

## **NARRATIVE AND SUMMARY OF FACTS**

The applicants, Michael and Esther Thaler, acquired the property located at 1528 San Carlos Bay Drive in the autumn of 2018. At the time, the parcel featured a two-story single-family house built at grade – approximately 4 feet NAVD - and a dock with a boat lift providing access to San Carlos Bay. Exhibit A is a signed and sealed survey dated 6/23/19 depicting the on-site conditions prior to the fall of 2022.

On September 28, 2022, Hurricane Ian struck Southwest Florida, causing severe damage to barrier islands and coastal communities with heavy rain, strong winds, and unprecedented storm surge. The Thaler's residence sustained significant water and wind damage, and according to a Damage Assessment prepared by Al Brizuela Engineering, Inc., the house was deemed a total loss and subsequently, was demolished in early spring 2024.

The Thalers now wish to rebuild a new home on their property, with a modern storm-resilient structure that elevates the first living level to a height that surpasses the storm surge experienced during Hurricane Ian.

Working with MHK Architecture, the Thalers submitted a building permit for a newly designed home in essentially the same footprint as the previous structure but elevated an additional 5.5 feet above the base flood elevation. However, City Staff's strict application of the provisions of Land Development Code Section 126-212, which allows nonconforming structures to be 'built back' following a natural disaster, did not provide the flexibility in design the Thalers were expecting, and the permit was returned for correction.

According to City Staff, the new design, including the minor site modifications and elevated first living level, meant that the structure failed to comply with Section 126-212(a)(1) and (2) and no longer met the standards for post disaster build back which state:

*Section 126-212 – Nonconforming Structures.*

*(a) When a nonconforming structure is destroyed or substantially damaged by accidental fire or other natural disastrous force, such structure may be built back (reconstructed):*

*(1) Within its pre-disaster footprint*

- (2) within the three-dimensional outline of the lawfully existing habitable area of the pre-disaster building*
- (3) Up to its pre-disaster gross square footage; and*
- (4) Up to its lawfully existing number of dwelling units, but elevated above the base flood elevations required by federal flood regulations, Chapter 94 of this Land Development Code, and the Florida Building Code requirements in effect at the time the substantially damaged building is built back (reconstructed).*

After considering their options, the Thalers decided to pursue variance approval seeking relief from the applicable development standards in order to build a new, more storm-resilient home on their property. Accordingly, there are modifications and modernizations between the previous house and site and the new one, however the Thalers and the MHK Architecture design team have been thoughtful and modest in the alterations proposed. The resulting home is a beautiful addition to San Carlos Bay Drive that improves upon the previous site conditions and is consistent with the existing scale and development pattern of the neighborhood.

As depicted on Exhibit B, the new house has been located in the center of the property to ensure equal distance to each side property line. The front setback is consistent with the line established by the previous structure and compatible with the neighboring structures to the east and west. The elevated outdoor space to the rear has shifted for improved views, the pool and pool deck have been located immediately to the rear of the house for privacy and the overall developed area of the property has been reduced to 4,194 square feet where the previous was 5,086 square feet.

The Thaler's property was originally platted in 1962 as Lot 10 of Unit 1 of the Sanibel Isles subdivision. See Exhibit C. Aerial images depicted on Exhibit D illustrate the waterfront nature of the neighborhood consisting of either bayfront or canal-front parcels. Despite the parallelogram configuration of the lot lines, the majority of the structures on San Carlos Bay Drive address the street parallel to the travel lane. Except for the parcels at the end of the cul-de-sac, all the lots on the bayside of San Carlos Bay Drive are constrained by the limitations of the Bay Beach eco zone which extends approximately 50 feet landward of the Mean High Water Line (MHWL) and prohibits any permanent structures or uses other than those of a

passive nature. See Exhibit E. The remaining area is within the Altered Lands eco zone and is subject to the development standards of Section 126-454.

When applied, the development standards described in Section 126-313 and 126-454 render the Thaler's property virtually unbuildable. However, pursuant to Section 82-136, the Planning Commission, following a hearing, is authorized to grant variances for accessory structures landward of the Mean High Water Line in the Bay Beach zone, and for principal residential structures located primarily in another zone contiguous to the Bay Beach zone to extend into the portion of the lot in the Bay Beach zone.

