



Meeting Minutes - Draft

Planning Commission

The times are estimated, but public hearings will not commence prior to the time stated

Tuesday, August 10, 2021

9:00 AM

City Hall

1. Call To Order

The meeting convened at 9:01 a.m.

2. Pledge of Allegiance (Commissioner Kirchner)

Commissioner Kirchner led the Pledge of Allegiance.

3. Roll Call

Present: 5 - Commissioner Matthew Kirchner, Commissioner Karen Storjohann, Commissioner Paul Nichols, Commissioner Ty Symroski, and Commissioner Laura DeBruce

Absent: 2 - Vice Chair Roger Grogman, and Commissioner Eric Pfeifer

- a. Motion to excuse absent member(s): Chair Grogman & Vice Chair Pfeifer

Commissioner Kirchner moved, seconded by Commissioner Symroski to excuse Chair Roger Grogman and Vice Chair Eric Pfeifer. The motion carried.

Excused: 2 - Vice Chair Grogman, and Commissioner Pfeifer

4. Public Comments for Items Not Appearing on the Agenda

There were no public comments from the audience.

5. City Council Liaison Report

Mayor Smith spoke to the increase in COVID cases and stated Council held a Special meeting on Saturday, August 7, 2021 at 10 a.m., noting Councilman Henshaw participated remotely due to extenuating circumstances.

- Attorney Agnew outlined what Council could and could not do under the Governor's Executive Orders in place.
- Council passed a motion for anyone over the age of 2 to wear facial coverings inside the Recreation Department
- Council passed a motion for employees and visitors aged 2 years and older to wear facial coverings inside the City Hall complex and Public Works
- Approved electronic signage coming onto the island with a dual message encouraging masks and vaccinations
- Passed Resolution 21-66 encouraging mask wearing and vaccinations

- Next meeting is August 24, 2021

6. Consent Agenda

a. Approval of the July 27, 2021 Minutes

Commissioner Kirchner moved, seconded by Commissioner DeBruce to adopt the July 27, 2021 minutes. The motion carried.

Excused: 2 - Vice Chair Grogman, and Commissioner Pfeifer

7. Public Hearings:

- a. Consideration of an application filed pursuant to Land Development Code Section 82-138, Application and hearing, for a Variance to Land Development Code Article XIV. - Supplementary District Regulations, Division 2. - Accessory Structures, Subdivision 1. - In General, Section 126-852. -Requirements, Subsection (3) Side and rear yard setbacks, to allow for the installation of an emergency electrical power generator, stand, roof over stand, and sound barrier wall closer than 10-feet from the side yard property line at a single-family residence located at 1051 Blue Heron Drive (tax parcel no. 20-46-22-T4-00008.0300). The application is submitted on behalf of the property owner, Andrew I. and Geraldine Morrison, by Corey D. Carlson with C-Level Construction Group LLC. **Application No. 21-12924 V**

Community Services Director Keith Williams read into record the description of Application 21-12924V.

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

By motion and second Chair Grogman and Vice Chair Pfeifer were excused from the meeting.

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

- Keith Williams, City of Sanibel, Community Services Director
- Kim Ruiz, City of Sanibel, Planner

Planner Kim Ruiz gave a brief background of the proposed generator project noting the subject property has an existing single-family residence on a parcel located within the unrecorded subdivision of Tahiti Shores. The parcel is at the bend in the road resulting in an irregularly shaped lot with a narrower end at the roadway fanning out to a wider end forming the rear property line. An open body of water abuts the rear property line.

The applicant proposes to construct a 50-inch-wide by 60-inch-long platform 6-feet above existing grade to hold a whole house emergency electrical generator. The platform and generator are proposed to be installed on the northeast side of the house and encroach 3-feet into the 10-foot side yard setback. A site visit was conducted by Planning Staff who noted there appears to be a potential alternate location for placement of the emergency electrical power generator at setbacks may be met or further reduced such as within the garage, on the patio area in the northeast corner of the existing house, or outside of the existing six-foot stucco panel fence in the northeast corner of the existing house.

Discussion ensued regarding the applicants not being in attendance for the hearing. Ms. Ruiz spoke to having provided the staff report and information to the applicant and providing the opportunity for their attendance. City Attorney, John Agnew, spoke to the meeting being properly noticed and opportunity provided for the applicant to participate. Commission discussed the option for continuing to the next meeting.

