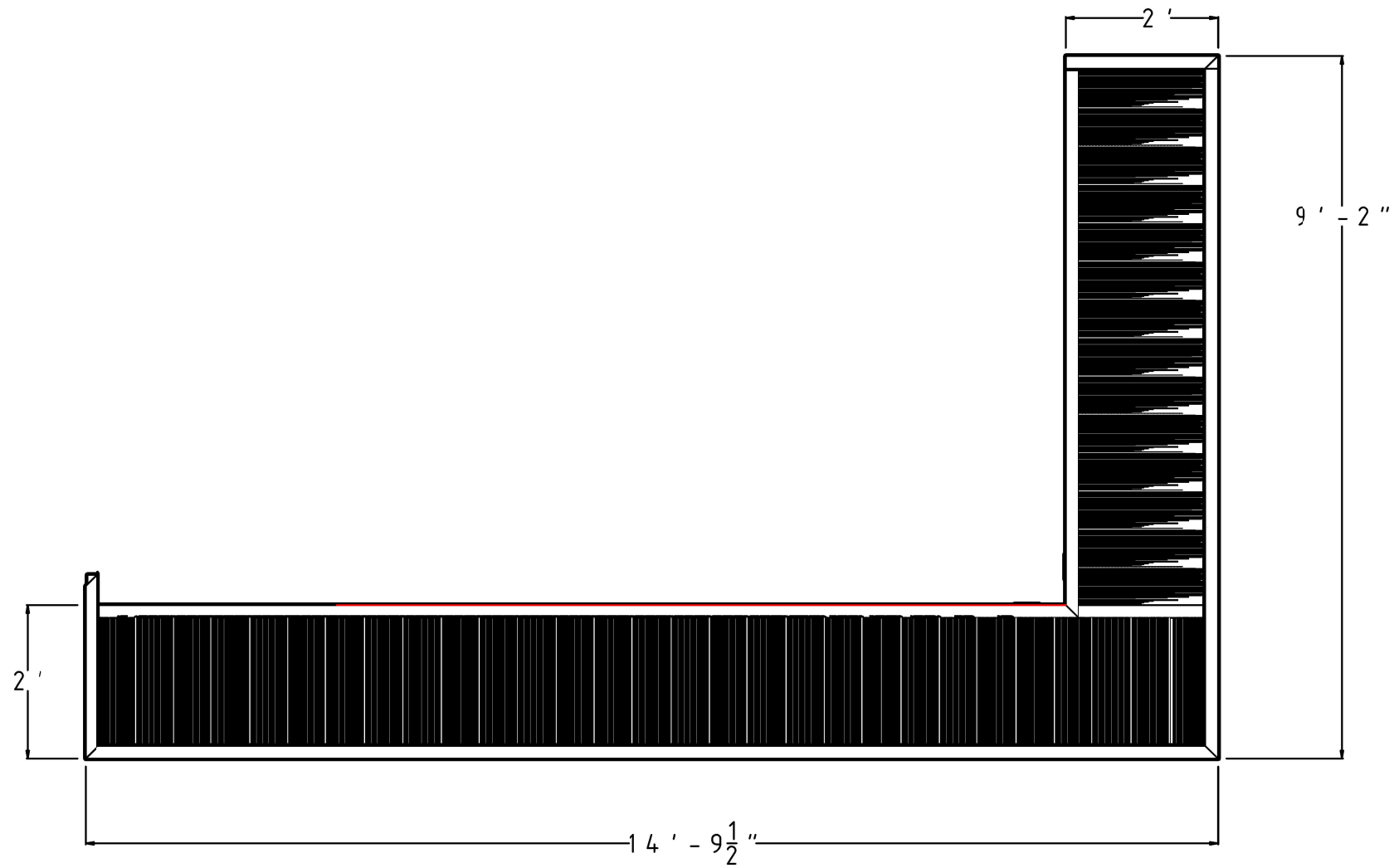
No.	Revision/Issue	Date

*West Coast*  
**Florida Enterprises, Inc.**  
8090 Supply Drive  
Fort Myers, Florida 33912  
239-433-9777

**Foley Res.**  
**26659 Hickory Blvd.**  
**Bonita Springs, FL.**

Date	12/20/21	Sheet
Revision		1
Scale		





General Notes

No.	Revision/Issue	Date

**West Coast**  
*Florida Enterprises, Inc.*  
 8090 Supply Drive  
 Fort Myers, Florida 33912  
 239-433-9777

**Foley Res.**  
 26659 Hickory Blvd.  
 Bonita Springs, Fl.

Date	12 / 20 / 21	Sheet	1
Revisoin			
Scale			

March 15, 2023

Mary Zizzo, Esq., AICP

Planner II

City of Bonita Springs Community Development

mzizzo@cityofbonitaspringscd.org

**RE: VAR22-97621-BOS – Hickory Blvd. Variance Request**

Ms. Zizzo:

The purpose of this letter is to provide a response to the City of Bonita Springs Department of Community Development review comments dated January 18, 2023 for the above referenced application. The following items have been provided to assist in Staff's review.

1. One (1) copy of the revised Exhibit IV-D, Request Narrative;
2. One (1) copy of the revised Application;
3. One (1) Encroachment Exhibit;
4. One (1) Certified sketch / survey / legal description;
5. One (1) copy of the revised Exhibit IV-E, Site Plan; and
6. One (1) copy of the Catwalk Detail and Floor Plan.

**Planning & Zoning Reviewed by: Mary Zizzo, Esq., AICP**

**Sufficiency Comments**

1. *Property does not appear to be within a platted subdivision recorded in the Plat Books of the Official Records of Lee County. Please provide legal description and survey or certified sketch of description.*

**Response: Noted. Please refer to the revised survey / certified sketch of description.**

2. *Site plan shall comply with LDC Section 4-195(f)(2). Revise.*

**Response: Please refer to the revised site plan, which has been updated per LDC Section 4-195(f)(2).**

Substantive Comments

1. *Please provide a catwalk detail to scale in both plan and elevation views.*

**Response: Please refer to the enclosed catwalk details including a rendering (elevation) and floor plans.**

Survey Review by: Jay Sweet, PSM, AICP

1. *Submitted survey shall comply with Florida Administrative Code and be fit to recording standards.*

**Response: Acknowledged.**

If you require additional information, please contact me at 239-337-3993 or [lrobin@m-da.com](mailto:lrobin@m-da.com).

