



City of Sanibel

Planning Commission

STAFF REPORT

Planning Commission Meeting:
Agenda Item:

January 27, 2015
No. 6a.

RE: The continued discussion and review of the Planning Department's outline for the proposed preparation of a draft ordinance to the Land Development Code establishing a public notice and hearing process for the Planning Commission to consider specific waiver requests to allow improvements to lawfully existing nonconforming parcels, buildings and structures located within the General, Town Center General and Town Center Limited Commercial Districts.

BACKGROUND

As part of the Commercial Redevelopment Study, this is a continuation of the public hearing held by the Planning Commission on December 9, 2014 with regards to the preparation of a draft ordinance amending the Land Development Code, to allow the Planning Commission to grant certain waivers associated with the rehabilitation and improvements of lawfully existing nonconforming properties and structures located within the City's commercial districts. At this meeting the Planning Commission directed staff to bring back for its consideration the specific language for the draft Ordinance. This report and attached Ordinance outline contain the recommended changes that Staff propose for the final draft ordinance which will be presented at the Planning Commission February 2, 2015 meeting.

It should also be noted that this is one of the final major components of the Commercial Redevelopment Study that was adopted and directed by City Council. The five (5) components of this Study include the following:

1. Permitted and conditional uses;
2. Nonconformities;
3. Off-street parking requirements for commercial uses;
4. Inter- and Intra-connectivity; and
5. Setbacks.

To date legislation in the form of an ordinance has been drafted and reviewed by the Planning Commission and directed to City Council for approval to amend Land Development Code procedures for permitted and conditional uses, off-street parking requirements and inter-and intra-connectivity. It should also be noted that it was decided to address the remaining Commercial Redevelopment components (i.e. nonconformities and setbacks) through the proposed draft waiver ordinance.

PURPOSE AND INTENT

To establish a public notice and hearing process where the Planning Commission can consider individual requests filed for a set of waivers to specific zoning requirements of the Land Development Code. The waivers are designed to assist the Planning Commission's consideration and review, on an individual basis, after taking into consideration the unique conditions and limitations that exist on properties located within the City's Commercial Districts that desire to perform certain improvements on nonconforming sites, buildings and accessory structures. The intent of the waivers themselves are not intended to create any new nonconformity nor to further the extent of any existing nonconformities, but to give the Planning Commission the authority and flexibility to evaluate each property on its own merits and constraints. It is further the intent of this section that a waiver shall not be granted to permit the demolition or reconstruction of an existing nonconforming buildings or structures, but to ensure that the proposed restoration and improvements will preserve the City's unique and rural character in a manner that is consistent with the goals and objectives of the Sanibel Plan.

SUMMARY OF THE DRAFT WAIVER ORDINANCE

Included with this report as **Attachment "A"** is an outline for the proposed draft waiver ordinance submitted for Planning Commission consideration and review. The outline includes as strikethroughs and underlines the proposed language for the final preparation of the draft waiver ordinance which includes provisions for the following:

Part I. Proposed Amendments to Subpart B, of the Land Development Code, Chapter 82 Administration, Article III, Planning Commission, Division 3, Specific Authority, Subdivision XIII, Waivers to Lawfully Existing Nonconforming Properties and Structures Located in the General, Town Center General and Town Center Limited Commercial Districts; and

Part II. Proposed Amendments to Other Sections of the Land Development Code.

RECOMMENDATION

After today's discussion and review direct staff to return on the February 10, 2015 meeting with a final draft ordinance that includes all of the Planning Commission's comments and recommendations and a prepared resolution to forward the ordinance to City Council for a first reading on March 3, 2015.

Attachment A: Outline for the Draft Waiver Ordinance

OUTLINE FOR THE DRAFT WAIVER ORDINANCE

Part I. Proposed Amendments to Subpart B, of the Land Development Code, Chapter 82 Administration, Article III, Planning Commission, Division 3, Specific Authority, Subdivision XIII, Waivers to Lawfully Existing Nonconforming Structures and Properties Located in the General, Town Center General and Town Center Limited Commercial Districts

Authorization

The Planning Commission, after hearing, may grant waivers from a set of specific requirements of certain applicable provisions of this Land Development Code's required condition but only for those lawfully existing nonconforming structures and properties located within the General, Town Center General and Town Limited Commercial Districts, in accordance with the standards set forth in this division, except that the Planning Commission shall not grant any waiver which will, directly or indirectly, increase the maximum floor area or height allowed for commercially zone parcels, or that will increase or further the extent of any lawfully existing nonconformity on a commercially zoned property developed prior to the adoption and effective date of this Land Development Code.

Waivers may be granted by the Planning Commission for the following set of applicable requirements and provisions associated with Chapter 126 Zoning of the Land Development Code.