Commissioner Symroski moved, seconded by Commissioner DeBruce to continue the public hearing to the next meeting.

Discussion ensued regarding the applicant receiving notification of the meeting as advertised, emailed information, and the applicant provided a response narrative.

Clerk Kelly swore in Planning Supervisor Craig Chandler who spoke to Planner Ruiz clearly communicating with the applicant regarding the process for the hearing. Mr. Chandler spoke with the contractor prior to application and conveyed the same information. Mr. Chandler further spoke to a continuance not benefiting the applicant due to the analysis provided in the staff report.

There were no public comments from the audience.

Commissioner DeBruce withdrew her second and the motion failed for lack of a second.

Ms. Ruiz read into record the seven standards required to be met for approval of a variance and spoke to the applicant not providing enough detailed information to verify there is not an alternative location for the generator, the subject property does not demonstrate unusual conditions, and information was not received detailing why the generator may not be installed in the garage or elsewhere on the property where setbacks may be met.

Staff finds the applicant has not demonstrated that the proposed variance to the side

yard setback meets the seven variance standards and does not recommend approval of the variance request.

Discussion ensued regarding if the applicant responded with other options for locations of the generator upon being notified of staff recommendation for denial. Ms. Ruiz spoke to the applicant maintaining the generator could not be placed in the garage and that the patio area (option A) was not fitting and did not state that option B was not viable.

Further discussion ensued regarding the neighbor's window being at least 10 feet away and required 30-minute delay for generators to turn on. Ms. Ruiz spoke to the report stating that it would not meet the sound standards and would need a full wall, not lattice work as proposed. Commission inquired if the house meets current base flood regulations to which Ms. Ruiz spoke to the home being built before the current standards being implemented.

Continued discussion ensued regarding the application not meeting six of the seven standards, health reasons not being a reason for the generator, other options for location of the generator that would not require a variance, and what type of fuel to be used for the generator.

There were no public comments from the audience.

Commissioner Symroski moved, seconded by Commissioner Kirchner to deny the application, 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 5-0 with Commissioners Grogman and Pfeifer excused.

Excused: 2 - Vice Chair Grogman, and Commissioner Pfeifer

- b.** Consideration of an application filed pursuant to Land Development Code Section 82-138, Application and hearing, for **Variances** to Land Development Code Chapter 126, Article VII, Division 5 - E-2 Gulf Beach Ridge Zone, Section 126-354(g) Coverage; Section 126-354(h) vegetation removal and developed area; Chapter 126, Article XV, Division 2, Subdivision II, Section 126-1341 - Required parking spaces; Chapter 126, Article XV, Division 4, Section 126-1406 - Design specifications; and Land Development Code Chapter 122, Article II, Division 3 - Residential Development Along Arterial and Collector Roads, Section 122-72 - Location and size of vegetation buffers; and Section 122-73 - Types, varieties, and numbers of plants required, to allow for the reconfiguration of the existing nonconforming parking lot accessory to an existing condominium complex located at 3041 West Gulf Drive (tax parcel No. 34-46-22-T2-01100.00CE); and Consideration of a **Development Permit** implementing the requested variances. Both applications are submitted by Omega Consulting Group, LLC, on behalf of property owner Breakers West Condo Association, Inc. **Application Nos. 21-12700V and 21-12701DP**

Community Services Director Keith Williams read into record the description of

Applications 21-12700V and 21-12701DP.

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

By motion and second Chair Grogman and Vice Chair Pfeifer were excused from the meeting.

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

- Josh Ooyman, City of Sanibel, Planner
- Keith Williams, City of Sanibel, Community Services Director
- Beverly Grady, Roetzel & Andress, on behalf of Breaker's West Condo Association
- Jay Westendorf, Omega Consulting Group, on behalf of the Applicant/Owner
- Brian Smith, Ensite Inc., on behalf of the Applicant
- Dana Dettmar, City of Sanibel, Natural Resources Department
- Sherry Schneider, San Cap Management, Property Manager

Planner Ooyman gave a brief background of the proposed reconfiguration of the existing parking lot to improve vehicular access and the provision of off-street parking spaces at an existing condominium complex in the Resort Housing District located at 3041 West Gulf Drive.

