

**ATTACHMENT B - Planning Commission Resolution 22-03
DPLF-2021-29 Amendment**

RESOLUTION 22-03

**CITY OF SANIBEL
PLANNING COMMISSION**

IN THE MATTER OF: Consideration of a request for **Long Form Development Permit**, filed pursuant to Land Development Code Section 126-152(10), (Nonconforming uses) Repairs, rehabilitations or reconstruction of existing nonconforming seawalls in human-made waterbodies, located at 1610 Middle Gulf Drive (Spanish Cay Condominium) – tax parcel No. 25-46-22-T3-01400.00CE. The application is submitted by Hans Wilson and Associates, Inc. (the applicant) on behalf of Bel Lan Apartment Owners Inc. (the property owner). **Application No. DPLF-2021-29**

APPLICANT: Hans Wilson and Associates, Inc. (the applicant) on behalf of Bel Lan Apartment Owners Inc. (the property owner)

APPLICATION NO: DPLF-2021-29

DATE OF HEARING: March 8, 2022

ADOPTION OF RESOLUTION: March 8, 2022

WHEREAS, the Planning Commission heard an application filed pursuant to Land Development Code Section 126-152(10), (Nonconforming uses) Repairs, rehabilitations or reconstruction of existing nonconforming seawalls in human-made waterbodies; and

WHEREAS, it has been determined that the Applicant has complied with the requirements of Land Development Code Section Sec. 82-421. – Application, a long-form application shall be required for the following types of development: (1) All applications for development that do not qualify for short-form application; and

WHEREAS, a public hearing was legally and properly advertised and held on March 8, 2022 before the Sanibel Planning Commission; and

WHEREAS, on March 8, 2022 the Sanibel Planning Commission considered the information presented by the Community Services Department including their Staff Report; the testimony and evidence of the Applicant and its representatives; public comments and documents on file with the City; and

WHEREAS, Chair Roger Grogman, Vice Chair Eric Pfeifer, and Commissioners Laura DeBruce, Matthew Kirchner, Paul Nichols, Karen Storjohann and Ty Symroski, were present at the March 8, 2022 hearing; and

WHEREAS, the Sanibel Planning Commission, after full and complete consideration of the evidence presented during the hearing, at which written minutes were taken, makes the finding that the Record (without exhibits) is substantially as follows:

Community Services Director Keith Williams read into record the description of Application DPLF-2021-29.

The Commissioners were polled for site visits, ex-parte communications, and conflict:

- Chair Grogman	Site Visit	No Ex-parte	No Conflict
- Vice Chair Pfeifer	Site Visit	No Ex-parte	No Conflict
- Commissioner DeBruce	Site Visit	No Ex-parte	No Conflict
- Commissioner Kirchner	Site Visit	No Ex-parte	No Conflict
- Commissioner Nichols	Site Visit	No Ex-parte	No Conflict
- Commissioner Storjohann	Site Visit	No Ex-parte	No Conflict
- Commissioner Symroski	Site Visit	No Ex-parte	No Conflict

Scotty Lynn Kelly, City Clerk, swore in the following:

- Kim Ruiz, City of Sanibel, Planner
- Keith Williams, City of Sanibel, Community Services Director
- Dana Dettmar, City of Sanibel, Natural Resources Department
- Craig Chandler, City of Sanibel, Planning Supervisor
- Paul Domke, on behalf of the property owner
- Claudia Burns, Sanibel Resident

Ms. Ruiz gave a brief background of the proposed project, supportive of the applicant's position that the replacement of the existing seawall cap and addition of riprap is the most compliant alternative to stabilize the existing failing seawall.

The applicant proposes the replacement of the existing concrete seawall cap and the addition of a riprap at a 2:1 slope establishing an approximately 10-12-foot-wide rip-rap shelf along the entirety of the approximately 496-foot-long shoreline to reinforce and stabilize the existing failing nonconforming use seawall that is showing signs of nearing the end of its service life. The mass of the riprap will effectively replace the anchoring system of the existing seawall. The replacement seawall cap will utilize the existing tiebacks acting as an added/backup anchoring system.

In the process of installing the riprap it will be necessary to remove the deck boards of the existing observation platforms [docks] to properly place the rock riprap. The decking will be replaced with new material after the riprap has been installed.

The Land Development Code (LDC) does include standards for repairing nonconforming use seawalls on human-made bodies of water. The applicant has provided a plan that includes replacing the seawall cap and installing a 10-12-foot shelf of rock riprap with a maximum 2:1 slope to repair the nonconforming seawall at Spanish Cay Condominiums.

Staff concurs that the seawall should be allowed to be repaired as proposed with recommended conditions of approval. Natural Resources staff prepared a memorandum evaluating the proposed project with recommended conditions of approval.

