

6. **CONSENT AGENDA**

- l. Request from the Yachtsman's Cove Property Owners Association for a waiver of fees associated with a variance application **AND RESOLUTION 11-006 AUTHORIZING AN APPLICATION FEE WAIVER RELATING TO A UNIQUE DEMONSTRATED HARDSHIP CONCERNING A FENCE SETBACK APPLIED FOR BY THE YACHTSMAN'S COVE PROPERTY OWNERS ASSOCIATION; AND PROVIDING AN EFFECTIVE DATE**

Yachtsman's Cove POA  
518 N. Yachtsman Dr.  
Sanibel, Fl 33957

RECEIVED BY  
10 DEC 29 AM 11: 01  
CITY OF SANIBEL  
ADMIN./LEGIS.

Pamela Smith  
City Clerk, City of Sanibel  
800 Dunlop Rd.  
Sanibel, Fl 33957

December 29, 2010

Dear Ms. Smith:

I would like to request that you include the issue outlined in this letter on the agenda for the January 4<sup>th</sup> Council meeting.

Yachtsman's Cove Property Owners Association (YCPOA) is requesting that all or part of the fees be waived relating the City variance process which is required for us to gain approval to erect a fence around our community pool. This fence is the last of several improvements which we have made that have been mandated by recent changes to Florida state law.

The required fence would surround our pool which was originally constructed under City permit in 1981. The fence would be closer than 20 feet to the canal and thus is considered a new non-conforming structure. In essence, Florida state law conflicts with City ordinances in this instance and there appears to be no provisions in the City code to allow for such conflicts to be resolved, short of a full variance process. We have submitted the variance request for consideration by the Planning Commission.

This variance request is perfunctory, as there appears to be no options except for it to be granted.

We have already spent thousands of dollars and many hours of unproductive time dealing with this issue and respectfully request your consideration for a fee exemption relating to this variance process. We are just trying to bring our community pool into compliance with the current best health and safety practices.

Sincerely,



Ed Kleinow  
President, Yachtsman's Cove Property Owners Association

Cc: Ben Pople, Planning Department 395-2009



City of Sanibel  
Planning Department  
**MEMORANDUM**

DATE: December 29, 2010  
TO: Judie Zimomra – City Manager  
FROM: James C. Jordan – Planning Director  
**SUBJECT: Yachtsman's Cove POA, Request for Fee Waiver**

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On 11-08-10 Yachtsman's Cove POA submitted a development permit application to install a pool safety fence enclosure around an existing swimming pool and deck in order to bring the property in compliance with applicable state pool safety requirements. The existing swimming pool and deck is a lawfully existing nonconforming structure that is noncompliant with the current 20 feet minimum setback requirement from an open body of water.

Staff has held discussions with the representative for property owners to discuss available permitting options including, but not limited to, the filing of a variance application. The property owner has submitted a variance application to allow the pool safety fence to be installed closer than the minimum 20 feet requirement from an open body of water.

It should be noted that under the current Redevelopment Study for the Resort Housing District the Planning Department is suggesting that in the interest of safety the Land Development Code should be amended to allow for the fencing-in or screening-in of accessory swimming pools that are nonconforming structures. However, this proposed change in legislation does not fit the compliance timetable that the Yachtsman's Cove POA must meet with the State. A variance procedure is also available for the state regulations, but such variances are considered for recommendation by a board that last met 11-03-10.

The subject property owner now seeks City Council's approval for the waiver of all or a part of the \$2,850.00 payment required for the variance application. Under the provision of Land Development Code Section 90-5. Exemptions, immunities and waivers (f), the city council, by resolution, may waive payment of all or part of a fee for any of following reasons:

- (1) Demonstrated hardship of a kind and nature exceeding the general inconvenience of paying fees.
- (2) The resubmission of an application is found to be necessary, and it would be inequitable to require payment of a full application fee.
- (3) All or a substantial portion of the benefit resulting from the application will be a public benefit.

Given the circumstance and background involving this matter it would seem appropriate for City Council to waive a part of the required filing fee for the variance application. The fee schedule given in Chapter 514, F.S. sets the fee for review of variance applications at \$240-\$400.

**CITY OF SANIBEL**

**RESOLUTION 11-006**

**A RESOLUTION AUTHORIZING AN APPLICATION FEE WAIVER RELATING TO A UNIQUE DEMONSTRATED HARDSHIP CONCERNING A FENCE SETBACK APPLIED FOR BY THE YACHTSMAN'S COVE PROPERTY OWNERS ASSOCIATION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Yachtsman's Cove Property Owners Association has submitted a Development Permit Application to install a pool safety fence enclosure around an existing swimming pool and deck in order to bring the property into compliance with applicable state pool safety requirements; and

**WHEREAS**, the existing swimming pool and deck is a lawfully existing nonconforming structure; and

**WHEREAS**, the Yachtsman's Cove Property Owners Association is seeking a variance from the current 20 foot minimum setback requirement between the pool fence and an open body of water; and

**WHEREAS**, the Planning Department, in accordance with the hearings and recommendations developed through the current Redevelopment Study for the Resort Housing District, will be recommending that in the interest of safety the Land Development Code should be amended to allow for the fencing or screening of accessory swimming pools that are nonconforming structures, however this proposed change in legislation will not be considered for several months; and

**WHEREAS**, the Yachtsman's Cove Property Owners Association is seeking the setback variance in January, 2011;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Sanibel, Florida, that:

**SECTION I.** The Sanibel City Council hereby approves a partial fee waiver for the Yachtsman's Cove Property Owners Association for its variance application for the current 20 foot minimum setback requirement between a fence and an open body of water and the City Council finds that the Yachtsman's Cove Property Owners Association has

“demonstrated hardship of a kind and nature exceeding the general inconvenience of paying fees” as set forth in Sanibel Land Development Code Section 90-5(1). The variance application shall fee be established at \$400 (reduced from the normal variance application fee of \$2,850).

**SECTION 3.** Effective date.

This resolution shall take effect immediately upon adoption.

**DULY PASSED AND ENACTED** by the Council of the City of Sanibel, Florida, this 4th day of January, 2011.

AUTHENTICATION:

\_\_\_\_\_  
Kevin Ruane, Mayor

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Pamela Smith, City Clerk

APPROVED AS TO FORM:

*Kenneth B. Cuyler*  
Kenneth B. Cuyler, City Attorney

1/3/11  
Date

Vote of Council Members:

Ruane \_\_\_\_\_  
Denham \_\_\_\_\_  
Harrity \_\_\_\_\_  
Jennings \_\_\_\_\_  
Pappas \_\_\_\_\_

Date Filed with City Clerk: \_\_\_\_\_