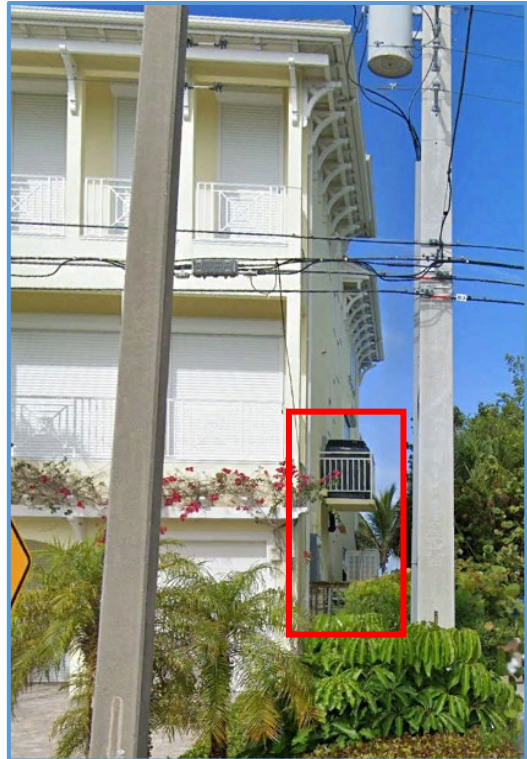
Sincerely,

**MORRIS-DEPEW ASSOCIATES, INC.**

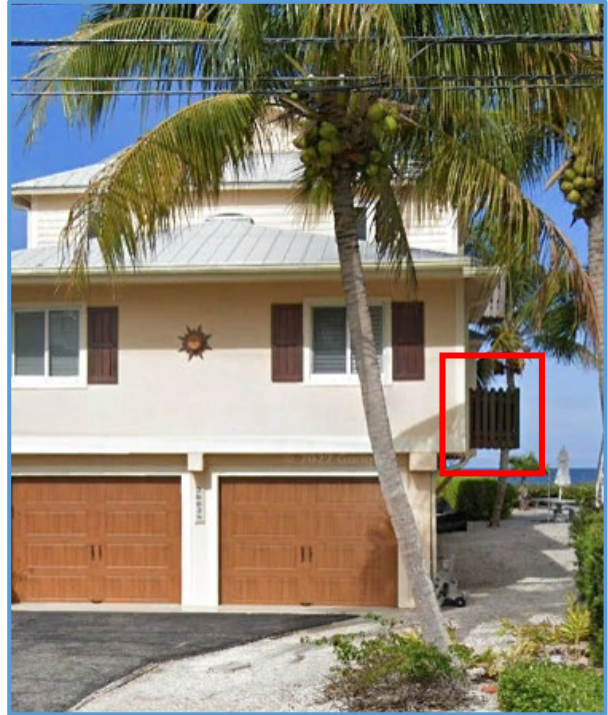


Lindsay F. Robin, MPA, AICP  
Senior Planner

**26659 Hickory Boulevard  
Surrounding Side Yard Encroachment Exhibit**













**26659 Hickory Boulevard**  
**Variance Request and Criteria Narrative**  
**Exhibit IV-D**  
**REVISED MARCH 2023**

**I. Background**

The Property (“property”), shown in Figure 1 below, subject to this request, is located at 26659 Hickory Blvd. in the City of Bonita Springs, Florida. The property is located on the east side of Hickory Blvd., west of Bay Road, north of Cape Hickory Court, and south of Harmony Lane. The property is zoned Residential Single-Family (RS-1) and is designated as Moderate Density Residential on the City’s Future Land Use Map. The Property is identified as STRAP 25-47-24-B4-00001.0030.

The Property is developed with a three-story single-family dwelling unit, with a swimming pool located on the second floor. The property was originally placed on the tax roll in 1978 per the Lee County Property Appraiser’s office. The principal entrance to the home is located on Hickory Blvd., with a secondary entrance located at the rear of the residence on Bay Road. The following setbacks are based on the most recent boundary survey:

- Street – Hickory Blvd.: 25.1 FT
- Street – Bay Road: 48.1 FT
- North Side Yard: 3.1 FT
- South Side Yard: 5.2 FT

**Figure 1 – Project Aerial**



The Property, which is a single-family residence located on a nonconforming lot, setbacks are subject to the setbacks outlined in LDC Section 4-2399(c), which are as follows:

*(c) A single-family residence may be constructed on a lot which complies with the density requirements of the Bonita Plan, as long as the lot is part of a plat approved by the board of county commissioners and lawfully recorded in the public records of the county after June 1962. Minimum setbacks for structures are as follows:*

- (1) Street setbacks must be in accordance with the regulations for the applicable zoning district.*
- (2) Side setbacks must be ten percent of lot width, or five feet, whichever is greater.*
- (3) Rear setbacks must be one-fourth of the lot depth but do not need to be greater than 20 feet.*

The LDC defines nonconforming as:

*“Nonconforming building or structure, lot or use means an existing building or structure, lot or use, lawful when established, which fails to comply with any provisions of this chapter, or which fails to comply as the result of subsequent amendments. See article VII of this chapter.”*

The Property does not meet the minimum development standards required within the RS-1 zoning district, which makes the property nonconforming. The RS-1 zoning district requires a 7,500 square foot minimum lot size, whereas the Property’s minimum lot area is approximately 7,100 square feet. The minimum lot width of the RS-1 is 75 feet, whereas the Property is providing 50 feet.

### **Code Permitted Encroachments**

LDC Section 4-1892, *Measurement; permitted encroachments*, provides relief for up to 3-feet of an overhang encroachment into any setback, so long as the overhang is not utilized as a, balcony, porch, or living space. The section states:

*LDC Sec. 4-1892(2): “Overhangs. An overhang which is part of a building may be permitted to encroach into any setback as long as the overhang does not extend more than three feet into the setback and does not permit any balcony, porch or living space located above the overhang to extend into the setback.”*

This section was relayed to Staff in an attempt to find feasible solution for the Owners that met the intent of the LDC. However, Staff did not consider the catwalk to be an overhang based on historical interpretations. The intent of the section is to prohibit human habitation, which would not be physically possible on a 2-foot-wide catwalk. This section is evidence that the Bonita Springs LDC does contemplate these very circumstances and provides relief that does not require administrative or public hearing approval.

## **II. Request**

This variance request aims to seek relief from LDC Sec. 4-2399(c), which requires a 5-foot side yard setback for single-family residences on nonconforming lots, **to allow for a 3.1-foot setback in the side yard along**

***the northern property boundary where a cantilevered catwalk, located on the second story, is proposed to encroach 1.9 feet into the required 5-foot setback.***

The Property has an elevated swimming pool located on the second floor, which, like all swimming pools, requires regular routine maintenance and servicing. There is currently no safe access to the pool equipment. The existing condition relies on a steep and narrow ladder to access the equipment from the ground level. The ladder was placed on the house after-the-fact by the homebuilder, not the owner. The situation is precarious, which has thus far led to an inability to retain a service contract with any qualified pool maintenance company.

Through this request, the Property Owner seeks to increase the safety of the access and reduce the liability that exists. The Property Owner's solution is to add a cantilevered catwalk to the rear and side of the house that allows access to the pool equipment where there is no safe access today. It is important to note that a majority of the proposed catwalk (14' 9 ½") will be located on the rear of the house, and only a small portion will be located on the side of the house (9' 2"). The granting of the requested variance will not threaten the health, safety, or welfare of abutting property owners or the general public. Figures 2 and 3 below demonstrate the existing conditions.