The recommended conditions of approval are based upon standards of LDC Section 126-152(a)(10) repairs, rehabilitations, or reconstruction of existing nonconforming [use] seawalls in human-made waterbodies; standards of LDC Section 126-912 revetment conditions; LDC Section 126-798 altered lands ecological zone performance standards for hydrology; and site conditions.

Ms. Ruiz read into record the staff recommendation and the 12 conditions listed in the staff report which are recommended with any approval of the permit.

To date, Staff has not received any public comments pertaining to the subject development permit application.

On behalf of the property owner, Paul Domke, Hans Wilson and Associates, spoke to multiple renditions being worked through to meet the requirements. He spoke to the riprap being a support for the wall to add strength, the cap being replaced to ensure a clean edge to control storm water drainage, and the added French drain system. Mr. Domke spoke to condition #7 and inquired about relocating the 3-foot buffer so the walkable area between the buildings and the wall is not cut off.

Discussion ensued regarding replacing the sod in the walkable area as opposed to the buffer. Mr. Domke responded with the description of the French drain noting a hedge buffer above it would result in root interference in the future. He further noted the unique design being based on blending multiple designs (riprap, mangrove, seawall, and French drain) to meet the requirements of the City Code. He also clarified that only the decking will be replaced so rocks can be placed below the dock - no new pilings will be placed.

Continued discussion ensued regarding the plantings required in condition 7 to which Ms. Dettmar confirmed seeing the possibility of root interference. She also stated her agreement to a compromise to add additional plantings to adjust the buffer behind the seawall. Mr. Domke spoke to removing invasives and replacing with native plants. Discussion returned to the design of the French drains, to which Mr. Domke explained it would be parallel to the wall and made of a perforated pipe to move the water to the drainage pipe out to the waterbody.

Further discussion ensued regarding how the rocks will be moved and installed, where the staging area will be located, how to plant the mangrove seedlings, and water level of the main waterbody being controlled by a structure. Mr. Domke spoke to utilizing the tips of the parking area for staging, utilizing a couple small barges, and operating a small excavator to move supplies and install the rocks. He further spoke to recently completing a similar project with Lee County, noting the contractor will adjust the rocks as well as possible, add soil and plant the seedlings, hoping the flow of water does not wash the seedlings out before they can take root.

Discussion ensued regarding adding buffers along the parking lot between buildings A and B and E and F. Ms. Dettmar spoke to adding some sort of vegetative cover along the area that is being washed out and buffers would be feasible in those areas. Mr. Domke spoke to the parking lot being permeable paver coverage.

Commission inquired about revising the buffer to make the walkway accessible, removing the exotics and replacing with natives, and inquired if the applicants agree with the conditions. Mr. Domke spoke to having conversations with the owners to address concerns of the owners and City and agree to the conditions. Ms. Dettmar noted there was no existing habitat along the seawall.

Attorney Agnew spoke to Ms. Dettmar providing revised language for condition 7. Vice Chair Pfeifer suggested removing condition 7. Discussion ensued regarding the need for condition 7 for some portions of the buffer. Dana Dettmar proposed the language as “(except in front of the observation decks)”, changed to “(except in front of the building structures)” and adding language about the removal of pea-gravel to be replaced with vegetative cover. Commissioner Symroski suggested, “a vegetation buffer of native plants shall be installed” and deleting “along the entire length of the seawall (except in front of the observation decks)”. Ms. Ruiz spoke to striking “along the entire length of the seawall except in front of the observation decks” and the condition would read as “A vegetation buffer of native plants shall be installed at a minimum width of 3ft, to assist in deterring stormwater from directly discharging over the seawall and provide water quality protection for the Sanibel Slough (state verified-impaired waterbody). The location of the plantings to be determined during the landscape plan review by Natural Resources Staff.”

There were no public comments from the audience.

MOTION: Commissioner Kirchner moved, seconded by Commissioner Symroski, to approve Application DPLF-2021-29, with the 12 conditions listed in the staff report, with condition 7 revised as last stated by Ms. Ruiz, to direct staff to prepare a Resolution in conformance with this motion, to close the public hearing in this matter, and to authorize the Chair to execute the Resolution without bringing it back for further consideration. The motion carried 7-0.

NOW, THEREFORE, BE IT RESOLVED, the Planning Commission of the City of Sanibel, finds that all Application Requirements have been met and that **Application No. DPLF-2021-29** is **APPROVED** subject to the following twelve conditions:

1. The proposed repairs to the existing nonconforming use seawall shall be developed in conformance with the proposed site plan, more specifically plan sheets 3 through 5, included as part of Attachment A of the staff report and conditioned herein.
2. The rip-rap must consist of limerock between 12 and 36 inches in diameter (approximate distribution of rock size is 25% between 12 and 18 inches; 50% between 18 and 24 inches; 25% minimum 24 inch to maximum 36 inch toe stones placed along the toe) with smaller stones used to chink the larger stones for strength and to prohibit movement.
3. The top of the rip-rap will be no less than two feet below the top of the seawall cap.
4. The rip-rap shelf must be constructed with a maximum slope of 2:1 and consist of an approximately 10 to 12 foot width.

