



City of Sanibel

Planning Commission

Building Department Staff Report

Planning Commission Meeting: April 8, 2025

Building Permit Number: BLDR-2024-017801

Applicant: American Gallery of Homes of Sanibel, Inc.

Owners: William & Sunyoung P Covaleski

Appellants: Arlene Dillon and 44 other residents

Address: 1305 Seaspray Lane

PUBLIC HEARING DESCRIPTION

Appeal of the floodplain administrator's interpretation of Chapter 94, Floodplain Management Ordinance, to the Planning Commission, alleging an error in a determination made by the floodplain administrator as it relates to the issuance of a building permit, BLDR-2024-017801, for new construction of a single-family home at 1305 Seaspray Lane, STRAP tax parcel no. 19-46-22-T1-00300.0180. The subject application was submitted by American Gallery of Homes of Sanibel, Inc. ("Applicant") on behalf of the property owners, William & Sunyoung P Covaleski ("Owners").

BACKGROUND

The subject property is located at 1305 Seaspray Lane. It is a triangular-shaped parcel of vacant land, surrounded on all three sides by developed parcels, including 1307 Seaspray Lane to the north; 1303 Seaspray Lane to the south; and 1381, 1377 (currently vacant land), 1371, and 1365 Jamaica Drive to the east. It is located in the D2 Upland Wetlands Ecological Zone. Among all the adjacent properties, the subject property is the only one that has not been previously developed.

Single-family dwellings are among the primary intended uses in the D-2 Upland Wetlands zone. The minimum lot area for a unit of residential density in the D-2 Upland Wetlands zone is 15,000 square feet. The subject property exceeds 23,000 square feet and is otherwise permitted up to one dwelling unit. The Owners purchased the subject property in August 2021 for the purposes of constructing a single-family dwelling upon it. The Applicant, on behalf of the Owners, applied for a building permit on July 30, 2024; and the City provided requisite notice to all owners within a 300-foot radius on August 2, 2024, inviting public comment. After receiving public comment and review of the application by the City, the building permit was ultimately issued on March 3, 2025, for the construction of a single-family dwelling. As part of the building permit approval process, the City's floodplain administrator (or his delegee) has certain duties, as detailed in Sec. 94-33. Those duties were performed by the floodplain administrator's delegee in the course of reviewing application submissions and resubmissions, and the floodplain administrator's delegee provided approvals on October 7, 2024.

Subsequent to the issuance of the building permit, but prior to any vertical construction on the subject property, Appellants filed their appeal. The appeal focuses on the interpretation of the open body of water boundaries on the subject property and alleges, among other things, that the floodplain administrator's delineation of boundaries for such open body of water is an error, based upon the allegation that the survey used in

consideration of the application was outdated. Appellants further request the City require an Environmental Assessment Report (EAR) for the property, and to either stay the permit of the work or otherwise issue a stop work order. A stop work order was not issued for the subject property, because the City has no legal grounds to do so. The City did, however, place the building permit on “hold,” meaning the Applicant could proceed with work on the subject property at their own risk pending the outcome of the appeal, but only to the point that a City inspection was necessary to allow the project to progress further. The Applicant’s work to date on the subject property is within the scope of the issued building permit and consists only of sitework, including placement of fill for the house pad.

ISSUES

Pursuant to Sanibel Code Section 94-92. – Appeals, appellate review of the subject building permit has been referred to the Planning Commission to address the following issue:

1. Did the floodplain administrator make a determination of the boundaries of an open body of water on the subject property; and, if so, was such determination made in error?

ATTACHMENTS

A	Appellants’ appeal letter
B	City Manager Souza’s response to the appeal letter
C	Survey
D	FEMA Special Flood Hazard Area Map
E	Site Plan – Revised Drainage Plan

RELEVANT LDC SECTIONS AND ANALYSIS

Staff provides the following table, which provides a summary of analysis relative to the issue on appeal.