Figure 2 – Existing Conditions – Side/Rear View

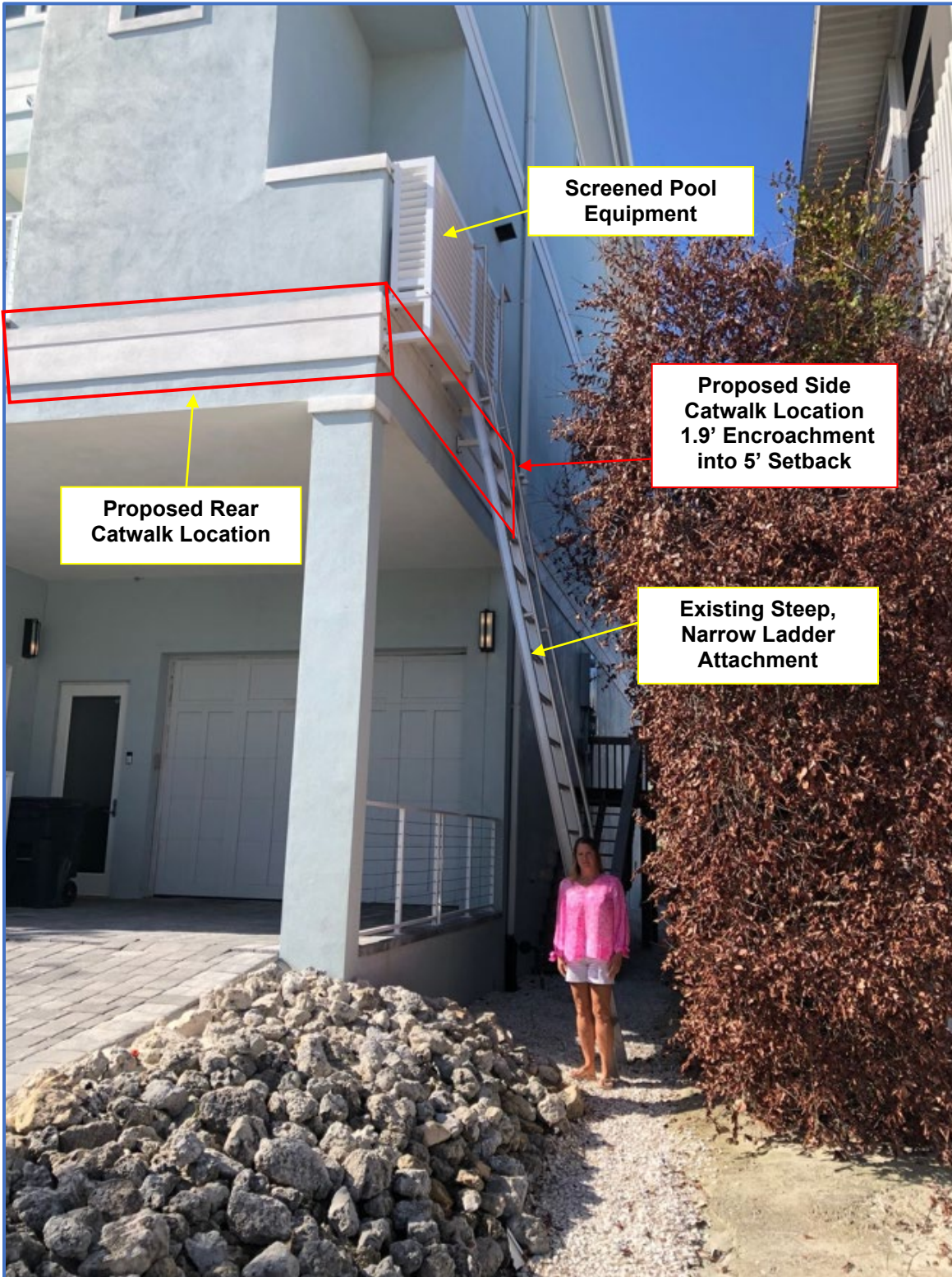




Figure 3 – Existing Conditions – Rear View



### III. Criteria

In accordance with LDC Sec. 4-131(b)(2) and 4-131(b)(3), the request complies with the following considerations and findings for Zoning Board:

#### 4-131(b)(2) Considerations

- a) **Whether exceptional or extraordinary conditions or circumstances exist which are inherent in the land, structure or building involved and whether those exceptional or extraordinary conditions or circumstances create a hardship on the property owner;**

Exceptional and extraordinary conditions exist that are inherent to the structure involved that create a hardship on the property owner. LDC Sec 4-2 defines a hardship as follows:

*Hardship means an unreasonable burden that is unique to a parcel of property, such as peculiar physical characteristics. Economic problems may be considered but may not be the sole basis for finding the existence of a hardship.*

A Certificate of Occupancy was issued for the Property located at 26659 Hickory Blvd.; however, as demonstrated on Figures 2 and 3, the location of the screened pool equipment is not accessible for maintenance purposes. This peculiar physical characteristic has created an unreasonable burden that is unique to this property (i.e. hardship) for the Property Owners who are unable to secure a pool cleaning company to maintain the pool. The Property Owners requests to retain service agreements have been denied by more than five (5) pool companies citing that the ladder placed on the side of the house to access the pool is too steep, narrow, and unsafe to haul pool cleaning equipment and supplies up and down to service the pool equipment. The Owners have also contacted the pool design contractor company and inquired about moving the pool equipment possibly to another location, which is also not an option due to the nature of the mechanical and electrical equipment.

- b) **Whether the exceptional or extraordinary conditions or circumstances do not result from the actions of the applicant;**

The circumstances are not a direct result of the action of the applicant. The owners purchased the home from the home builder, who received a Certificate of Occupancy from the City indicating that the structure was ready to be moved into and occupied. At the time of the home purchase, it was unknown to the owners that the pool equipment was not accessible. The owners informed the home builders of the issue, who then proceeded to attach a steep, narrow ladder to the side of the house in an attempt to remedy the situation. However, the ladder is unsafe to ascend and descend and the owners have been turned down by multiple pool cleaning companies who refuse to haul their equipment up and down the ladder to access the pool equipment.

- c) **Granting the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare;**

Granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare. The cantilevered catwalk will be located on the second floor of the dwelling

unit, connected to a balcony with an existing set of stairs located in the rear of the unit. Only a small portion of the catwalk is proposed in the side yard, while the rest of the catwalk is proposed to be located on the rear of the home, wrapping around the corner to the screened pool equipment area. The catwalk will provide safe and sturdy access to provide maintenance and cleaning services to the pool equipment.

As evidenced by driving along Hickory Blvd., it is not uncommon to have structures and encroachments into the side yard setbacks of the dwelling units, in fact, it is common in this area of the City and therefore would not be injurious to the neighborhood. Please refer to the side yard encroachment exhibit which demonstrates a number of existing circumstances where equipment or structures are protruding on the side of a dwelling unit, in the side yard setback.

**d) Staff recommendations;**

To be determined by Staff.

**e) Testimony from the applicant; and**

The Applicant has provided a complete variance package, which addresses the variance criteria.

**f) Testimony from the public.**

To be provided at advertised public hearing.

4-131(b)(3) Considerations

**a) There are exceptional or extraordinary conditions or circumstances that are inherent to the property in question;**

The property is a legal non-conforming single-family residential lot that has been on record since 1978, which is an extraordinary condition that is inherent to the property. The current minimum side setbacks allowable on the subject property do not allow for a catwalk that is necessary to access the second-story pool equipment located along the northern property boundary. The property was developed with a single-family home by a homebuilder and subsequently sold to the current owner. The current owners were not aware of the issues related to the pool equipment access until after purchasing the property. It is an exceptional and extraordinary circumstance to not have safe and secure access to the pool equipment, which is essential to the maintenance and functionality of the pool, which is part of the residence.

**b) The exceptional or extraordinary conditions or circumstances are not the result of actions of the applicant taken subsequent to the adoption of the ordinance (any action taken by an applicant pursuant to lawfully adopted regulations preceding the adoption of the ordinance from which this chapter is derived will not be considered self-created);**

The extraordinary condition of the property is not the result of an action of the applicant subsequent to the adoption of the ordinance. The residence was constructed in accordance with the required setbacks as outlined in the RS-1 zoning district subject to those lots developed as

legal non-conforming pursuant to LDC Section 4-2399(c). The lot has been on record since 1978. It was constructed in 2019 by a homebuilder, and purchased by the current owner in 2020.

**c) The variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to their property;**

The granting of the requested variance is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to their property. By allowing the cantilevered catwalk to encroach 1.8' into the 5' side yard setback, the applicant will be able to hire a pool company to service the pool equipment, which is currently inaccessible. The Owners have been declined by the following established pool companies who refuse to service the equipment based on the unsafe nature of the ladder and existing conditions: Collier Pool Company, Pinch-a-Penny, Better Choice Pool Service and Jeff Wilson Pool Service. All companies have made it clear that it is a liability and they do not want their employees getting hurt or falling.

The side yard of the subject property, along with numerous other side yards on Hickory Blvd., already contain various encroachments into the setback such as decks and stairs, rip rap, existing cantilevers holding various pieces of equipment, and in some cases, balconies. This has been demonstrated on the enclosed encroachments exhibit. As shown on the Survey, the wooden stairs and deck providing access to the electrical equipment encroaches farther into the setback than the proposed cantilevered catwalk. As proposed, the catwalk will not exceed the existing encroachments. Furthermore, as shown in Figures 2 and 3 above, the ladder protrudes farther into the ground-level setback than the proposed catwalk would, which creates more of an impact due to the ladder encroachment being ground-level.

It is unreasonable for the Applicant to not be permitted to locate the cantilevered catwalk on the second story of the residence, which would provide them the safe access necessary to service the pool equipment. The LDC permits administrative setback variances for encroachments into side yard setbacks, especially in situations where encroachments do not protrude beyond the existing overhang of the building; to legitimize minor errors in setbacks that occurred at the time of construction; and for buildings or structures that are not in compliance with current setback regulations and which can be proven to have been permitted. With the exception of the current setbacks being regulated by LDC Sec. 4-2399(c) for nonconforming lots, the requested variance could be processed as an administrative setback variance to allow the nominal encroachment.

**d) The granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and**

As requested, the granting of this variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare. The surrounding properties were also in existence prior to the incorporation of the City and are subject to the same setback requirements applicable to legal non-conforming single-family lots as outlined in LDC 4-2399(c). As outlined above, the granting of the variance would not be injurious due to the fact that majority of the surrounding homeowners also have encroachments in the side yard for various reasons.

