



City of Sanibel

Planning Commission

Planning Department Staff Report

Planning Commission Meeting: April 22, 2025

Application Number: VAR-2025-000263

Applicant: Leslee Dulmer, MHK Architecture, Inc.

Address: 1528 San Carlos Bay Drive

PUBLIC HEARING DESCRIPTION

Consideration of an application filed pursuant to Land Development Code Chapter 82, Article III, Division 3, Subdivision II. – Variances, Section 82-138. – Application and hearing, to request variances from Section 126-313. – Required conditions, Section 126-454. – Required conditions (b) height, (c) front yard setbacks, (d) side yard setbacks, (g) coverage, (h) vegetation removal and developed area, and Section 126-1404. – Driveways and service aisles to allow proposed redevelopment of a single-family residence on a lawfully-existing nonconforming lot located at 1528 San Carlos Bay Drive – tax parcel (STRAP) no. 18-46-23-T4-0060A.0100. The application is submitted by Leslee Dulmer (MHK Architecture) on behalf of Michael & Esther Thaler, the property owner. **Application VAR-2025-000263.**

ISSUES

Pursuant to Sanibel Code Section 82-136. – Authorization. and Section 82-137 – Conditions., the subject application has been referred to the Planning Commission to address the following issues:

1. Does the requested variance for a swimming pool and deck in the B – Bay Beach Zone comply with Section 82-143. – Accessory structures?
2. Do the other six variance requests in the subject application comply with all seven variance standards, respectively, as provided in Sanibel Code Section 82-140. – Standards – generally?
3. If the Planning Commission approves the application, what additional conditions should be required?

ATTACHMENTS

A	Applicant’s narrative response to variance standards
B	Survey dated June 23, 2019
C	Survey dated July 29, 2024
D	Location Map and Aerial Imagery
E	Ecological Zone Map
F	Site Plan

G	Lot Area Exhibit (from the applicant)
H	Angle-of-Light Height Exhibit (from the applicant)
I	Wall Section Exhibit (from the applicant)
J	USGS Flood Event Viewer (Hurricane Ian)
K	Specific Amendment 85-027
L	Approved Plans (permit application 85-4997)
M	Land Development Code Division 3. – B Bay Beach Zone
N	Land Development Code Division 10. – G Altered Lands Zone
O	Alternate design in conformance with <u>Sec. 126-212. – Nonconforming structure</u>
P	Alternate design in conformance with <u>Sec. 126-1404(a)(2) Location</u>
Q	Natural Resources Department Memorandum dated April 14, 2025
R	Public Comment
S	Email Correspondence between Applicant and Staff

BACKGROUND

The subject property is 0.20 acres (8,589 square feet) in size, consisting of a single lot in the unrecorded portion of the Sanibel Isles subdivision. Sanibel Isles was platted prior to the incorporation of Sanibel. Sanibel Isles is listed as a “modern platted subdivision” in the Sanibel Plan and therefore the property qualifies for one single family dwelling unit based on the “existing parcels” provision of the code (Sec. 86-92).

The Sanibel Isles neighborhood only permits single-family residential uses. All surrounding land uses are single-family homes.

The subject property was developed in 1963 as a single-family residence, built at-grade, with 1,297 square feet of living area. In 1985, City Council passed a specific amendment (SA-85-027) to allow an addition of 782 square feet of living area in a second floor over a portion of the first floor of a structure partially within the B – Bay Beach Zone and required setbacks. A second request, to construct a swimming pool and privacy wall within the front yard setback, was denied. A required condition of the approval was to remove an existing concrete driveway for replacement with a permeable gravel driveway. The total habitable area subsequent to the approval of the specific amendment was 2,079 square feet.

Pursuant to Land Development Code Sec. 82-456, certain Specific Amendments of the Sanibel Plan, predating adoption of the Land Development Code, are treated as variances. Therefore, Specific Amendment 85-027 is treated as a variance. A variance does not expire and runs with the land. Therefore, the development permit that implemented SA-85-027 constitutes the applicable development standards for the subject property.

Since the last approved site plan, unpermitted brick walkways, gravel areas, and wood decking were installed/constructed in excess of maximum vegetation removal and developed area, maximum impermeable coverage and in conflict with land use restrictions in the B – Bay Beach Zone. The area of these unpermitted

improvements totaled approx. 1,600 square feet (unpermitted brick and gravel areas). An unpermitted rip-rap shoreline exists within the first 10 to 15 feet of the Bay Beach Zone adjacent to the Mean High Water Line. A copy of the survey dated June 23, 2019, is included as **Attachment B**.

The original single-family home was substantially damaged by Hurricane Ian in 2022 and was subsequently demolished. Storm surge data from USGS documented a high-water mark of 5.43 feet above ground at its nearest reference point (Limpet Drive). The applicable flood zone is AE9 feet NAVD. The minimum design flood height of the first floor of living area is +10 feet NAVD. A copy of the survey dated July 29, 2024, is included as **Attachment C**.

Permit history at the subject property is provided below in **Table 1**.

Table 1. Permit History		
Date	Scope of Work	Staff Comments
1985	Second floor addition	Approved by Specific Amendment
1988	Removal of nonconforming seawall	
1988	Dock and boat lift	Approved by variance
1999	Porch addition	
2005	Dock repair (Hurricane Charley)	
2023	Dock repair (Hurricane Ian)	
2024	Demolition of single-family residence	

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Adopted alongside the Sanibel Plan is a series of future land use maps establishing ecological zones under which development and land use is regulated in a manner deemed necessary to protect natural resources and to achieve a community vision that places sanctuary quality as the dominant principle placed at the top of its hierarchy of values.