Mr. Ooyman spoke to the attachments included in the staff report being A) Variance Application and Applicants Response to Variance Standards, B) Applicant's Narrative, C) Location Map and Arial Photos, D) Reduced Size Survey, E) Existing Site Plan, F) Proposed Site Plan, G) Proposed Site Plan Aerial Overlay, H) Proposed Landscape Plan, and I) Natural Resources Memorandum.

Mr. Ooyman described the property as a lawfully existing nonconforming 18-unit condominium complex known as Breakers West located within the City's resort housing district, which was constructed prior to City incorporation. He further spoke to there historically being two vehicular access points available to residents being a driveway abutting the western portion of the property and a strip of land located on Waterside Inn property located to the east of the subject property.

The applicant's narrative stated in 2016 Waterside Inn filed a lawsuit denying the use of the Waterside driveway to Breakers West. In 2018 a judgment was passed in favor of Waterside Inn followed in 2019 with a permitted fence being constructed along the

west Waterside Inn property line precluding access to the Breakers West property. As a result, the traditional vehicular access pattern (entering from the Waterside driveway) was disrupted, and the existing angled parking space configuration was rendered incompatible leading to the loss of already deficient parking spaces. The Breakers West driveway is now used as a two-way drive rather than a one-way drive as it previously existed.

The proposed plan will facilitate improved two-way vehicular access on the Breakers West driveway and provide and increase of seven parking spaces. To accommodate the proposed reconfiguration and parking addition, the applicant requests variances to impermeable coverage and developed area, to the number and depth of parking spaces, and to vegetation buffers.

To date, Staff has received no public comments regarding the variance applications. Staff supports approval of the requested variances to impermeable coverage, developed area, number of parking spaces, and parking design standards. The variance request to the vegetation buffer can be supported upon review and approval of a revised vegetation buffer plan currently being developed by the applicant.

If the Planning Commission finds that the application meets the seven variance standards, Staff recommends the six conditions listed in the staff report be included in approval.

Beverly Grady, Roetzel & Andress, on behalf of Breakers West Condominium Association, introduced other representatives present for the hearing. Ms. Grady then spoke to the request being for the reconfiguration of the existing nonconforming parking lot at 3041 West Gulf Drive. She spoke to the plan being for 25 parking spots requesting a variance for 2 parking spots, a variance for depths of 16-feet instead of 18-feet, and vegetation variance from medium tree requirements by five trees.

The applicants agree with the conditions listed in the staff report. The application was provided in cooperation with working with Staff. Ms. Grady gave a brief history of the inception and creation of Breaker's West and the access points to the property, speaking to the cause of the need for the application being Waterside Inn filing the lawsuit denying the use of the Waterside Inn access.

Discussion ensued regarding adding width to the driveway and removing a buffer to which Jay Westendorf, Omega Consulting Group, spoke to the original site plan showing the driveway from property line to the building which is 17 ½ feet and the proposed project is not to widen the driveway. Further discussion ensued regarding emergency access to the property, having the additional seven parking spaces not assigned to specific units, and getting agreement between Staff and the HOA

regarding the vegetation plan.

Dana Dettmar, Natural Resources Department, spoke to receiving the new plans on Friday and that the plans were not provided in the 30-day time limit and had not been reviewed. Attorney Agnew spoke to the current adjustment to procedures to receive the information in time for review and that the revisions were provided following receipt of the staff report and the option for continuing the vegetation portion of the request to the next meeting. Discussion ensued regarding if one request were continued if it would hold up approval of the rest of the project to which Mr. Ooyman stated that all the variance requests were under one application number.

Clerk Kelly swore in Planning Supervisor Craig Chandler who spoke to casting no blame on the applicant and the issue being a matter of process.

Commission spoke to the distinction of having the opportunity to review and approve and inquired if Natural Resources had had time to review. Ms. Dettmar spoke to staff not having time to review the plans or compare to current onsite conditions.

Attorney Agnew spoke to the opportunity for Commission to continue a portion of the application relating to vegetation and approve the remainder of the items.