Approval of this request will enhance the safety of the neighborhood by allowing pool equipment to be safely accessed without any incumbrances to those who maintain the pool. There is no



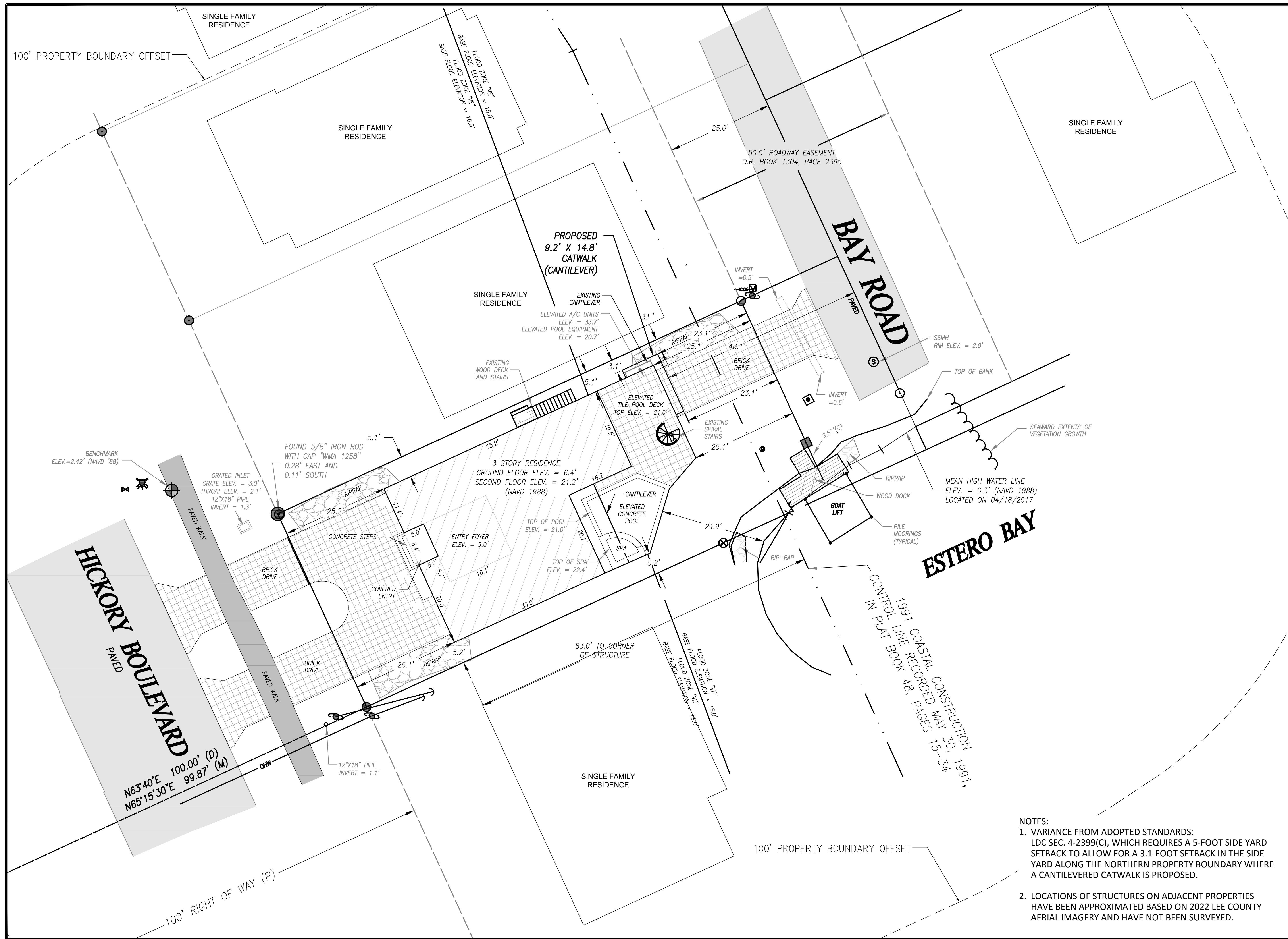
record of code enforcement violations or civil actions as a result of the structure being constructed in its current location. This would indicate that granting the variance, which will memorialize the reduced side yard setback for this structure, will not be injurious to the surrounding neighborhood or detrimental to the public welfare since it has existed in this condition for several years. It is important to note that the neighborhood in which the Property is located is relatively secluded from other developments, as it is located on Hickory Island, in an area that consists mostly of all single-family residential. More particularly, the area is characterized by larger residences built on smaller parcels, similar to the subject property. As demonstrated in the Encroachment Exhibit, it is not uncommon in this area of the City for encroachments into side yard setbacks, especially considering the number of nonconforming single-family residences in the immediate area. The requested variance is limited to a 1.9-foot encroachment into the 5-foot side yard setback, resulting in a 3.1-foot setback for the minimal area of catwalk to be located on the side of the residence.

- e) The condition or situation of the specific piece of property, or the intended use of the property, for which the variance is sought is not of a general or recurrent nature so as to make it more reasonable and practical to amend the ordinance.**

The requested variance, which will memorialize the reduced side yard setback for this structure, is a request aimed at allowing a catwalk to the side of the house that enables access to the pool equipment where there is currently no safe maintenance access. The variance is not of a general or recurrent nature and is the most practical way to provide access to the pool equipment without being injurious to the adjacent properties.

#### **IV. Conclusion**

This purpose of this variance request is to seek relief from LDC Sec. 4-2399(c) which requires a 5-foot side yard setback for nonconforming single-family lots, to allow for a 3.1-foot setback (1.9-foot encroachment) along the northern property boundary where a catwalk is proposed on the second floor. The catwalk, which will allow safe access to the second story pool equipment, will be contained within the subject property boundaries. The subject variance request is the most practical way to provide access to maintain the pool equipment without being injurious to the adjacent properties. The proposed minimum variance request relieves the property owner of an unreasonable burden, addresses the exceptional and extraordinary conditions and circumstances that are inherent to the property in question, and ensures it will not be injurious to the neighborhood or otherwise detrimental to public health, safety or welfare.



PROJECT:  
**26659 HICKORY BLVD.  
VARIANCE  
VAR22-97621-BOS**

LOCATION:  
26659 HICKORY BLVD.  
CITY OF BONITA SPRINGS, FLORIDA

CLIENT:  
**FOLEY RESIDENCE**

CONSULTANT:

**Fort Myers**  
2914 Cleveland Avenue  
Fort Myers, Florida 33901  
(239) 337-3993  
Fax: (239) 337-3994  
Toll free: 866-337-7341

**Tallahassee**  
113 South Monroe Street  
1st Floor  
Tallahassee, Florida 32301  
Toll free: 866-337-7341

**Destin**  
5597 Highway 98  
Unit 201  
Santa Rosa Beach, Florida 32459  
Toll free: 866-337-7341

PREPARED BY:

REVISIONS	DATE

PROJECT MANAGER: LFR  
DRAWING BY: CJV  
JURISDICTION: CITY OF BONITA SPRINGS  
DATE: 2/3/2023

SHEET TITLE:  
**EXHIBIT IV-E  
VARIANCE SITE PLAN**

SHEET NUMBER: CS-101

SCALE 1"=10'

JOB/FILE NUMBER: 21193-00

- NOTES:
- VARIANCE FROM ADOPTED STANDARDS: LDC SEC. 4-2399(C), WHICH REQUIRES A 5-FOOT SIDE YARD SETBACK TO ALLOW FOR A 3.1-FOOT SETBACK IN THE SIDE YARD ALONG THE NORTHERN PROPERTY BOUNDARY WHERE A CANTILEVERED CATWALK IS PROPOSED.
  - LOCATIONS OF STRUCTURES ON ADJACENT PROPERTIES HAVE BEEN APPROXIMATED BASED ON 2022 LEE COUNTY AERIAL IMAGERY AND HAVE NOT BEEN SURVEYED.