Objective B2 of the Section 3.6.2. Future Land Use Element (Sanibel Plan), states:

As development and redevelopment anticipated in the Future Land Use Element occurs, protect natural resources, including soils, by limiting development as a percentage of total land area.

Policy B2.1. states:

Protect natural resources by application of best management practices and continued implementation of the development regulations and performance standards of the Land Development Code.

The property is located in two ecological zones. The B-Bay Beach Zone – a preservation district dedicated to passive uses – comprises a larger area of the property than the G – Altered Lands Zone, a residential district where development is conditioned upon regulatory controls such as setbacks, limitations on vegetation clearance and developed area, as well as impermeable coverage. However, pursuant to *Land Development Code Sec. 126-976*, the B – Bay Beach Zone shall not ever be considered the predominant zone in terms of applicability of coverage, vegetation removal, and developed area standards.

The Sanibel Plan provides background discussion regarding both the B – Bay Beach Zone and G – Altered Land Zone, which establishes each zone’s respective purpose and intent.

Bay Beach Zone

The Bay Beach Zone, an “active beach” zone, extends along the Island’s bay shoreline between a 50-foot setback from the mean high water line to the City’s boundary one-half mile off-shore. Although the Bay Beach is a lower energy beach than the Gulf Beach, it nevertheless serves the same valuable storm and flood protection, shoreline stabilization, marine life and wildlife habitat and feeding functions. The natural processes are similar and so too are the constraints to development. Regulations similar to those outlined for the Gulf Beach Zone are required to maintain the functions of this zone.

Altered Land Zone

This is land altered by humans disturbing the natural topography, hydrology and vegetation of an area usually for real estate development purposes. In most cases, the area delineated on the Ecological Zones maps has been elevated to approximately four feet above mean sea level either by importing fill or by excavation within the site area. The purpose of such modifications has been to transform low lying land that is often wet and unsuitable for development into high, dry land, associated in some cases with lakes, lagoons and canals formed by dredging below the water table. For planning purposes, only the larger areas of filled, cleared and builtout lands were mapped as Altered, thereby excluding spoil areas from mosquito ditches and canals that did not cover extensive areas. Some areas have been filled for 50 years or more, with subsequent reestablishment of grasses and woody plants. In such cases, they were not classified as Altered Land. Areas that were more recently altered and are classified as Altered Land frequently are bare but for the invasion of scattered weeds. Eventually, if left undisturbed, these lands may return to a natural state.

Additional Sanibel Plan references, including goals, objectives and policies related to the B – Bay Beach Zone are provided in **Table 10** at the end of this staff report. The Natural Resources Department also provided a memorandum regarding the subject application in the context of environmental goals, objectives and policies of the Sanibel Plan and findings from an on-site inspection. A copy of the memorandum dated April 14, 2025, is included as **Attachment Q**.

While residential uses are prohibited in the Bay Beach zone by the Sanibel Plan, build-back of lawfully existing nonconforming principal structures and redevelopment of lawfully existing accessory swimming pools and structures are permitted subject to compliance with the Land Development Code.

Land Development Code Sec. 82-136. – Authorization states the Planning Commission may grant a variance for accessory structures located landward of the Mean High Water Line in the B – Bay Beach Zone and for principal residential structures located primarily in a contiguous zone to extend into the B – Bay Beach Zone.

There are eight (8) required conditions for the development of a principal structure in the G – Altered Lands Zone, seven of which are applicable to the subject lot (min. lot size, height, front yard setbacks, side yard setbacks, setback from open bodies of water, coverage, and vegetation removal and developed area). The formerly approved development (SA-85-027) complied with four of the seven applicable required conditions.

PROPOSAL

The applicant proposes the redevelopment of a single-family home in roughly the same location as the former principal structure. The proposed house is larger in terms of overall size and massing, mainly due to a proposed elevation of +14.5 feet NAVD (+10.5 feet above grade and +4.5 feet above the required design flood elevation), but also due to a significant increase in living area (proposed 3,481 sf) compared to the former house (2,079 sf), an increase of 1,402 square feet. The proposed house has a larger footprint (2,465 sf) than the former house (2,041 sf) by 424 square feet.

The increases to pre-disaster footprint, three-dimensional outline of lawfully-existing habitable floor area, and gross square footage mean the proposed development cannot qualify for build-back entitlements authorized by the Land Development Code for nonconforming structures. Therefore, the applicant is requesting seven variances to permit the plan for redevelopment of a larger single-family residence that extends into the B – Bay Beach Zone and that does not comply with required conditions of the G – Altered Lands Zone.

Additionally, the applicant requests a variance to construct a new accessory structure – an 8' x 8' plunge pool and pool deck – in the back yard, located entirely within the B – Bay Beach Zone preservation district. The proposed structure is approximately 448 square feet, including the existing landward portion of an existing dock. The edge of the proposed pool deck measures 10.6 feet away from the Mean High Water Line and inches away from nonconforming rip-rap shoreline.

A copy of the subject application, plans, and exhibits submitted by the applicant are included as **Attachments A through I**.

ANALYSIS

The applicant reiterates throughout their narrative that there is a hardship based on the narrow buildable area of the lot (see **Attachment G**, Lot Area Exhibit). Staff agrees that there are constraints on the lot, which have been recognized on other parcels in the vicinity through approval of variances and on this lot specifically with the approval of the specific amendment in 1985. The applicant could build back a home under the building parameters approved through that specific amendment or through the provisions for build-back in substantially the same footprint as proposed, as the applicant recognizes (see page 1 of **Attachment A**, Applicant's narrative response). Rebuilding subject to "buildback" or per the specific amendment, along with a request for a single variance to exceed height limitations based on a desire to exceed minimum base flood elevation, could also have been pursued. Instead, the applicant chose to pursue redevelopment, where the building must comply with all development standards, and expanded the request to include new accessory structures (a pool and pool deck) entirely within the Bay Beach zone.