Accordingly, the Thalers request variance approval from the following sections of the Land Development Code:

1. Section 126-313 Required Conditions
  - a. To allow the extension of a portion of a single-family structure as well as a pool and pool deck located in a zone contiguous to the Bay Beach zone where uses in the Bay Beach zone shall be passive in nature and not involve the construction of any permanent structure or fixture.
2. Section 126-454(c) Front Yard Setbacks
  - a. To allow a 40.5-foot setback to the house and a 38.5-foot setback to the roof overhang measured to the centerline of San Carlos Bay Drive where a 50-foot setback measured from San Carlos Bay Drive is required.
3. Section 126-454(d) Side Yard Setbacks
  - a. To allow a 7.4-foot setback on the east side and a 7.5-foot setback on the west side measured to the nearest property line(s) to accommodate the roof overhang where a 10-foot setback is required.
4. Section 126-1404(a)(2)a Driveways and Service Aisles
  - a. To allow a 2.9-foot driveway setback on the east side yard where a ten-foot side yard setback is required.
5. Section 126-454(b) Height
  - a. To allow encroachments in the primary angle of light as depicted on Exhibit G where no structure shall be of such a height to penetrate the primary angle of light measured from front, side and rear setback lines.

6. Section 126-454(g) Coverage

- a. To allow 35.2% of impermeable surface coverage (3,019 square feet) on the subject property where a maximum of 35% is provided.

7. Section 126-454(h) Vegetation removal and Developed Area

- a. To allow 48.8% of developed area (4,194 square feet) on the subject property where a maximum of 40% is provided.

**CRITERIA RESPONSES**

Pursuant to Section 82-140 of the Land Development Code, the planning commission may grant variances upon finding all of the following:

- (1) A literal enforcement of the particular regulation would result in an undue and unnecessary hardship to a property owner because the particular shape, size, location or topography of a lot or parcel, or of a structure thereon, would cause practical difficulties that would deprive the owner of reasonable use and enjoyment of such lot or parcel in the same manner as other properties similarly situated.*

As depicted on Exhibit F, the literal enforcement of the previously identified and applicable site development standards on the subject property would force the Thalers to construct their home in an area less than 10 feet deep by approximately 51 feet wide. The resulting volume is a narrow 941 square foot buildable area that, when considered with the angle of light height limitations, deprives the owners of any reasonable use and enjoyment of their property.

With the exception of the lots at the end of the cul-de-sac, all the parcels on the bay side of San Carlos Bay Drive are faced with the same development constraints: a parallelogram lot configuration, a lot depth of approximately 100 feet, the Bay Beach eco-zone which parallels the Mean High Water Line at a depth of 50 feet, and a 50-foot front yard setback measured from the road centerline. As a result, more than one variance has been granted for relief from these development standards for properties on San Carlos Bay Drive, including the previous structure on the subject property and the neighbor immediately to the west.

*(2) That the special conditions relate to unusual conditions peculiar to the specific lot or parcel or relate to special conditions of the structure involved and are not generally applicable to other lands or structures similarly situated.*

Along with the other lots on San Carlos Bay Drive, the Thaler's property was originally platted in 1962, prior to the incorporation of the City of Sanibel, as Lot 10 of Unit 1 of the Sanibel Isles subdivision. The parallelogram configured lots in this subdivision do not meet the minimum lot standards of the Altered Land ecological zone which, along with the Bay Beach ecological zone, were applied following the adoption of the Sanibel Plan and Land Development Code. The Bay Beach prohibition on active uses and permanent structures results in a further reduction of developable area on an already reduced sized lot. When considered with the development standards of Section 126-454 the parcel becomes virtually unbuildable.

These special circumstances are peculiar to this lot and subdivision and are not generally applicable to other areas of the City. The Planning Commission has recognized the unusual conditions of the neighborhood through the review and approval of a number of variance applications for properties on San Carlos Bay Drive, including the property immediately adjacent to the west.

*(3) That the special conditions and circumstances do not result from actions taken by the applicant or proposed by the applicant and are not otherwise self-imposed.*

The special conditions that force the development limitations of the subject property are not self-imposed, as the lot was platted prior to incorporation of the City of Sanibel and prior to the Thaler's acquisition. Approval of the variance request will not be adverse to the surrounding neighborhood or to the health, safety, and welfare of the community. As noted, other homes on the bay side of San Carlos Bay Drive were also obligated to obtain variances for similar circumstances. Approval of the proposed storm-resilient design as planned will fill the vacant hole left by Hurricane Ian and ensure compatibility in scale and character along the street.