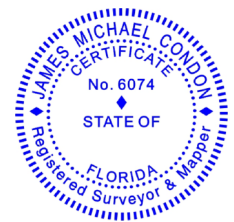
© COPYRIGHT MORRIS DEPEW ASSOCIATES, INC. 2023 ALL RIGHTS RESERVED. 3/21/193 - 26659 Hickory Blvd/Plat/21193-00 Variance Application/Current Plans/21193-00 CS-101 Site Plan.dwg 4/5/2023 09:56:12 am PLOTTED BY: covevacke



# MAP OF BOUNDARY SURVEY AND CATWALK SITE PLAN OF A LOT OR PARCEL OF LAND LYING IN SECTION 25, TOWNSHIP 47 SOUTH, RANGE 24 EAST, AND SECTION 30, TOWNSHIP 47 SOUTH, RANGE 25 EAST LEE COUNTY, FLORIDA

















## SURVEYOR'S NOTES

1. BEARINGS SHOWN HEREON ARE GRID BEARINGS BASED UPON THE NORTH AMERICAN DATUM OF 1983, 1990 ADJUSTMENT (NAD83/90) FLORIDA WEST ZONE. DISTANCES SHOWN ARE GROUND DISTANCES MEASURED IN FEET. COORDINATES SHOWN ARE GRID COORDINATES. DATUM BASED UPON DEPARTMENT OF NATURAL RESOURCES CONTROL MONUMENTS 12-83-A46 AND 12-83-A47 HAVING NAD83/90 GRID COORDINATES AS SHOWN.
2. NO UNDERGROUND IMPROVEMENTS OR FOUNDATIONS WERE LOCATED UNDER THE SCOPE OF THIS SURVEY.
3. ELEVATIONS SHOWN HEREON ARE REFERENCED TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 1988). ELEVATIONS ARE BASED UPON BENCHMARK "872 5283 TIDAL 4" HAVING A RECORD ELEVATION OF 13.23' (NAVD 1988) AS GIVEN IN THE NATIONAL GEODETIC SURVEY CONTROL POINT DATABASE.
4. THIS PARCEL LIES IN FLOOD ZONE "VE" WITH A BASE FLOOD ELEVATION OF 16.0' (NAVD 1988) AS SHOWN FEMA FLOOD INSURANCE RATE MAP PANEL 12071C0651 F, DATED AUGUST 28, 2008. FLOOD ZONE LIMIT LINES DEPICTED HEREON WERE OBTAINED FROM THE LEE COUNTY GEOGRAPHIC INFORMATION SYSTEM (GIS) DEPARTMENT.
5. BOUNDARY INFORMATION SHOWN HEREON IS BASED UPON THE RECORD PLAT AND LEGAL DESCRIPTION PROVIDED. NO SEARCH OF THE PUBLIC RECORD WAS PERFORMED BY THIS SURVEYOR. THERE MAY BE OTHER SETBACKS AND/OR EASEMENTS NOT KNOWN TO THIS SURVEYOR.
6. THE 1991 COASTAL CONSTRUCTION CONTROL LINE SHOWN HEREON IS AS RECORDED IN PLAT BOOK 48, PAGES 15 THROUGH 34, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.
7. THE 1978 COASTAL CONSTRUCTION SETBACK LINE SHOWN HEREON IS AS SHOWN ON EXHIBIT "A" OF LEE COUNTY ORDINANCE 76-10, AS RECORDED ON APRIL 17, 1978, IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.
8. MEAN HIGH WATER ELEVATION OF 0.30' (NAVD 1988) IS BASED ON AN EXTENSION OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION TIDE INTERPOLATION POINT NUMBER 100234.
9. THE STREET ADDRESS IS:  
26659 HICKORY BOULEVARD  
BONITA SPRINGS, FLORIDA 34134
10. THIS PARCEL CONTAINS 0.163 ACRE MORE OR LESS.
11. THERE IS A 50' ROAD EASEMENT OVER THE NORTHERLY 25' OF THIS PARCEL FOR BAY ROAD. THE CURRENT DEED RECORDED AS INSTRUMENT NO. 2006000242840 DOES NOT REFERENCE THIS EASEMENT. THIS EASEMENT IS REFERENCED IN INSTRUMENT NO. 2013000063551 AND IS SUPPORTED BY FOUND MONUMENTATION AS SHOWN.



# MAP OF BOUNDARY SURVEY AND CATWALK SITE PLAN OF A LOT OR PARCEL OF LAND LYING IN SECTION 25, TOWNSHIP 47 SOUTH, RANGE 24 EAST, AND SECTION 30, TOWNSHIP 47 SOUTH, RANGE 25 EAST LEE COUNTY, FLORIDA

## LEGEND

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li> = BENCHMARK, FOUND PK NAIL AND DISK - "LB 6896"</li> <li> = FOUND 5/8" REBAR - NO IDENTIFICATION</li> <li> = FOUND 1/2" REBAR BENT WITH CAP - LB 4919</li> <li> = FOUND 5/8" REBAR AND CAP - "D&amp;W LB 6896"</li> <li> = FOUND 5/8" REBAR AND CAP - "PORTELLA LB2503"</li> <li> = FOUND 4" X 4" CONCRETE MONUMENT NO IDENTIFICATION</li> <li>(C) = CALCULATED DATA</li> <li>(D) = LEGAL DESCRIPTION DATA</li> <li>(M) = FIELD MEASURED DATA</li> <li>(P) = RECORD PLAT DATA</li> <li>RCP = REINFORCED CONCRETE PIPE</li> <li>W.F. = WOOD FENCE</li> </ul> | <ul style="list-style-type: none"> <li> = WOOD UTILITY POLE</li> <li> = GUY ANCHOR</li> <li> = WATER METER</li> <li> = WATER VALVE</li> <li> = WATER VALVE BOX</li> <li> = BACKFLOW PREVENTER</li> <li> = FIRE HYDRANT</li> <li> = SANITARY SEWER CLEAN-OUT</li> <li> = SANITARY SEWER MANHOLE - SSMH</li> <li> = GAS VALVE</li> </ul> |
|---|---|

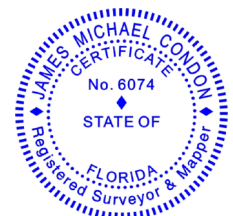
## LEGAL DESCRIPTION

LOT H, AS SHOWN IN SURVEY RECORDED IN DEED BOOK 273, PAGE 385, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A LOT OR PARCEL OF LAND LYING IN SECTION 25, TOWNSHIP 47 SOUTH, RANGE 24 EAST, AND SECTION 30, TOWNSHIP 47 SOUTH, RANGE 25 EAST, WHICH LOT OR PARCEL IS DESCRIBED AS FOLLOWS:

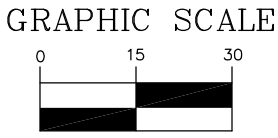
FROM THE SOUTHEASTERLY CORNER OF LOT 16, BLOCK H, BONITA BEACH, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 8, PAGE 65, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, RUN NORTH 63°40' EAST, PERPENDICULAR TO HICKORY BOULEVARD, FOR 100 FEET TO THE POINT OF BEGINNING OF THE LANDS HEREIN DESCRIBED: FROM SAID POINT OF BEGINNING CONTINUE NORTH 63°40' EAST FOR 145 FEET; THENCE RUN NORTH 26°20' WEST PARALLEL TO HICKORY BOULEVARD FOR 50 FEET; THENCE RUN SOUTH 63°40' WEST PERPENDICULAR TO SAID BOULEVARD FOR 145 FEET; THENCE RUN SOUTH 26°20' EAST ALONG SAID BOULEVARD FOR 50 FEET TO THE POINT OF BEGINNING.

LINE TABLE		
LINE	BEARING (M)	DISTANCE (M)
L1	N40°41'28"E	6.34'
L2	N54°02'40"E	15.66'
L3	N64°43'26"E	14.65'
L4	N24°41'04"W	44.15'
L5	N25°30'59"W	8.77'
L6	N24°41'04"W	36.79'
L7	S24°41'04"E	50.00'
LINE TABLE		
LINE	BEARING (D)	DISTANCE (D)
L4	N26°20'W	50.00'
L7	S26°20'00"E	50.00'



# MAP OF BOUNDARY SURVEY AND CATWALK SITE PLAN OF A LOT OR PARCEL OF LAND LYING IN SECTION 25, TOWNSHIP 47 SOUTH, RANGE 24 EAST, AND SECTION 30, TOWNSHIP 47 SOUTH, RANGE 25 EAST LEE COUNTY, FLORIDA

1991 COASTAL CONSTRUCTION  
CONTROL LINE RECORDED MAY 30, 1991,  
IN PLAT BOOK 48, PAGES 15-34  
SUBJECT LANDS OWNED BY:  
ANTJE GEYRHALTER  
OFFICIAL INSTRUMENT NO.  
2018000121202  
STRAP NO.  
25-47-24-B4-00001.003A



BENCHMARK  
ELEV. = 2.42'  
(NAVD '88)

N24°44'49" W  
489.3' (M)

N24°39'25" W  
50.08' (M)

S32°47'20" E  
1166.39' (P)

S24°27'13" E  
696.97' (M)