The applicant has not presented a plan that is the minimum necessary to achieve reasonable use of the lot. The specific amendment provided reasonable use and the house in its previous footprint represented a single-family home consistent with the established neighborhood. The applicants purchased and used the home for five years. The requested variances for new setback encroachments and a new pool deck and pool cannot be considered the minimum necessary or examples of a hardship that is not self-imposed. The proposed setback to mean high water for the pool deck not only expands the encroachment into the Bay Beach zone but is less than what would otherwise be required by the code for an open body of water setback (10 feet instead of 20 feet).

The applicant's narrative also states the owner's desire to build a storm-resilient structure. A house built to current building code standards, rather than built in 1963 and altered in 1986, will, by every measure, be more resilient to future storms. Placing all structures farther from the bay and potential surge impacts could also be considered resilient. Encroachment of the house, pool, and pool deck into the Bay Beach zone, into front and side setbacks, and increases in developed area and impermeable coverage, will not increase the resiliency of the building. Approval of these variances is not necessary to enable the owner to build a storm-resilient home.

The applicant provides a narrative description of the subject application included with this staff report as **Attachment A**. Staff reviewed the narrative describing the circumstances that led to this application and found several misrepresentations and notable omissions of relevant context (see below).

- *“City staff’s strict application of the provisions of Land Development Code Section 126-212... did not provide the flexibility in design the Thaler’s 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).” [Staff note: The correct subsections are (2) and (3).]*
- *“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.”*

To correct the record, staff has compiled a timeline of events and relevant correspondence prior to and following submittal of application BLDR-2024-18834, which is included at the end of the analysis section. A full compilation of relevant emails is included as **Attachment S**. Based on that information; staff provides the following responses:

- Staff provided appropriate flexibility in the interpretation and application of provisions of Land Development Code Section 126-212. Staff conducted multiple pre-application meetings and communicated via email and phone numerous times over 7 months prior to submittal of permit applications, providing information as requested and setting appropriate expectations for the permitting and variance process.
- According to staff, and as a matter of fact, the design submitted with application BLDR-2024-18834 failed to comply with Sec. 126-212(a)(2) and (3). The design was not rejected due to “minor site modifications and an elevated first living level” but was rejected due to its proposal to expand habitable area by 1,402 square feet and gross area by 2,788 square feet relative to the pre-disaster nonconforming structure.
- Staff suggested the applicant apply for a variance from height and setbacks (later recognizing setback relief was previously authorized by SA-85-027) to increase elevation for improved resiliency of a structure design that would otherwise be permitted under build-back provisions. Staff provided direct guidance on the manner in which a variance application could obtain staff support and find compliance with all seven variance standards in Sec. 82-140.
- Resiliency and compliance are not mutually exclusive. The seven variances requested are not crucial “in order to build a new, more storm resilient home.”

The proposed plans do not comply with six out of the seven applicable required conditions of the G – Altered Lands Zone and increases the degree of nonconformance to the only required condition of the B – Bay Beach Zone by expanding uses prohibited therein.

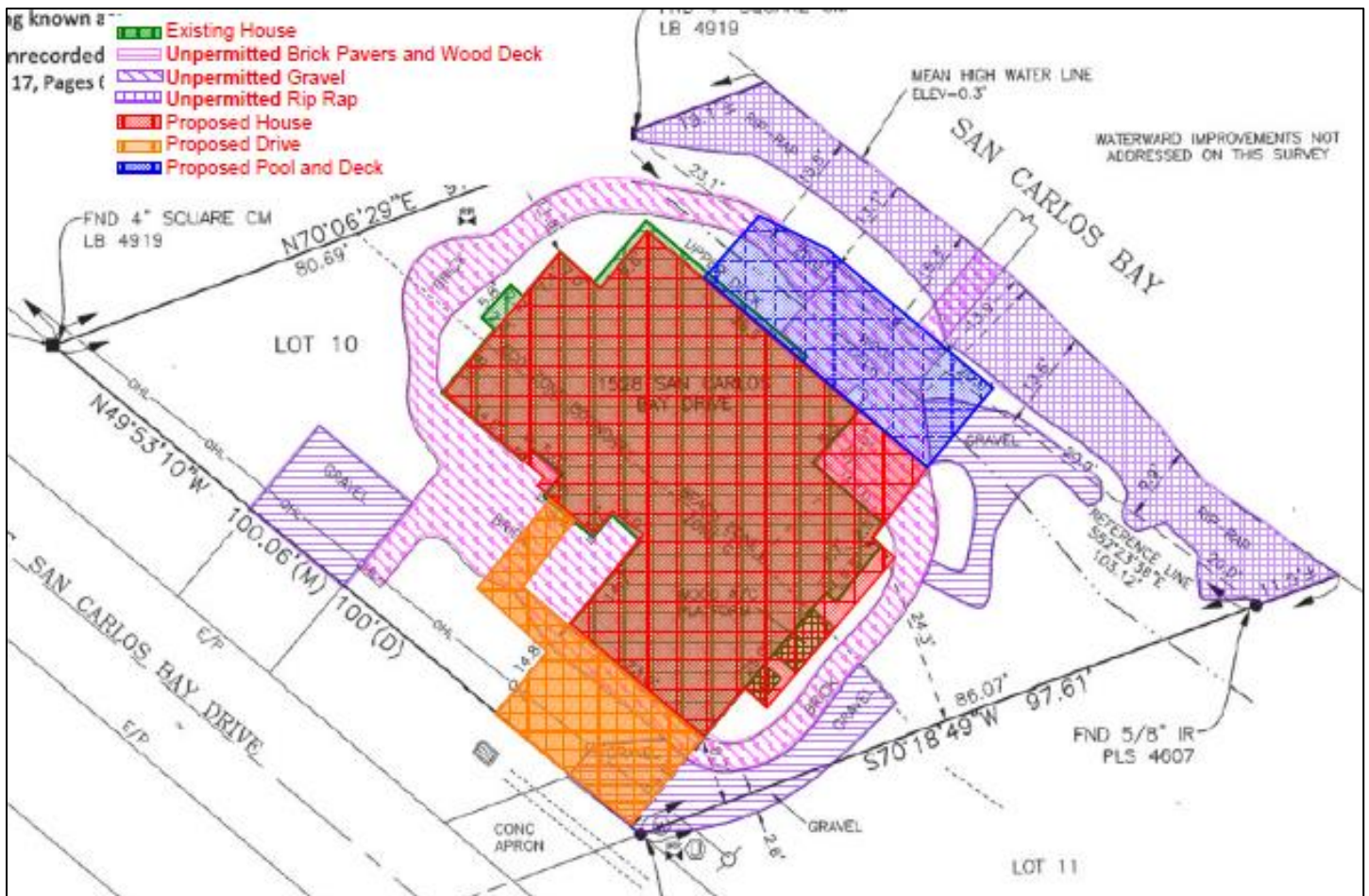
An analysis of conformance of the prior development compared to the proposed development is provided below in **Table 2**, and **Exhibit 1**, which overlays the proposed development and the former development to illustrate