Table 1. Analysis of Appeal under Sec. 94-92

Sanibel Code Requirement	Staff Comments
Sec. 94-31. – Designation. The city manager is designated as the floodplain administrator. The floodplain administrator may delegate performance of certain duties to other employees.	At all times relevant to this matter (and long before), the city manager had delegated such duties to Building Official Craig Mole' and his staff.
Sec. 94-33.—Applications and permits. The floodplain administrator, in coordination with other pertinent offices of the community, shall: ... (5) Interpret flood hazard area boundaries where such interpretation is necessary to determine the exact location of boundaries; a person contesting the determination shall have the opportunity to appeal the interpretation.	The appellants allege this subsection (5), which references interpretation of flood hazard area boundaries, pertains to the boundaries of an open body of water. This understanding is inaccurate. As detailed in Sec. 94-13, the “flood hazard area” boundary reference is a reference to FEMA special flood hazard areas, as determined by flood insurance rate maps (FIRM). The floodplain administrator’s duties related to this subsection (5) is simply reviewing a FEMA Special Flood Hazard Map to determine in which flood zone a property lies. The subject property lies wholly in the AE flood zone, with a base flood elevation (BFE) of 9. There is no dispute as to the correctness of this AE-9 determination.

Sec. 94-92. – Appeals. The planning commission shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the administration and enforcement of this chapter. Any person aggrieved by the decision of the planning commission may appeal such decision to the Sanibel City Council. Any person aggrieved by the decision of the Sanibel City Council may appeal such decision to the circuit court, as provided by Florida Statutes.

The alleged error—improper determination of the boundaries of an open body of water on the subject property—is not a decision or determination made by the floodplain administrator. Nowhere in Chapter 94 is there even reference to open body of water. In practice, it is the City’s Natural Resource Department that delineates the boundaries of open bodies of water.

Accordingly, because the appeal “alleges...an error in [a]...determination made by the floodplain administrator in the administration and enforcement of [Chapter 94]” it was required to be heard by the Planning Commission. However, the Appellants’ allegation that the floodplain administrator is the determiner of boundaries for an open body of water is inaccurate. In fact, consistent with City Manager Souza’s response to the appeal letter, the floodplain administrator does not make any determination related to the boundaries of an open body of water. So, although the appellants’ mere allegations of error by the floodplain administrator were sufficient to require the Planning Commission to hear the appeal, the fact that the floodplain administrator makes no open body of water boundary determination means the appellants necessarily cannot find any relief through their appeal under Chapter 94. Said differently, there is no potential for the Planning Commission to find an error in the floodplain administrator’s decision in this respect, because the floodplain manager made no such decision or determination related to the boundaries of an open body of water.

<p>Sec. 82-363. Environmental assessment report. When a proposed development involves areas of land which may contain rare, threatened, or endangered species of wildlife and their habitats; or...which are exceptionally low or wet with potential open bodies of water (typically D1 or D2 wetland zones), the city manager, or the manager's designee may, in their discretion, require the filing by the applicant of an environmental assessment report....</p>	<p>Prior to enactment of Ordinance 25-001 at the March 18, 2005 City Council meeting, Sec. 82-363 provided that the Planning Commission could require an applicant to file an environmental assessment report (EAR) for long-form applications before the Planning Commission. However, the authority to require an EAR no longer rests with Planning Commission, but rather with the city manager or the manager's designee. Accordingly, the Planning Commission lacks the authority to order an EAR. Additionally, the EAR is a potential requirement of an <i>applicant</i> for a permit for use in considering an application, not for an existing permit holder, the latter of which describes the current case.</p>
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PUBLIC COMMENT

Staff have received numerous public comments on this item.

RECOMMENDATIONS

Staff recommends the Planning Commission find:

1. Sec. 94-33(5), requires the flood plain administrator interpret flood hazard area boundaries in accordance with FEMA flood insurance rate maps and does not require the floodplain administrator to make a determination as to the boundaries of any open body of water; and
2. the floodplain administrator made no determination as to the boundaries of any open body of water on the subject property; and
3. The floodplain administrator did not err in any requirement, decision, or determination in interpreting the flood hazard area boundaries of the subject property.

And, with such findings, Staff further recommends the Planning Commission uphold the floodplain administrator's decisions with respect to Building Permit No. BLDR-2024-017801.