GRID N: 732902.310  
GRID E: 704295.462

KATHERINE C. SAPP  
OFFICIAL RECORDS BOOK 1709, PAGE 2403  
STRAP NO. 30-47-25-B4-00006.0050

FOUND 5/8"  
IRON ROD  
WITH CAP  
"WMA 1258"  
0.28' EAST  
AND  
0.11' SOUTH

S63°40' W 145.00' (D)  
S65°18'56" W 145.00' (C)

120.00' (M)  
5.1'  
5.2'

92.42' (M)  
145.00' (D)  
N63°40' E  
N65°18'56" E 109.22' (C)

TO MEAN, HIGH WATER  
83.0' TO CORNER  
OF STRUCTURE

POINT OF BEGINNING  
GRID N = 732806.771  
GRID E = 704207.316

HICKORY  
BOULEVARD  
PAVED

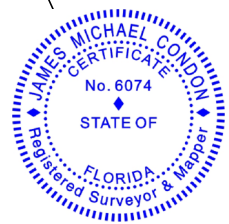
N63°40' E  
N65°15'30" E

100.00' (D)  
99.87' (M)

POINT OF COMMENCEMENT  
SOUTHEASTERLY CORNER OF  
LOT 16, BLOCK H, BONITA BEACH

100' RIGHT OF WAY (P)

12"x18" PIPE  
INVERT = 1.1'



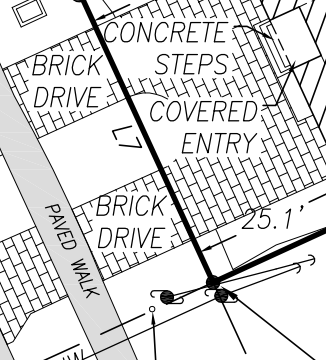
UNPLATTED LAND  
NOW OR FORMERLY OWNED BY:  
JOLEEN CHRESTENSEN, CAREY  
CHRESTENSEN HITT, AND ROBERT  
ARDEN HITT  
OFFICIAL RECORDS BOOK 3334, PAGE  
223  
STRAP NO.  
30-47-25-B4-00023.0010

MEAN HIGH WATER LINE  
ELEV. = 0.3' (NAVD 1988)  
LOCATED ON 04/18/2017

ESTERO BAY

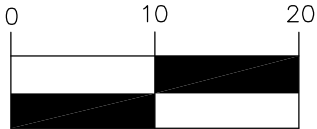
BAY ROAD  
PAVED L4

50.0' ROADWAY  
EASEMENT  
O.R. BOOK 1304,  
PAGE 2395





# GRAPHIC SCALE



( IN FEET )

1 inch = 20

ft.

# HICKORY BOULEVARD

# HOUSE DETAIL

1" = 20'

50.0' ROADWAY EASEMENT  
O.R. BOOK 1304,  
PAGE 2395

# ROAD BAY

PAVED L 4

PROPOSED  
9.2' X 14.8'  
CATWALK  
(CANTILEVER)

EXISTING  
CANTILEVER

ELEVATED A/C UNITS  
ELEV. = 33.7'  
ELEVATED POOL EQUIPMENT  
ELEV. = 20.7'  
ELEVATED TILE POOL DECK  
TOP ELEV. = 21.0'

WOOD DECK  
AND STAIRS

TOP OF POOL  
ELEV. = 21.0'

3 STORY RESIDENCE  
GROUND FLOOR ELEV.=6.4'  
SECOND FLOOR ELEV.=21.2'  
(NAVD 1988)

ELEVATED  
CONCRETE  
POOL

TOP OF SPA  
ELEV. = 22.4'

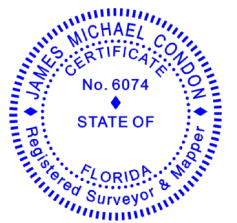
BOAT LIFT

PILE  
MOORINGS  
(TYPICAL)

POINT OF BEGINNING  
GRID N = 732806.771  
GRID E = 704207.316

12"X18" PIPE  
INVERT = 1.1'

FLOOD ZONE "A"  
BASE FLOOD  
ELEVATION = 15.0'  
FLOOD FLOOD  
BASE FLOOD  
ELEVATION = 19.0'  
ELEVATION = 1.19.0'



THIS MAP PREPARED BY:  
CERTIFICATE OF AUTHORIZATION NO. LB 6896  
NOT VALID WITHOUT THE SIGNATURE  
AND SEAL OF A FLORIDA  
LICENSED SURVEYOR AND MAPPER

JAMES M. CONDON, PSM  
*James M. Condon*  
Professional Surveyor & Mapper Fla. License No. 6074

COMPUTER FILE: 22230 0411  
DRAWING SCALE: 1" = 20'  
SURVEY DATE: 03/10/2023  
REVISION DATE: 10/14/2023



10081 Bonita Beach Road SE  
Bonita Springs, Florida 34135  
339-350-4005  
www.chwi-inc.com  
est. 1988 FLORIDA  
21-0271

DRAWN BY: FA  
CHECKED BY: JC  
FIELD BOOK: N/A

CERTIFIED TO:  
JIM & JENNIFER FOLEY

JOB NO.: 17133  
SHEET NO.: 4 OF 4



**From:** [Amy S. Thibaut](#)  
**To:** [Mary Zizzo](#)  
**Subject:** FW: FOLEY----Pinch A Penny----Pool Equipment Accessibility  
**Date:** Thursday, June 1, 2023 11:13:14 AM

---



**Amy S. Thibaut, Of Counsel**  
PAVESE LAW FIRM  
1833 Hendry Street (33901)  
Post Office Box 1507 Fort Myers, FL 33902  
Direct 239.336.6223 Fax 239.332.2243  
[AST@paveselaw.com](mailto:AST@paveselaw.com)  
Visit our website: [www.paveselaw.com](http://www.paveselaw.com)

---

**From:** JENNIFER NORTH <jennifer.foley2@comcast.net>  
**Sent:** Thursday, May 18, 2023 12:40 PM  
**To:** Lindsay F. Robin <lrobin@m-da.com>; Amy S. Thibaut <AmyThibaut@Paveselaw.com>  
**Subject:** Fwd: FOLEY----Pinch A Penny----Pool Equipment Accessibility

----- Forwarded message -----

From: **Pinch A Penny #53** <[papservice53@gmail.com](mailto:papservice53@gmail.com)>  
Date: Wed, May 17, 2023 at 2:11 PM  
Subject: FOLEY----Pinch A Penny----Pool Equipment Accessibility  
To: <[jennifer.foley@comcast.net](mailto:jennifer.foley@comcast.net)>

Hello Mrs. Foley,

To Whom It May Concern:

RE: 26659 Hickory Blvd  
Bonita Springs Fl 34134

Upon initiating pool service maintenance in August 2021, there was no access to the equipment, which sits up high on a second/third story balcony. A very steep, very narrow, aluminum staircase was installed. The technician at the time was a very short, very thin man, who did climb up the stairs. He stated that going up and down the stairs was tight, but when the week came to clean the filter, it would be rather uncomfortable, as the filter is larger than others, with the weight of it being wet, coming down the steep, narrow-slippery staircase, would be very uncomfortable. Furthermore, once upon the equipment pad, there is very little space to get safely and effectively to the filter, as the technician would have to step over pipes, wires, to even get to the filter canister.

Our recommendation would be to have the very balcony extended, and or also have it accessed from around top from the poolside. .

**Sincerely,**

Monica Moreno

**Service Department**

**Pinch A Penny #53**

**9130 Bonita Beach Road**

**Bonita Springs Fl. 34135**

**(239) 947-2216**

**(239) 947-1542 Fax**

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This email has been scanned for viruses and malware, and may have been automatically archived by **Mimecast Ltd.**

**From:** [Amy S. Thibaut](#)  
**To:** [Mary Zizzo](#); "[Lindsay F. Robin](#)"  
**Cc:** [Cynthia Vargas](#)  
**Subject:** RE: VAR22-97621-BOS 26659 Hickory Blvd.  
**Date:** Thursday, June 1, 2023 11:13:06 AM  
**Attachments:** [image009.png](#)  
[image010.png](#)  
[Dade County v Florida Mining and Materials Corp.pdf](#)  
[Elwyn v City of Miami \(2\).pdf](#)  
[City of Coral Gables v Geary \(1\).pdf](#)  
[Burritt v Harris.pdf](#)

---

Mary,

I tried calling you earlier, as I have been sick since Saturday and have to travel today. Regardless, I have included an analysis below along with cases for review.