differences and distinguish between lawfully-existing nonconformances and unpermitted (unlawful) nonconformances.

Table 2. Analysis of compliance with required conditions			
Required condition	1985	2019	Proposed
Minimum lot size	✓	✓	✓
Height	✓	✓	X
Front yard setback	X	X	X
Side yard setback	X (1/2)	X (1/2)	X (2/2)
Rear yard setback	N/A	N/A	N/A
Setback from Open Body of Water	N/A	N/A	N/A
(Impermeable) Coverage	✓	X *	X
Vegetation Removal and Developed Area	✓	X *	X

**Unlawful*

Exhibit 1. Site plan overlay pre-disaster conditions and proposed development.



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Staff reviewed the requested variance to Section 126-313. – Required conditions against standards in Section 82-143. – Accessory structures. All other requested variances in the subject application were reviewed against standards in Sec. 82-140. – Standards - generally. The table below includes references to those standards and staff review notes. Please reference **Attachment A** alongside the corresponding staff comments below.

Variance #1 – Sec. 126-313. – Required conditions.

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.

Table 3. Evaluation of consistency with all three variance standards of <u>Sec. 82-143.</u>		
Variance #1 – Sec. 126-313. – Required conditions		
Sanibel Code Requirement	Staff Comments	Requirement met?
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;	The proposed structure is accessory to a proposed principal residential use – Single-family home – of contiguous lands in B – Bay Beach Zone and G – Altered Lands Zone on the same parcel with common ownership.	Yes.
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	Staff finds the proposed plunge pool and deck could be located on that portion of the lot not in the bay beach zone. The owner has demolished the single-family residence. There are no existing structures on the property that require the addition of an accessory pool and deck to be located behind the principal structure in the B-Bay Beach Zone. On San Carlos Bay Drive, there are four bayfront properties with accessory swimming pools. None of those accessory swimming pools are placed between the principal structure and the Mean High Water Line. Each of those accessory structures permitted by the City of Sanibel were designed in a manner to reduce the degree of encroachment within the B – Bay Beach Zone to the greatest extent possible.	No.
3. The structure will be located entirely landward of the mean high water line.	The proposed plunge pool and deck are proposed landward of the Mean High Water Line.	Yes.

Variance #2 – Sec. 126-454(b) Height

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.

Please note the applicants exhibit regarding angle-of-light encroachments depicts encroachments based on the setbacks approved by the specific amendment and not based on the setbacks otherwise required by the Sanibel Code.

Table 4. Evaluation of consistency with all seven variance standards of <u>Sec. 82-140.</u>		
Variance #2 – Sec. 126-454(b) Height		
Sanibel Code Requirement	Staff Comments	Requirement met?
<p>1. A literal enforcement of the particular regulation would result in 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.</p>	<p>“Exhibit F” provided by the applicant, and included with this staff report as Attachment G, demonstrate the challenges of designing a single-family residence where the front setback and Bay Beach Zone take up approximately 75% of the lot depth. The remaining area is insufficient for the development of a single-family residence in the same manner as other residential lots.</p> <p>Ordinance SA-85-027 approved the pre-disaster footprint of the house as a variance, effectively adjusting applicable setbacks. Angle-of-light compliance, which is measured at setback lines, is presently challenging due to the desired elevation for the proposed single-family redevelopment.</p> <p>The minimum design flood elevation (+10 feet NAVD) is approximately 6 feet above grade. Staff can issue a permit without a variance to allow build-back of the principal structure to comply with minimum flood requirements. As provided in Attachment J, the nearest point of documented storm surge (Limpet Drive) from Hurricane Ian is +5.43 feet above grade. However, USGS also documented data points with high water lines between 7 and 10 feet above grade on the east end of the island where Hurricane Ian impacts were most extreme.</p>	<p>Yes.</p>

Table 4. Evaluation of consistency with all seven variance standards of Sec. 82-140.