Ms. Grady spoke to no new information being submitted and that only a response was being submitted. Ms. Grady provided to Commission print outs of the applicant's responses to enter into the record. She spoke to not having an option for relocating the path that connects Parking B and C, willing to relocate ADA ramp to pool to improve buffer, added more trees and asking for a lesser variance, reduction in variance to 5, exceeding coverage of small trees and shrubs, willing to split plan into two schedules, willing to change Silver Buttonwood to Pitch Apple, make 5b a condition, make 6b a condition, and make 7 and 8 conditions. She further stated there are no new plans and requesting the items listed in the memorandum dated August 4, 2021, be made conditions in the approval. Ms. Dettmar requested the opportunity to review new plans and compare to site conditions to ensure the request from the applicant is a legitimate request.

Brian Smith, Ensite Inc., spoke to losing ingress and egress in two locations and the landscape plan includes the trees where they could fit in the available, plant able areas. Further discussion ensued regarding there being an area of buffer between the parking lot and the pool which is accommodated by the relocation of the ADA ramp, area varies between 5-9 feet and keeping the trees that are currently planted in the areas.

Continued discussion ensued regarding wordsmithing the motion and allowing portions of the project to move forward. Commission inquired how many trees are currently on the property to which Brian Smith spoke to adding trees to the property and that

there are currently 18 existing trees.

Commission spoke to not wanting to truncate the process by Natural Resources not having the opportunity to do a site visit and review of the plans and current conditions.

There were no public comments from the audience.

Commissioner Storjohann inquired if the intention of the motion was for the Applicant to come back before the Commission if an agreement was not reached with Natural Resources by end of the week to which the motioner and seconder concurred.

Ms. Grady stated the applicant agreed with the conditions, Ms. Dettmar noted she was also in agreement with the time frame for coming to an agreement.

Commissioner Kirchner moved, seconded by Commissioner DeBruce to approve 21-12700V and 21-12701DP with the 6 conditions listed in the Staff Report and the 8 items in Attachment I of the Staff Report, that Natural Resources Staff and the Applicant come to an agreement on final vegetation plan by the end of the week, if no agreement then come back to Commission for further consideration, direct Staff to draft a resolution in conformance with the motion, close the public hearing, and authorize the Chair to execute the Resolution without bringing back for further consideration. The motion carried 5-0 with Chair Grogman and Vice Chair Pfeifer excused.

Excused: 2 - Vice Chair Grogman, and Commissioner Pfeifer

The meeting recessed at 10:37 a.m.

The meeting reconvened at 10:50 a.m.

- c. Consideration of a recommendation to City Council for an Ordinance amending the Code of Ordinances, amending Subpart B Land Development Code, Chapter 78 - General Provisions, Section 78-1. - Rules of Construction and Definitions; amending Chapter 126 - Zoning, Article IV. - Conditional Use, Amending Section 126-101. - Seawalls as Accessory Structures; amending Chapter 126 - Zoning, Article IV. - Conditional Use, adding Section 126-106. - Seawall as Accessory Structure Placed Waterward of Existing Seawall; amending Chapter 126 - Zoning, Article XIV. - Supplementary Structures, Subdivision II. - Accessory Marine Structures, Section 126-875. - Waterward Extension; amending Chapter 126 - Zoning, Article IV. - Conditional Use, Section 126-99 - Erosion Control Structures; amending Chapter 126 - Zoning, Article V. - Nonconformances, Division 2. - Uses, Section 126-152. - (Nonconforming Uses) Exceptions and Prohibitions; amending Chapter 126 - Zoning, Article V. - Nonconformances, Division 3. - Structures, Section 126-172. - (Nonconforming Structures) Improvement, Reconstruction or Relocation Prohibited, Exceptions; amending Chapter 126 - Zoning, Article XIV. - Supplementary Structures, Subdivision II. - Accessory Marine Structures, Section 126-885. - Materials, as Recommended by the LDC Review Subcommittee and Pursuant to Land Development Code Chapter 82 Administration, Article VI. - Amendments; Section 82-97 - Conduct of Hearings; Action and Section 82-117 - Authorization, for the Purpose of Land Development Code Regulations.

(Continued from 07/27/21)

Director Williams read into record the description of the proposed code amendments.