1. The design specifications for off-street parking spaces and loading areas;
2. The installation, location, numbers, types, size and variety specified for commercial vegetation buffers and landscaping;
3. Modifications and improvements to lawfully existing nonconforming parcels of land, buildings or structures, (including the roof or other architectural features of such buildings or structures), that are situated within the minimum front, side or rear yard setbacks for the commercial districts.
4. The maximum allowed land area to be either covered with impermeable surfaces or developed for a specific use or cleared of vegetation for nonconforming properties located within the commercial districts; and
5. Increase in the number of ingress/egress driveways access to any of the commercially zoned properties that will enhance safety and traffic circulation.

Conditions.

In approving any requested waiver, the Planning Commission may attach to the approval such conditions and limitations as are necessary to ensure that any development deviating from the requirements of this Land Development Code pursuant to such waiver approval is in compliance with the standards specified in section 82-XXX and is not detrimental to the public health, welfare, or safety, or to the quiet and peaceful use and enjoyment of adjoining lands and uses. Any development which deviates from the standards of this Land Development Code, pursuant to an approved waiver, but which is not in compliance with the conditions attached to the approved variance, shall be a violation of this Land Development Code.

Application and hearing

Application for a waiver shall be made on such form as is provided by the city and shall include such information, as identified in section 82-382, as the city manager determines to be necessary to a complete determination of the issue. The hearing on the application shall be conducted by the Planning Commission as for the consideration of an application for long-form development permit as provided in sections 82-97, 82-422 and 82-423.

Action upon application

The Planning Commission, immediately or within 60 days after closing the hearing, shall, by resolution, take action upon the application. A copy of the resolution shall be forwarded to the owner and the applicant within ten days following the adoption of the resolution.

Standards—Generally

The Planning Commission may grant a waiver upon a positive finding of the following:

1. The applicant's request must be able to identify the specific hardship or practical reason for not being able to meet the regulation as a result of 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.
2. The applicant's request must be able to identify any special conditions related to unusual constraints peculiar to the specific lot or parcel or relate to special conditions of the structure involved, and that are not generally applicable to other lands or structures similarly situated.
3. The applicant's request cannot be based upon the cost of redeveloping in compliance with the Land Development Code ~~or be financial in nature and~~

must serve the public interest by way of reducing any negative impacts upon surrounding properties and land uses nearby.

4. The proposed waiver shall not diminish property values in, nor alter the essential character of, the area surrounding the site and shall not otherwise interfere with or negatively impact the customary use and enjoyment of adjacent property owners and their lands.
5. The proposed waiver shall not be 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.
6. The waiver granted must be the minimum necessary to mitigate the hardship demonstrated.

Part II. Proposed Amendments to Other Sections of the Land Development Code

Subdivision I. - In General

Section 82-116. - Variances, temporary uses, conditional uses, waivers.

Approvals of variances, temporary uses, ~~and~~ conditional uses and waivers shall expire if any necessary development permit to implement such approval is not obtained within a period of 12 months after approval, or, if a development permit is obtained within 12 months, upon expiration of the development permit.

Sec. 82-117. - Authorization.

The Planning Commission, in addition to hearing requests for development permits, conditional uses, temporary uses, variances, waivers, interpretation of zone boundaries, and interpretation of the language of the Sanibel Plan and this Land Development Code, shall hear requests for the re-establishment of nonconforming uses that have been abandoned. The Planning Commission shall also review applications for amendments to the Sanibel Plan, amendments to zone district boundaries, and amendments to the regulations contained in this Land Development Code, and shall, after hearing, make a recommendation, for council action, in accordance with the standards set forth in this division. In addition, the Planning Commission shall conduct an annual review of the capital improvements element of the Sanibel Plan. The Planning Commission shall also review, annually, the future land use element, the permitting process and the effectiveness of below market rate housing provisions.

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.
- (2) Application for development which the city manager determines to be inconsistent with the plan or raise issues as to interpretation of the Sanibel Plan or this Land Development Code.
- (3) All applications for development which require a variance or **waiver**.
- (4) All applications for development requiring conditional use permits.
- (5) All applications which require interpretation of zone line.
- (6) Any application in which the developer seeks an interpretation of the language of the Sanibel Plan or this Land Development Code inconsistent with that of the city manager.
- (7) Any application for placement of a structure on the historic register, in accordance with the procedures set forth in [chapter 98](#).
- (8) Any application which raises questions as to compliance with [section 86-43](#).
- (9) Building back either a nonconforming structure or a nonconforming use within a nonconforming structure which has been destroyed or substantially damaged by a natural disaster within the three-dimensional outline of the lawfully existing habitable area of the pre-disaster building, but the footprint of the lawfully existing pre-disaster building is moved in a manner that reduces the pre-disaster building's encroachment into the Gulf Beach Zone.
- (10) All applications for a principal structure that includes an accessory structure, integrally attached to the principal structure, which requires a long-form application.

Section 90-489. Applications for Waivers to Certain Required Conditions for the General, Town Center General and Town Center Limited Commercial Districts Involving Nonconforming Buildings and Structures

For an application filed pursuant to section 82-421, requesting as a long-form permit a waiver from certain requirements set forth in the applicable provisions of this Land Development Code, the fee shall be \$1,000.00.