Variance #2 – Sec. 126-454(b) Height

Sanibel Code Requirement	Staff Comments	Requirement met?
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.	The special conditions relate to the existing pre-city subdivision and the location of the property within the B-Bay Beach Zone. The conditions are applicable to other lots in Sanibel Isles that are similarly situated, but variances and specific amendments have been issued for such properties in recognition of these compliance challenges.	Yes.
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 proposed variance is, in part, a result of design choices made by the applicant and are therefore self-imposed.	No.
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.	<p>The applicant has the option to “build-back” without the need for a variance.</p> <p>Pursuant to <u>Sec. 126-212. – Nonconforming structures</u>, the applicant had the option to design a single-family residence that maintains the same pre-disaster footprint, three-dimensional outline of lawfully-existing habitable area, and gross square footage; and achieves conformance with minimum design flood height.</p> <p>Attachment O provides a design alternative that does not require a variance to height. This design, elevated to exceed documented storm surge from Hurricane Ian, would comply with this standard.</p> <p>In the context of “redevelopment,” the applicant declined to make design changes such as the use of gabled ends that could comply with angle-of-light regulations at both sides of the property to reduce the variance request.</p>	No.

Table 4. Evaluation of consistency with all seven variance standards of Sec. 82-140.

Variance #2 – Sec. 126-454(b) Height

Sanibel Code Requirement	Staff Comments	Requirement met?
5. That the development or use of the subject parcel in some other manner than that proposed, in accordance with the applicable requirements, is not feasible.	Single-family use in compliance with height standards is not feasible unless building-back pursuant to <u>Sec. 126-212.</u> “Build-back” also has limitations that do not permit the applicant to elevate the single-family residence above documented storm surge impacts from Hurricane Ian.	Yes.
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 requested height variance is not adverse to the developed neighborhood scheme (pre-city incorporation). However, the proposed expansion of development, including height, within the Bay Beach Zone, is not consistent with the Sanibel Plan goals, objectives and policies for coastal zone protection, conservation, scenic preservation, recreation and open space, and future land use.	No.
7. That the variance granted is the minimum necessary to mitigate the hardship demonstrated.	The requested variance is not the minimum necessary to mitigate the hardship demonstrated. An alternate design provided by the applicant during pre-application correspondence (Attachment O) would not require a variance to permit. If modified to an elevation of +14 feet NAVD, that would represent the minimum necessary height variance to mitigate the hardship alleged by storm surge from Hurricane Ian.	No.

Variance #3 – Sec. 126-454(c) Front yard setbacks

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.

Table 5. Evaluation of consistency with all seven variance standards of Sec. 82-140.

Variance #3 – Sec. 126-454(c) Front yard setbacks

Sanibel Code Requirement	Staff Comments	Requirement met?
<p>1. A literal enforcement of the particular regulation would result in 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.</p>	<p>Attachment G illustrates an undue hardship to redevelopment of a single-family residence in compliance with all setback and zoning requirements, as recognized a prior City Council with the adoption of Ordinance SA-85-027.</p>	<p>Yes.</p>
<p>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.</p>	<p>See comments for standard #2 in Table 4.</p>	<p>Yes.</p>
<p>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.</p>	<p>Generally, the circumstances of this front setback constraint are not self-imposed. The applicant is not proposing any additional encroachment within the required front setback compared to the former lawfully-existing nonconforming principal structure.</p> <p>However, the proposed variance is, in part, a result of design choices made by the applicant and are therefore self-imposed. When viewed in totality, the redevelopment of a single-family home that is nearly 70% larger in terms of habitable area self-imposes hardships that could be minimized collectively or eliminated singularly, if the applicant chose to.</p>	<p>No.</p>

Table 5. Evaluation of consistency with all seven variance standards of Sec. 82-140.

Variance #3 – Sec. 126-454(c) Front yard setbacks

Sanibel Code Requirement	Staff Comments	Requirement met?
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.	Single-family use may be built-back (reconstructed) in compliance with the previously approved specific amendment and without the need to authorize additional variance requests.	No.
5. That the development or use of the subject parcel in some other manner than that proposed, in accordance with the applicable requirements, is not feasible.	See above.	No.
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 requested variance is adverse to the developed neighborhood scheme insofar as it is not the minimum necessary request to mitigate the hardship demonstrated.	No.
7. That the variance granted is the minimum necessary to mitigate the hardship demonstrated.	The requested variance is not necessary to mitigate the hardship demonstrated by the applicant as it relates to front yard setbacks. Build-back of the pre-disaster single-family residence mitigates the hardship without the need for an additional variance.	No.

Variance #4 – Sec. 126-454(d) Side yard setbacks

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.

Table 6. Evaluation of consistency with all seven variance standards of Sec. 82-140.

Variance #4 – Sec. 126-454(d) Side yard setbacks

Sanibel Code Requirement	Staff Comments	Requirement met?
1. A literal enforcement of the particular regulation would result in 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.	The subject parcel has a width of 100 feet. The required side setbacks are 10 feet from the side property lines. Enforcement of this standard does not result in an undue hardship that deprives the owner of reasonable use and enjoyment in comparison to other lots where single-family use is permitted.	No.
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.	The width of this property (100 feet) is not an unusual condition in comparison to other lots where single-family use is permitted.	No.
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 proposed noncompliance is a result of design choices made by the applicant and are therefore self-imposed.	No.
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.	The applicant has the option to “build-back” without the need for a variance.	No.
5. That the development or use of the subject parcel in some other manner than that proposed, in accordance with the applicable requirements, is not feasible.	Single-family use in compliance with side setbacks is feasible.	No.
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 developed neighborhood scheme (Sanibel Isles) is in conformance to side setback requirements. The proposed variance is inconsistent with the development pattern in Sanibel Isles and single-family neighborhoods at large within the city.	No.