Planner Kim Ruiz noted there was no new presentation. Discussion ensued regarding if the terms “certified design engineer” and “professional engineer” were interchangeable, to which Ms. Ruiz noted that “professional” and “licensed” are the same.

Commission spoke to the process being money driven and not planning driven, the need to plan versus react, concerns were expressed regarding the 12 inch or 18 inches for maximum extension waterward, and the possibility of existing seawalls extending forward of the current neighboring walls.

Mr. Agnew spoke to condition 13 providing an easement requirement, further stating that the easement documents would outline who would be responsible for the seawall repairs within it. Director Williams spoke to ownership scenarios being 1) City owned, 2) private canals, 3) sovereign submerged lands of the State of Florida. Discussion ensued regarding ownership, and who was responsible for the maintenance and repairs. Mr. Williams spoke to tidal research and similar cases having been brought forward on private canals, but typically finding that they are sovereign submerged lands of the state of Florida.

Continued discussion ensued regarding seawall repair conditions not being based on cost, but rather based on conveniences, disruptions to neighboring properties, and the footprint that would be required. Discussion continued regarding there not being legislation that addresses requiring property owners to maintain their seawall, requiring an easement, and the materials used which are currently not addressed in the code.

Attorney Agnew spoke to the code addressing vinyl seawalls and how it is allowable to replace a vinyl seawall within the same footprint. The discussions branched out and included if prudence was considered. How if the primary concern is putting a wall in front of an existing wall, what if the wall in front of the existing fails and there is not a way to replace the now current wall.

Commission spoke further to concerns regarding the property lines, putting vinyl into the environment, the logistics for fill between the existing structure and the new, being satisfied with the inclusion of a requirement for a certified engineer, ex-parte communications with Ryan Orgera from the Sanibel Captiva Conservation Foundation in regards to the materials used, and the possibility of continuing to the next meeting when a full Commission was present.

Attorney Agnew spoke to the Commission's role including a recommendation to City Council either in support of or denial of the recommendations. The item could be continued to the September meeting if the variable conditions could be included as background for Council, the desire to continue to next Commission meeting with more

members present, being not as concerned with encroachment or material issues as applicants will come before Commission for approval, conditional use process lays out the frame work for considerations and allows experts to pose solutions for individual properties when needed, and already taking into account the work that has gone into the process.

Public Comment:

- Claudia Burns
- Austin Peterson - Stokes Marine

Attorney Agnew spoke to scriveners errors being corrected being included in the motion.

Commissioner Nichols moved, seconded by Commissioner Symroski forwarding to City Council recommendation to approve the ordinance as drafted with scriveners errors corrected. The motion carried 3-2 with Chair Grogman and Vice Chair Pfeifer excused.

Opposed: 2 - Commissioner Kirchner, and Commissioner Storjohann

Excused: 2 - Vice Chair Grogman, and Commissioner Pfeifer

8. Report from Director of Community Services (Keith Williams)

- a.** Upcoming meeting dates:
 - i. Planning Commission - Tuesday, September 14, 2021
 - ii. Below Market Rate Housing Review - Tuesday, September 28, 2021
 - iii. Report to City Council - Tuesday, August 24, 2021 - Commissioner Symroski

Director Williams spoke to the next meeting of the Below Market Rate Housing Review Subcommittee scheduled for September 28, 2021, and the Capital Improvement Project Review Subcommittee meeting scheduled for October 26, 2021.

- b.** Planning Priority Matrix

Director Williams noted the matrix would continue to be attached to Planning Commission agendas for informational purposes and would be brought back as needed.

9. Report from Commission Members

Commissioner Symroski spoke to comments regarding the 1000 squarefoot penalty applied to commercial properties that also had residential properties included.

Director Williams spoke to the Below Market Rate Housing Subcommittee being the platform for addressing the issue of a penalty for mixed use properties. Regarding the Shared Use Path Master Plan, staff is working to address and prepare for approval.

10. Report from Commission Chair

Commissioner Storjohann spoke to previous Commission meetings addressing the penalty of squarefootage being due to properties that had rental properties above and that some of those properties were being rented out at or below the Below Market Rate Housing thresholds while not being in the Community Housing and Resources (CHR) program.

11. Public Comment

There were no public comments from the audience.

12. Adjournment

There being no further business the meeting adjourned at 11:42 a.m.