The case at bar is straightforward – there is pool equipment in an area of the home that is inaccessible, except by ladder, currently. The pool equipment cannot be relocated because the one other possible location is indoors, and putting the pool heater indoors is a violation of the Florida Building Code venting guidelines. See M2006.1, FBC (referencing UL 726).

Under the current arrangement, the pool equipment is accessible by ladder. The height and grade of the ladder is dangerous standing alone. When paired with the requirement to bring equipment and large pool filters up and down, it is a serious safety hazard. As a result, the property owner is seeking a variance to allow for a platform on which the property owner and their guests, licensees, etc. can access the pool equipment safely.

The proposed encroachment is very small – 20 sq. ft. or less. That 20 sq. ft. is the difference between a very real threat to health and safety versus a solution that protects the health and safety of the affected individuals. Denying this variance because it does not strictly comply with the setbacks does not bear a substantial relation to the protection of the public health, morals, safety, or welfare of the community. See *Burritt v. Harris* at 822 (attached). Rather, where restrictions on private property exceed “the limits of necessity for the public welfare,” such denial is an unlawful taking. See *Id.* It is clear that denial of the variance in this case would be adverse to the health and safety of those most affected by this issue, whereas approving it would only affect the adjacent neighbor who is supportive of the request.

The hardship is also not self-created simply because the current owners took title to the property in its current condition. The cases that hold that purchasing a property under the current zoning scheme is a self-created hardship often deal with use variances. Courts in those instances often held that purchasing a property under the existing zoning scheme and then establishing a use that is prohibited thereon is a self-created hardship, and this makes sense in that context. See e.g. *Elwyn v. City of Miami* (attached). The basis for this requirement is that an owner who, “by his own conduct creates the exact hardship which he alleges to exist, he certainly should not be able to take advantage of it.” See *Id.* at 853.

Conversely, there is another line of case law that holds that purchasing a property with an unusual shape is not a self-created hardship. See *City of Coral Gables v. Geary* (attached). In *Geary*, the Court held that the unusual lot shape was not self-created because “it is not the act of the purchaser which brings the hardship into being” and therefore “it is incorrect with having charged him with having created it.” See *Id.* at 1128. Notably, this analysis ignores the fact that a prior owner in the chain of title created the lot in its current dimensions. However, the Court cites *Rathkopf*’s explanation for these cases, stating that there was some “affirmative act which created the hardship peculiar to the property involved or there was insufficient evidence as to at least one of the elements required for a grant of a variance.” See *Id.* at Footnote 1.

Here, there was not an affirmative act that created this condition, and the property owners did not have notice that the house was unsafe such that it would require a variance; rather, it was a minor design issue that cannot be remedied another way. The property owner did not take title to the property with the intention to do something that is not permitted by the LDC. Rather, it was a

design defect that was discovered after they purchased the home and no pool company would service their house because of the defect. It is also pertinent to add that the City did approve the plans as they are and issued a CO, so the oversight here was on the part of both the builder and the City. The property owners are not experts in pool construction or maintenance and therefore cannot be expected to be on notice that this issue existed such that a variance is required. They purchased a home after performing reasonable due diligence, and that due diligence did not reveal that this serious safety issue existed. They did not create this issue, and they should not be punished by a setback that does not further the City's interest in any way (as applied to this case, of course) when the variance would actually protect their safety in this instance. They had no reasonable way of knowing that there was need to encroach into the setback until after they closed on the property and moved in. That is certainly not akin to purchasing a property for the purpose of establishing a use that was prohibited at the time of purchase. Simply put, enforcing the setback here would be arbitrary.

Further, Lindsay provided a plethora of photographic evidence that there are many similar encroachments in the area. In fact, there is such second-story encroachment on the house next door, into a different portion of the setback area (e.g. there would be no interference between the two encroachments, but denial of the variance would treat my clients differently than their neighbors). Denials of variances have been held to be unreasonable where other requests for essentially the same activity have been approved; where there is no evidence that approval of the subject variance would be detrimental to the public health, safety, or welfare; and where there the request would not violate the zoning scheme generally. See *Dade County v. Fla. Mining and Materials Corp* (attached).

Even if you read all of the case law regarding variances, one overarching principle is always the same – the circumstances of one request are not the same as any other request. A legitimate variance request should be peculiar and therefore, it should be difficult to find case law that is directly analogous to the case at bar. It is clear that denying the variance in the interest of adhering to the LDC, while ignoring the actual facts of the case – and specifically, the facts related to the safety hazard presented by the current arrangement – would be arbitrary and unreasonable such that the denial would be an unlawful exercise of the police power. There are many, many other encroachments in the area that do not serve anywhere near as important of a purpose as directly protecting the safety of the property owners.



*Amy S. Thibaut, Of Counsel*  
PAVESE LAW FIRM  
1833 Hendry Street (33901)  
Post Office Box 1507 Fort Myers, FL 33902  
Direct 239.336.6223 Fax 239.332.2243  
[AST@paveselaw.com](mailto:AST@paveselaw.com)  
Visit our website: [www.paveselaw.com](http://www.paveselaw.com)

---

**From:** Mary Zizzo <MZizzo@cityofbonitaspringscd.org>  
**Sent:** Wednesday, May 31, 2023 3:39 PM  
**To:** Amy S. Thibaut <AmyThibaut@Paveselaw.com>; 'Lindsay F. Robin' <lrobin@m-da.com>  
**Cc:** Cynthia Vargas <CVargas@cityofbonitaspringscd.org>  
**Subject:** RE: VAR22-97621-BOS 26659 Hickory Blvd.

Hi Amy,

Please provide all materials by noon tomorrow, Thursday, June 1<sup>st</sup>, or the recommendation will be made based on the criteria and the documents provided in the application.

Should you choose to push back this case for hearing until you are able to provide that information, we can discuss.

**CITY OF BONITA SPRINGS  
COMMUNITY DEVELOPMENT DEPARTMENT  
NOTICE OF PUBLIC HEARING  
APPLICATION: VAR22-97621-BOS**

This is a courtesy notice of a proposed zoning action within 375 feet of property you own. You are encouraged to attend these public hearings and/or complete and return the attached Citizen Response Form, should you have any comments or concerns regarding this matter. If you have any questions or would like further information, please contact **Mary Zizzo, Planner**, at **(239) 444-6162**, or **mzizzo@cityofbonitaspringscd.org**. Copies of the staff report will be available one week prior to the hearing. This file may be reviewed at the Community Development department, 9220 Bonita Beach Road, Suite 109, Bonita Springs, FL 34135 or online at:

<http://cityofbonitasprings.org/cms/one.aspx?pagelId=13788499>

<p><b>Zoning Board of Adjustments:</b> June 13th, 2023 at 9:00am Bonita Springs City Hall 9101 Bonita Beach Road Bonita Springs, FL 34135</p>	<p><b>City Council:</b> June 21st, 2023 at 9:00am (Tentative) Bonita Springs City Hall 9101 Bonita Beach Road Bonita Springs, FL 34135</p> <p>August 2nd, 2023 at 5:30pm (Tentative) Bonita Springs City Hall 9101 Bonita Beach Road Bonita Springs, FL 34135</p>
---	---

**CASE NUMBER:** VAR22-97621-BOS

**CASE NAME:** 26659 Hickory Blvd. Residential Setback Variance

**REQUEST:** A variance from LDC Section 4-2399(c)(2), which requires a setback of 5 feet, to allow a setback of 3.1 feet along the northern side property line for a cantilevered structure on a residential property in Bonita Springs.

**LOCATION:** The subject property is located at 26659 Hickory Blvd, Bonita Springs FL 34134. STRAP: 25-47-24-B4-00001.0030.