Table 6. Evaluation of consistency with all seven variance standards of <u>Sec. 82-140.</u>		
Variance #4 – Sec. 126-454(d) Side yard setbacks		
Sanibel Code Requirement	Staff Comments	Requirement met?
7. That the variance granted is the minimum necessary to mitigate the hardship demonstrated.	The variance request to required side setbacks is unnecessary, as the particular regulation does not create a hardship.	No.

Variance #5 – Sec. 126-454(g) Coverage

To allow 35.2% of impermeable surface coverage (3,019 square feet) on the subject property where a maximum of 35% is provided (3,006 square feet).

Table 7. Evaluation of consistency with all seven variance standards of <u>Sec. 82-140.</u>		
Variance #5 – Sec. 126-454(g) Coverage		
Sanibel Code Requirement	Staff Comments	Requirement met?
1. A literal enforcement of the particular regulation would result in 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.	The particular regulation, which allows up to 35% of the lot area for impermeable coverage – just over 3,000 square feet – does not result in an undue hardship that deprive the owner of a single-family residence in the same manner as other residentially zoned properties. Despite a majority of the property existing within the B-Bay Beach Zone – a preservation district where a single-family residence is a prohibited use – the applicable development standards are the least restrictive of any residential district.	No.
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.	The lawfully-existing nonconforming lot size for a single-family lot in a modern platted subdivision is not unusual and therefore this condition is applicable to other lands similarly situated.	No.

Table 7. Evaluation of consistency with all seven variance standards of Sec. 82-140.

Variance #5 – Sec. 126-454(g) Coverage

Sanibel Code Requirement	Staff Comments	Requirement met?
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 proposed noncompliance is a result of design choices made by the applicant to increase the house footprint by 424 square feet and propose the addition of an approximately 400 square foot pool and deck; therefore the circumstances of this variance request are self-imposed.	No.
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.	The applicant has the option to “build-back” without the need for a variance. Numerous design alternatives exist for redevelopment that do not require the requested variance of 13 square feet excess impermeable coverage.	No.
5. That the development or use of the subject parcel in some other manner than that proposed, in accordance with the applicable requirements, is not feasible.	Single-family use in compliance with maximum impermeable coverage is feasible.	No.
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.	Development regulations limiting impermeable coverage areas are an integral part of the Sanibel Plan, so much so that legislative controls were adopted to protect such policies from amendment with a requirement for voter referendum. Specifically, Objective B2 of the Section 3.6.2. and Objective 5 of the Conservation Element uphold this principle. Therefore, staff finds this request inconsistent with the Sanibel Plan and unnecessary due to a failure to demonstrate a legitimate hardship relating to <u>Sec. 126-454(q).</u>	No.
7. That the variance granted is the minimum necessary to mitigate the hardship demonstrated.	The variance request to the impermeable coverage limitation is unnecessary, as the particular regulation does not create a hardship.	No.

Variance #6 – Sec. 126-454(h) Vegetation removal and developed area

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

Table 8. Evaluation of consistency with all seven variance standards of <u>Sec. 82-140.</u>		
Variance #6 – Sec. 126-454(h) Vegetation removal and developed area		
Sanibel Code Requirement	Staff Comments	Requirement met?
1. A literal enforcement of the particular regulation would result in 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.	<p>The particular regulation, allows up to 40% of the lot area for vegetation clearance and developed area – just under 3,500 square feet – does not result in an undue hardship that deprive the owner of a single-family residence in the same manner as other residentially zoned properties.</p> <p>Despite a majority of the property existing within the B-Bay Beach Zone preservation district where a single-family residence is a prohibited use – the applicable development standards are the least restrictive of any residential district.</p>	No.
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.	See comments to standard #2 in Table 7.	No.
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.	See comments to standard #3 in Table 7.	No.

Table 8. Evaluation of consistency with all seven variance standards of Sec. 82-140.

Variance #6 – Sec. 126-454(h) Vegetation removal and developed area

Sanibel Code Requirement	Staff Comments	Requirement met?
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.	The applicant has the option to “build-back” the principal structure without the need for a variance. Numerous design alternatives exist for redevelopment that do not require the requested variance of 748 square feet excess developed area. Reducing or eliminating the proposed swimming pool and deck, as well as the abatement of the nonconforming rip-rap shoreline with a compliant alternative shoreline stabilization project would achieve compliance with <u>Sec. 126-454(h).</u>	No.
5. That the development or use of the subject parcel in some other manner than that proposed, in accordance with the applicable requirements, is not feasible.	Single-family use in compliance with maximum vegetation removal and developed area is feasible.	No.
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.	Regulations limiting vegetation removal and developed area are an integral part of the Sanibel Plan, so much so that legislative controls were adopted to protect such policies from amendment with a requirement for voter referendum. Specifically, Objective B2 of the Section 3.6.2., Objective 5 of the Conservation Element, and provision 3 of the Plan for Vegetation Preservation uphold this principle. Therefore, staff finds this request inconsistent with the Sanibel Plan and unnecessary due to a failure to demonstrate a legitimate hardship relating to <u>Sec. 126-454(h).</u>	No.
7. That the variance granted is the minimum necessary to mitigate the hardship demonstrated.	The variance request to limitations on vegetation clearance and developed area is unnecessary, as the particular regulation does not create a hardship.	No.

Variance #7 – Sec. 126-1404(a)(2) Location (Driveways and service aisles)

To allow a 2.9-foot driveway setback on the east side yard where a ten-foot side yard setback is required.