*(4) That the applicant has taken all reasonable steps to mitigate or eliminate the requested variance by the acquisition of adjacent lands or the relocation or redesign of the structure involved.*

Due to the previously mentioned site limitations and constraints, the Thalers and the MHK Architecture design team have taken all reasonable steps to reduce the requested variances to ensure the development of the property in a reasonable yet resilient manner. The fact that there is more than one sections of the code requiring relief further demonstrates and proves validity to the existing hardships inherent to the subject property. With existing structures on either side of the subject property, there are no adjacent vacant lands available to acquire in order to mitigate the variances needed.

*(5) That the development or use of the subject property in some other manner than that proposed, in accordance with the applicable requirements, is not feasible.*

The Thalers are proposing a single-family home in a single-family zoning district. When applied to the property, the development standards of the two ecological zones - Altered Lands and Bay Beach – result in a narrow strip of land that renders the property virtually unbuildable. Development of the subject property in some other manner than proposed is not feasible.

*(6) That the requested variance will not be adverse to the developed neighborhood scheme and will not adversely affect the plan and scheme set forth in this Land Development Code and will not cause the proposed development to be inconsistent with the Sanibel Plan nor adverse to the health safety and general welfare of the community.*

The unusual and peculiar limitations to development on the subject property apply to all of the bayside parcels along San Carlos Bay Drive in the Sanibel Isles subdivision. Approval of the variances embedded in the proposed design are negligible to the naked eye and will have no adverse impact on the surrounding neighborhood. Rather, the proposal will enhance the area through a new storm-resilient structure that is compatible in character within the neighborhood and consistent with the Sanibel Plan

with no adverse impacts to the health, safety and welfare of the community.

*(7) That the variance granted is the minimum necessary to mitigate the hardship demonstrated.*

The subject property is an approximately 8,589 square foot lot in the Sanibel Isles subdivision, platted and developed prior to the incorporation of the City of Sanibel and the adoption of its regulatory standards with respect to lot size, setbacks, height and lot coverage.

Following incorporation, the Bay Beach and Altered Land ecological zones were applied to the subject property. Application of the Bay Beach prohibition on active uses and permanent structures results in a 57% reduction in site area. When layered with the 50-foot front yard setback, measured from the centerline of San Carlos Bay Drive, and the 10-foot side yard setbacks, a 941 square foot buildable area, approximately 10 feet by 51 feet, remains. No single-family house or its customary accessory structures can be constructed within such constraints.

Fortunately, Section 82-136 grants authority to the City of Sanibel Planning Commission to approve variances under specific circumstances. Relevant to the Thaler's request, the Planning Commission may grant variance approval for 'accessory structures landward of the Mean High Water Line in the Bay Beach zone' as well as 'principal residential structures located primarily in another zone contiguous to the Bay Beach zone to extend into that portion of the lot in the Bay Beach zone.' The Thalers are requesting approval for a portion of the new house to extend into the Bay Beach zone as well as an accessory pool and pool deck that also extend into the Bay Beach zone.

Pursuant to Section 82-143 of the Land Development Code, variances to permit accessory structures in the Bay Beach Zone may only be granted by the planning commission upon finding that:

*(1) The structure is clearly accessory to a principal residential use of contiguous lands, not in the Bay*

*Beach zone, which are under common ownership with the Bay Beach parcel in question;*

- (2) The structure is for a use which could not reasonably be located on that portion of the lot not in the Bay Beach zone; and*
- (3) The structure will be located entirely landward of the Mean High Water Line.*

The subject property is a contiguous piece of property, owned by Mr. and Mrs. Thaler, upon which both the Bay Beach and Altered Land ecological zones have been applied. The site plan provided in Exhibit B demonstrates the modest scale of the proposed plunge pool and pool deck, clearly accessory to the single-family structure and located entirely landward of the Mean High Water Line.