5. Turbidity curtains or similar devices shall be required during construction and a minimum of 24-hours after completion of construction to prevent siltation of the waterbody.
6. Red mangroves (18 inches minimum height nursery grown seedlings, or equivalent) shall be planted among the boulders on three-foot staggered centers, 3ft in depth, on the portion of the rip-rap closest to the seawall.
7. A vegetation buffer of native plants shall be installed at a minimum width of 3ft, to assist in deterring stormwater from directly discharging over the seawall and provide water quality protection for the Sanibel Slough (state verified-impaired waterbody). The location of the plantings to be determined during the landscape plan review by Natural Resources Staff.
8. A vegetation plan detailing the species, quantities, gallon-size, and planting locations of each species for both in-water and vegetation buffer plantings required above in Conditions 6 and 7 must be submitted to Natural Resources for review and approval prior to plant installation.
9. The existing rainwater downspouts that are directly discharging through the seawall into the canal must be redirected through the installation of an underground water dispersal system in substantial conformance with the conceptual plan designed by Hans Wilson and Associates, Inc. attached hereto as Attachment F with a final engineered design to be included with the building permit application for the replacement of the seawall cap.
10. All City-listed invasive exotics shall be removed and the property maintained free of these exotic pest plants in perpetuity.
11. The development shall comply with all applicable standards and requirements of the Land Development Code. The Community Services Department Planning Branch may attach typical requirements for new construction required by the Land Development Code as advisory conditions to the Development Permit.
12. All work shall be performed by licensed contractors as required by State law and by County or City of Sanibel licensing ordinances, unless otherwise exempt.

EXPIRATION OF PLANNING COMMISSION ACTION;

Development Permit: In accordance with Land Development Code Section 82-424 (f) Action on Application. When a Development Permit is approved by the Planning Commission with conditions imposed thereon, such conditions shall be satisfied within the time limit specified in the Resolution issued by the Planning Commission. When such conditions specify requirements to be specified for satisfaction of the conditions, such conditions must be satisfied within six (6) months after issuance of the development order.

EFFECTIVE DATE OF PLANNING COMMISSION ACTION:

Development Permit: In accordance with Land Development Code Section 82-97. All actions of the Planning Commission, including those which constitute final decisions, shall be effective upon the date of filing of the adopted Resolution with the City Manager, or at a later date if provided in the Resolution. However, permits authorized by final decisions shall not be issued until one of the following has occurred: 1) The time for filing an appeal to City Council has elapsed; 2) The applicant and all other persons having appeal rights have filed a written waiver of appeal rights; 3) If an appeal has been timely filed, the City Council has finally disposed of the matter.

RIGHT TO APPEAL PLANNING COMMISSION ACTION:

In accordance with Land Development Code Section 82-98. Appeals. The applicant is hereby advised that the following persons have the right to appeal a final decision of the Planning Commission adverse to their interests: 1) The applicant; 2) The owner of the property proposed for development; 3) The developer of the property proposed for development; 4) Any other person residing upon, or owning property within the City, or owning or operating a business within the City, who participated by written comment before or at the Planning Commission hearing or who participated in person or through an authorized agent at the Planning Commission hearing.

FIFTEEN DAY TIME LIMIT FOR FILING APPEALS OF PLANNING COMMISSION ACTION:

In accordance with Land Development Code Section 82-98. Appeals. The appeal shall be filed within 15 days after the date that the Planning Commission decision was filed. The appeal shall be filed with the City manager, and the filing fee shall be paid as a prerequisite to filing.

The foregoing Resolution was adopted by the Planning Commission upon a motion by Commissioner Kirchner and seconded by Commissioner Symroski, and the vote was as follows:

Roger Grogman	<u>Yea</u>	Eric Pfeifer	<u>Yea</u>
Laura DeBruce	<u>Yea</u>	Matthew Kirchner	<u>Yea</u>
Paul Nichols	<u>Yea</u>	Karen Storjohann	<u>Yea</u>
Ty Symroski	<u>Yea</u>		

DULY PASSED AND ADOPTED this 8th day of March 2022.

SANIBEL PLANNING COMMISSION

Signed: _____

Roger Grogman, Planning Commission Chair

01/28/22
Date Signed

Approved As to Form: _____

John D. Agnew, City Attorney

4/28/22
Date Signed

Date Filed With City Manager: _____