Table 9. Evaluation of consistency with all seven variance standards of <u>Sec. 82-140.</u>		
Variance #7 – Sec. 126-1404(a)(2) Location (Driveways and service aisles)		
Sanibel Code Requirement	Staff Comments	Requirement met?
1. A literal enforcement of the particular regulation would result in 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.	In the context of redevelopment, the 100 wide right-of-way frontage is certainly adequate to accommodate a driveway between 12 and 22 feet wide without compromising compliance to side setbacks.	No.
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.	The right-of-way frontage width at the subject parcel is not an unusual condition for a single-family lot. These conditions <i>are</i> applicable to other lands similarly situated.	No.
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 conditions of the requested driveway location variance are the result of design choices made by the applicant. Therefore, this variance request is self-imposed.	No.
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.	The applicant provided staff with an alternate site design (Attachment P), which reorients the design in a manner that places the garage in the center of the subject property. While that design option was not viable in the context of build-back (due to further encroachment into the Bay Beach Zone), this exhibit illustrates the possibility of redesign to eliminate or mitigate the requested variance.	No.

Table 9. Evaluation of consistency with all seven variance standards of Sec. 82-140.

Variance #7 – Sec. 126-1404(a)(2) Location (Driveways and service aisles)

Sanibel Code Requirement	Staff Comments	Requirement met?
5. That the development or use of the subject parcel in some other manner than that proposed, in accordance with the applicable requirements, is not feasible.	Single-family use in compliance with driveway location outside of side setbacks is feasible.	No.
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 requested variance is inconsistent with the developed neighborhood scheme on San Carlos Bay Drive and the scheme set forth in the Land Development Code. There is also a storm drain on the east side of the property that should be avoided.	No.
7. That the variance granted is the minimum necessary to mitigate the hardship demonstrated.	The requested variance is unnecessary, as the applicant failed to demonstrate a legitimate hardship caused by this particular regulation.	No.

Table 10. Sanibel Plan references relating to the B – Bay Beach Zone		
Plan Reference	Reference Type	Plan Text
Section 3.2.1. Coastal Zone Protection Element	Goal Statement	Protect and appropriately manage the natural resources of the coastal area to ensure the conservation or enhancement of the natural functions of the coastal ecosystem as the development anticipated in the Future Land Use Element of the Plan occurs and prohibit new development and redevelopment for human habitation in the Gulf Beach and Bay Beach Zones.
Section 3.2.2 Conservation Element	Background discussion	The Gulf beach and bay beach are protected as preservation districts as provided in this Plan.
Section 3.2.5. Scenic Preservation Element	Policy 1.2	Encourage beachfront property owners to maintain native vegetation between upland structures and the Gulf and Bay beaches so that the view of Sanibel from its beaches is not dominated by humanmade structures
Plan for Recreation and Open Space	Provision #4	The Gulf and Bay beaches of Sanibel, natural resources that are hard to visit without having recreational experiences, are to be maintained in their natural conditions, thereby ensuring passive recreational opportunities, such as bird watching, that are compatible with wildlife’s use of this rare and limited natural resource. Commercial uses of the Gulf and Bay beaches, except for that incidental to recreation use that is compatible with scenic preservation and conservation uses, will be prohibited. Recreational activities in the Gulf and Bay beaches shall not interfere with the conservation of these vital natural resources.
Plan for Permitted Uses	Provision #1	Residential uses are prohibited in Preservation Districts (The Gulf Beach and Bay Beach Ecological Zones) and in the Environmentally Sensitive Lands Conservation District. In addition to conservation use, passive recreation is permitted in these Districts. In clarification of activities that constitute or that are compatible with passive recreation uses, the City prohibits horseback riding on the beach. Lawfully existing residential uses located in the Gulf Beach and Bay Beach Zones are permitted to continue that use and to build-back that structure and reestablish the residential use if the structure is substantially damaged by a natural disaster. Lawfully existing accessory swimming pools and accessory structures are permitted to be redeveloped in the Gulf Beach and Bay Beach Zones, subject to the criteria in the Land Development Code.
	Provision #4	Restrict accessory uses that will have a deleterious effect on the carrying capacity of the beach.
Plan for Development Intensity	Background discussion	No development is permitted in the Gulf Beach and Bay Beach Preservation zones but these areas were allocated a residential density, all of which must be built landward of these Preservation Zones.

Timeline and description of staff correspondence with the applicant:

- **March 2023:** The applicants, MHK Architecture, Inc., and Newport Property Construction (builder) first reached out to staff, asking if it was true that the owners could obtain a permit to reconstruct a home in the same footprint and asked if any exceptions or other options would allow for an increase in buildable area. In a response, staff affirmed that provisions of Division 5. – Standards for Building-Back (reconstruction) of Structures Substantially Damaged by a Natural Disaster would allow for reconstruction in the same non-conforming footprint. Staff indicated that the owner could apply for a variance but cautioned that a variance application would face compliance challenges (to variance standards) when “build-back” provisions provide a viable alternative.
- **April 22, 2024:** Staff met with the applicant and builder to reiterate the above information and review preliminary concepts of the design.
- **May 31, 2024:** Carmella Cioffi, AIA, NCARB, (MHK Architecture) emailed staff stating their intent to design in accordance with build-back provisions and asked a question regarding angle-of-light height regulation to which staff responded, “*angle-of-light may be violated, but only insofar as to achieve minimum flood elevation compliance.*”
- **June 19, 2024:** Staff met with MHK Architecture again to address interpretation questions of Sec. 126-212, specifically related to adhering to the same pre-disaster footprint, as defined in Sec. 78-1.
- **July 2024:** Staff and the applicant exchange emails about “flipping” the design to make accessing the garage easier and avoiding a storm drain along the east property line. Later in the month, staff reached out to the applicant as a courtesy to inform them of our finding that the riprap shoreline is nonconforming to Land Development Code requirements upon completing a final inspection of the reconstructed dock.
- **August 5, 2024:** Staff met with MHK Architecture to view preliminary elevation drawings. At the time staff did not identify a conflict with height regulations.
- **November 19, 2024:** Application BLDR-2024-18834 is submitted by Newport Property Construction and subsequently rejected due to application insufficiencies.
- **December 3, 2024:** Application BLDR-2024-18834 is resubmitted and accepted by staff review coordinator who assigns reviews to various departments.
- **December 16, 2024:** Planning review is completed and requires resubmittal to address insufficient information to verify compliance with build-back provisions, height (angle-of-light), and use of fill.
- **January 10, 2025:** The applicant meets with staff to provide additional information related to corrections provided by the Planning Department. A summary of the meeting is provided in subsequent emails from the applicant and staff.
- **January 14, 2025:** The applicant provides staff with a new exhibit in an attempt to address conflicts with the primary angle-of-light.
- **January 17, 2025:** Staff receives records from a building permit (85-4997) for the addition of a *partial* second floor of living area to verify architectural designs shared by the applicant do not expand upon the pre-disaster three-dimensional outline of lawfully existing habitable area and do not expand upon pre-disaster gross square footage. Staff subsequently spoke with the applicant by phone to express that the plans shared with staff via email on January 14, 2025, do not comply with build-back standards in Sec. 126-212.
- **January 28, 2025:** The applicant provides staff with an alternative design to address staff comments and comply with build-back standards.
- **January 30, 2025:** Staff verifies the attachment demonstrates compliance with build-back provisions in Sec. 126-212.
- **February 2025:** The applicant expresses the owner’s displeasure over the revised design specifically in regard to height, based on storm surge impacts from Hurricane Ian, described as “10 feet” above grade. Staff agree

with the owner's concerns and states to the applicant that such evidence could form the basis of a hardship in support of an application for variance from Sec. 126-454(b) Height. Staff emphasizes that the design provided to staff on January 28, 2025, which complies with build-back standards, would represent the "minimum necessary" variance request, if proposed to an elevation of +10 feet above grade. Staff also shares a public record via email – a Specific Amendment approved by City Council (SA-85-027), which is treated as a variance for consideration.

- **February 13, 2025:** Staff meets with Leslee Dulmer, MHK Architecture, for the first time and reiterates the parameters of an application that could obtain staff support for a variance from height and pre-existing front and side setback encroachments and encroachment within the Bay Beach Zone. Staff cautioned the applicant that it will be tempting for the owner to go back to the original design that does not comply with build-back standards and staff unequivocally stated that a variance application proposing the original design would not receive staff support due to noncompliance with variance standards in Sec. 82-140.
- **February 25, 2025:** The applicant made a courtesy call to staff to inform them of the owner's decision to proceed with the original design plans in an application for variance.
- **March 19, 2025:** Application VAR-2025-000263 is submitted. The application includes variance requests from seven (7) standards – three of which were not previously discussed with staff.
- **March 2025:** The application is revised to include a variance request for a seventh standard (driveway location). In its review, staff provided corrections regarding two additional variance requests, but staff withdrew their comments following an email from the applicant in rebuttal.

PUBLIC COMMENT

The applicant submitted four letters of support from neighbors in the Sanibel Isles established neighborhood. Staff received two additional public comment from residents opposing the subject application. Copies of public comment are included as **Attachment R**.

RECOMMENDATIONS AND CONDITIONS

Staff has made the following findings in support of its recommendations:

- Staff find the proposed variance from Section 126-313. – Required conditions does not comply with condition 2 in Sec. 82-143, which pertains to accessory uses.
- Staff find the proposed variance to Section 126-454. – Required conditions, (b) Height, does not comply with all seven variance standards in Sec. 82-140. Specifically, staff find the request is inconsistent with standards 3, 4, 6 and 7.
- Staff find the proposed variance to Section 126-454. – Required conditions, (c) Front yard setback, does not comply with all seven variance standards in Sec. 82-140. Specifically, staff find the request is inconsistent with standards 3, 4, 5, 6 and 7.
- Staff find the proposed variance to Section 126-454. – Required conditions, (d) Side yard setbacks, does not comply with all seven variance standards in Sec. 82-140. Specifically, staff find the request is inconsistent with each of the seven variance standards.
- Staff find the proposed variance to Section 126-454. – Required conditions, (g) Coverage, does not comply with all seven variance standards in Sec. 82-140. Specifically, staff find the request is inconsistent with each of the seven variance standards.

- Staff find the proposed variance to Section 126-454. – Required conditions, (h) Vegetation removal and developed area, does not comply with all seven variance standards in Sec. 82-140. Specifically, staff find the request is inconsistent with each of the seven variance standards.
- Staff find the proposed variance to Section 126-1404. – Driveways and service aisles, (a)(2) Location, does not comply with all seven variance standards in Sec. 82-140. Specifically, staff find the application is inconsistent with each of the seven variance standards.

Staff, therefore, recommend denial of application VAR-2025-000263. In denying these variances, Planning Commission will reaffirm the purpose and importance of compliance with standards of the Land Development Code at individual properties to implement principles and achieve community-wide goals of the Sanibel Plan.

The applicant is encouraged to consider alternatives that eliminate or mitigate the variances requested, including use of the design alternative presented by the exhibit in **Attachment O**. Adherence to build-back provisions will reduce or eliminate many of the variances requested by this application. Pending legislation to amend Sec. 126-212 would also allow increased height of the principal structure without necessitating a variance application. Lastly, the relocation and redesign of the accessory swimming pool to the side or below the elevated single-family home would reduce the number of variances, achieve consistency with the developed neighborhood pattern, and preserve a greater portion of the Bay Beach Zone preservation district, a stated goal of the Sanibel Plan.