As depicted on Exhibit F, the literal enforcement of the applicable site development standards on the subject property results in a buildable area less than 10 feet deep by approximately 51 feet wide. This footprint is absorbed by the proposed single-family structure leaving no remaining area in the Altered Land zone for the proposed plunge pool and pool deck. Considering the constraints of the site, the Thaler's and the MHK Architecture design team have proposed these modest accessory features directly behind the proposed home, eliminating any impact on adjacent properties.

The proposed site plan establishes a front yard setback of 40.5 feet to the house and 38.5 feet to the roof overhang. The immediate neighbors to the east and west are both approximately 35 feet from the centerline of San Carlos Bay Drive. The previous structure was located slightly towards the southeast of the site, but the new site plan centers the house, ensuring the structure itself meets the 10-foot side yard setbacks. Due to the parallelogram shape of the lot, the associated roof overhangs encroach into the side setbacks in two locations as well as the driveway on the east side of the property. Providing relief from the 50-foot front yard setback and allowing the roof overhangs and driveway to encroach the side yard setbacks will balance the placement of the house on-site ensuring continuity to the development pattern and rhythm along the street and will result in no notable impact on the neighborhood.



Maximum height in the Altered Land ecological zone is 45 feet NAVD which is further restricted by the angle of light limitations that impose a 45 degree setback angle to the front, side and rear setbacks as they extend in the vertical plane. During Hurricane Ian the Thaler's property experienced sustained flood waters at an elevation of 8-9 feet NAVD and storm surge in excess of 12-13 feet NAVD. Having this firsthand experience of storm surge from Ian followed up by the one-two punch of Hurricanes Helene and Milton has made the Thaler's wary of constructing a new house that would be unnecessarily vulnerable to these increasing storm events. The current flood maps show a base flood elevation of AE 9, however, the Thaler's decided to set the first living level at 14.5 feet, using past experience as a guide in determining the most responsible elevation of their new home. See Exhibit H. The house does not exceed the maximum height of 45 feet NAVD, however, setting the first-floor elevation at 14.5 feet results in the second living level penetrating the angle of light setbacks. The Thalers are simply attempting to recover the reasonable use of their previous two-story house in a new two-story house; but for the storm-resilient first living level elevation and resulting angle of light penetrations, the request is a like-for-like exchange.

The Altered Land eco zone development standards limit coverage of impermeable area to 35% of the lot, while developed area is limited to 40% coverage. Applied to the 8,589 square foot subject property, this results in 3,006 square feet of impermeable coverage and 3,436 square feet of developed area. The Thalers previous home destroyed by Hurricane Ian, enjoyed an impermeable coverage of 3,618 square feet (42.1%) and a developed area of 5,086 square feet (59.2%). The new home, mechanical platform, pool and pool deck design proposed by the Thalers and the MHK Architecture design team, features just 3,019 square feet (35.2%) of impermeable coverage and 4,194 square feet of developed area (48.8%). While these areas do exceed the maximums provided in Section 126-454, the code does not contemplate the unique circumstances and hardships inherent to the subject property; namely a lot size that is 1,400 square feet less than the minimum provided in code and located more than 50% in the Bay Beach zone. Furthermore, over 700 square feet of the developed area is allocated to the existing rip rap shoreline that predates the Thaler's acquisition of the property.

As described throughout this application, the site limitations and constraints on the subject property result in unnecessary and unreasonable hardships for the Thalers that cannot be overcome without the relief provided by variance approval. The Thalers and MHK Architecture have designed a beautiful, storm-resilient structure that enhances the neighborhood without interrupting the development pattern and rhythm of the street. The specific variances requested are the minimum necessary to relieve the hardship and allow the Thalers the quiet enjoyment of their parcel in the same manner as other properties similarly situated. And because there is no practical alternative to the proposed development, the Thaler's respectfully request approval of this request so they may construct their new home and finally, fully, recover from Hurricane Ian.

#### Schedule of Exhibits

- A – 2019 Site Survey
- B – Proposed Site Plan
- C – Sanibel Isles Subdivision
- D – Aerial
- E – Zoning Map
- F – Lot Area
- G – Angle of Light and Elevations
- H – Wall Section

#### Supplementary Information

- 2024 Site Survey
- Renderings
- Hurricane Ian Aftermath images
- Damage Assessment prepared by Al Brizuela Engineering, Inc.