*The City of Bonita Springs will not discriminate against individuals on the basis of race, color, national origin, sex, age, disability, religion, income, or marital status. To request an ADA-qualified reasonable modification at no charge to the requestor, please contact City Clerk Mike Sheffield by calling (239) 949-6262 at least 48 hours prior to the meeting.*

*If a person decides to appeal a decision made by the Council on any matter at this meeting, such person must have a verbatim record of the proceeding to include the testimony and evidence upon which such appeal is to be based.*



RETURN TO:  
City of Bonita Springs  
Community Development Department  
Attn: Mary Zizzo  
9220 Bonita Beach Road, Suite 109  
Bonita Springs, FL 34135  
[mzizzo@cityofbonitaspringscd.org](mailto:mzizzo@cityofbonitaspringscd.org)

Support \_\_\_\_\_ Oppose \_\_\_\_\_

Application: VAR22-97621-BOS: 26659 Hickory Blvd. Variance

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DATE: \_\_\_\_\_  
NAME: \_\_\_\_\_ PHONE: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_ CITY/STATE/ZIP: \_\_\_\_\_

**RECOMMENDATIONS AND POSTPONEMENTS:** The Board may accept, reject or modify staff recommendations and take other appropriate and lawful action including continuing said public hearings.

**CONDUCT OF HEARINGS:** These hearings are quasi-judicial and must be conducted to afford all parties due process. Any communication that Council Members have outside of the public hearing must be fully disclosed at the hearing. Anyone who wishes to speak at the hearing will be sworn in and may be subject to questions by the board, city staff or applicant. Public comment is encouraged, and all relevant information should be presented to the Board so a fair and appropriate decision can be made. Tapes are limited to three (3) minutes in length and are to be submitted to the Zoning Division one week prior to the meeting date for review. All tapes/information submitted for the public record will not be returned.

**GROUP REPRESENTATIVES:** Any person representing a group or organization must provide written authorization to speak on behalf of that group. The representative shall inform Staff prior to the hearing of their intent to speak on behalf of a group and provide staff the name of that group.

I will have a representative at the Zoning Board Hearing and/or City Council. My representative's name, address, and phone are:	
NAME: _____	PHONE: _____
ADDRESS: _____	CITY/STATE/ZIP: _____

**APPEALS:** If a person decides to appeal any final decision made by the City Council, with respect to any matter considered at such hearing, they are responsible at their own expense for ordering from a court reporter to ensure that a verbatim record of the proceedings is made, which includes the testimony and evidence on which the appeal is to be based.

If you have a disability and the format of this document interferes with your ability to access some information, please contact us at (239) 444-6150 during regular business hours (8:00am-5:00pm, Monday-Friday), and we'll gladly assist.

**CITY OF BONITA SPRINGS**  
Community Development Department  
9220 Bonita Beach Road, Ste. 111  
Bonita Springs, FL 34135  
Phone: (239) 444-6150  
email: [permitting@cityofbonitaspringscd.org](mailto:permitting@cityofbonitaspringscd.org)

## MAILING NOTICES AFFIDAVIT

Property owners within 375 feet (or 500 feet in the case of on-premises consumption special exceptions) of the subject parcel(s) must be notified in writing of the proposed zoning action going before council within thirty CALENDAR (30) days of the initial Public Hearing. Property owners must be informed of their ability to participate in these hearings and/or given the opportunity to return a Citizen Response Form, should they have any comments or concerns regarding the matter. This affidavit must be returned assuring the following:

- a. Affidavit for case # VAR22-97621-BOS sent on May 12, 2023.
- b. Names and addresses of property owners are those appearing on the latest tax rolls for Lee County.
- c. The Zoning Board for land use adjustments and City Council public hearing dates, times, and locations of hearings that were provided in the notices.
- d. All notices have been sent by first-class mail.

NOTE: AFTER THE NOTICES HAVE BEEN SENT, THE AFFIDAVIT OF THE MAILING NOTICES, BELOW, SHOULD BE RETURNED NO LATER THAN THREE (3) WORKING DAYS BEFORE THE INITIAL HEARING DATE TO CITY OF BONITA SPRINGS ZONING DIVISION, 9220 BONITA BEACH ROAD, SUITE 109, BONITA SPRINGS, FL 34135.

BEFORE THE UNDERSIGNED AUTHORITY, PERSONALLY APPEARED Lindsay F. Robin WHO ON OATH SAYS THAT HE/SHE HAS SENT PROPER NOTICE AS REQUIRED BY SECTION 4-229(B) OF THE CITY OF BONITA SPRINGS LAND DEVELOPMENT CODE ON THE PARCEL COVERED IN THE ZONING APPLICATION REFERENCED BELOW:

ZONING APPLICATION CASE NUMBER: VAR22-97621-BOS  
SIGNATURE OF APPLICANT OR AGENT: *Lindsay Robin*  
NAME (TYPED OR PRINTED): Lindsay F. Robin  
SITE ADDRESS OR P.O. BOX: 2914 Cleveland Ave.  
CITY, STATE & ZIP: Fort Myers, FL 33901

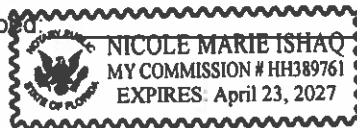
STATE OF FLORIDA  
COUNTY OF LEE

Sworn to (or affirmed) and subscribed before me by means of physical presence  or online notarization ,  
this (day) 12<sup>th</sup> of (month) MAY, (year) 2023,  
by (name of person making statement) Nicole Marie Ishaq

Signature of Notary Public - State of Florida: *Nicole Marie Ishaq*  
Name of Notary Typed, Printed, or Stamped: \_\_\_\_\_

Personally Known  OR Produced Identification

Type of Identification Produced: \_\_\_\_\_





## AFFIDAVIT OF POSTING NOTICE

Community Development Department | 9220 Bonita Beach Road, Suite 111 | Bonita Springs, FL 34135 | Phone: (239) 444-6150 | Fax: (239) 444-6140

### INSTRUCTIONS

A zoning sign must be posted on the parcel subject to any zoning application for a minimum of fifteen CALENDAR (15) days in advance of a Public Hearing and maintained through the City of Bonita Springs Public Hearing, if any. This sign will be provided by the Zoning Division in the following manner:

- a. Signs for case # VAR 22-97021-BOS must be posted by 5/29/23.
- b. The sign must be erected in full view of the public, not more than five (5) feet from the nearest right-of-way or easement.
- c. The sign must be securely affixed by nails, staples or other means to a wood frame or to a wood panel and then fastened securely to a post, or pother structure. The sign may not be affixed to a tree or other foliage.
- d. The applicant must make a good faith effort to maintain the sign in place, and readable condition until the requested action has been heard and a final decision rendered.
- e. If the sign is destroyed, lost, or rendered unreadable, the applicant must report the condition to the Zoning Division, and obtain duplicate copies of the sign from the Zoning Division.
- f. The Division may require the applicant to erect additional signs where large parcels are involved with street frontages extending over considerable distances. If required, such additional signs must be placed not more than three hundred (300) feet apart.

When a parcel abuts more than one (1) street, the applicant must post signs along each street. When a subject parcel does not front a public road, the applicant must post the sign at a point on a public road which leads to the property, and the sign must include a notation which generally indicates the distance and direction to the parcel boundaries and the dimensions of the parcel.

NOTE: AFTER THE SIGN HAS BEEN POSTED, THE AFFIDAVIT OF THE POSTING NOTICE, BELOW, SHOULD BE RETURNED NO LATER THAN THREE (3) WORKING DAYS BEFORE THE INITIAL HEARING DATE TO CITY OF BONITA SPRINGS ZONING DIVISION, 9220 BONITA BEACH ROAD, SUITE 109, BONITA SPRINGS, FL 34135.

(Return the completed Affidavit below to the Zoning Division as indicated in previous paragraph.)

STATE OF FLORIDA  
COUNTY OF LEE

BEFORE THE UNDERSIGNED AUTHORITY, PERSONALLY APPEARED Lindsay Robin  
WHO ON OATH SAYS THAT HE/SHE HAS POSTED PROPER NOTICE AS REQUIRED BY SECTION 4-  
229(B) OF THE CITY OF BONITA SPRINGS LAND DEVELOPMENT CODE ON THE PARCEL COVERED IN  
THE ZONING APPLICATION REFERENCED BELOW:

Lindsay Robin  
SIGNATURE OF APPLICANT OR AGENT

Lindsay Robin  
NAME (TYPED OR PRINTED)

26659 Hickory Blvd.  
ST. OR P.O. BOX

Bonita Springs, FL 34104  
CITY, STATE & ZIP

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was sworn to and subscribed before me this 26<sup>th</sup> day of May, 2023,  
by Nicole Ishaq, personally known to me or who produced  
as identification and who did/did not take oath.

Nicole Ishaq  
Signature of Notary Public

Nicole Ishaq  
Printed Name of Notary Public

My Commission Expires:  
(Stamp with serial number)

