

RESOLUTION NO. 12-05

**CITY OF SANIBEL
PLANNING COMMISSION**

IN THE MATTER OF: A Conditional Use permit application to allow onsite food preparation associated with the operation of a proposed juice bar.

APPLICANT: Edith Rood and Nikki Rood owners of the Sanibel Sprout, LLC and authorized by the property owner Nancy Bass Cooke d/b/a Palm Ridge Place

APPLICATION NO.: 12-6657CUP

DATE OF HEARING: April 24, 2012

ADOPTION OF RESOLUTION: April 24, 2012

WHEREAS, an application was submitted for consideration of a conditional use permit to allow for onsite food preparation associated with the operation of a proposed juice bar (without seating) as an incidental use to the Sanibel Sprout, an existing health food store. The health food store is located in a 1,000-SF commercial unit within the Palm Ridge Place Shopping Center, at 2330 Palm Ridge Road (Tax Parcel No. 26-46-22-T2-0030A.0010). The application is submitted for the benefit of The Sanibel Sprout LLC, represented by owners Edith and Nikki Rood, as authorized by the shopping center's owner, Nancy Bass Cooke. Application No. 12-6675CUP.

WHEREAS, it has been determined that the Applicants have complied with the filing requirements of Chapter 82, Article III, Division 3, Subdivision V, of the Land Development Code; and

WHEREAS, a public hearing was legally and properly advertised and held on April 24, 2012 before the Sanibel Planning Commission; and

WHEREAS, the Sanibel Planning Commission considered the recommendations of the Planning Department staff; the testimony and evidence of the Applicants and their representatives; public comments and documents on file with the City; and

WHEREAS, Chair Valiquette, Vice Chair Marks, Commissioners Chris Heidrick, Chuck Ketteiman, Tom Krekel, Holly Smith and John Talmage were present at the meeting; 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:

Director Jordan read the title, introduced the item and stated that City Planner, Benjamin Pople would present the staff report.

Sworn: Benjamin Pople, City Planner, Planning Director Jimmy Jordan, Edith Rood, applicant and Nikki Rood, applicant.

Site Visits/Ex-Parte Communications: All Commissioners made site visits; Commissioners Kettelman and Heidrick disclosed ex-parte communications.

Mr. Pople reviewed the application and staff report:

1. Entered the staff report into the record as City Exhibit 1.
2. The applicant is proposing to add a juice bar as an additional use incidental to and accessory to the existing Sanibel Sprout food store.
3. If the food store was opening up new, it would qualify for a Conditional Use review but it is an existing use.
4. The trigger is the addition of on-site food preparation to the uses of Sanibel Sprout.
5. This addition must meet all the requirements for Conditional Uses as well as the specific requirements for on-site food preparation.
6. An analysis is contained in the staff report.
7. The analysis shows there is no significant impact regarding parking or other considerations.
8. The only area of concern was with the Public Works Department.
9. The additional use of the juice bar and some sink fixtures may cause an additional demand on the sewer system.
10. There is sufficient capacity in the system.
11. If the use is approved there are six conditions that are standard for Conditional Use approval.
12. If the addition of the juice bar increases the intensity for the sewer system, the Public Works Department wants the demand to be accounted for.
13. This is included in the six conditions.

Planning Commission Comments

Commissioner Kettelman said it appears that the application was submitted at the end of December 2011 and asked if there is a reason it took so long for the application to be presented to the Planning Commission. Mr. Pople stated this was the initial approval for the Sanibel Sprout. The application for the juice bar was received in March.

Vice Chair Marks asked if the juices are purchased or if they are made in the store from fresh fruits and vegetables. Nikki Rood stated that they are made from fresh organic fruits and vegetables that come from the organic co-op. They don't sell anything pre-packaged; everything is fresh. Vice Chair Marks asked what is done to the fresh fruits and vegetables prior to juicing them. Nikki Good stated that the fruits and vegetables are washed with a vinegar and water solution and they are refrigerated. Vice Chair Marks asked if the person doing the washing and preparing the juices stays exclusively in the food preparation area. If the store gets busy does this person go to the front to sell other products or change money? Edith Rood stated they are basically a partnership. When one person is preparing the juice and washing the fruits and vegetables the other person works on the floor selling the fruits and vegetables and handling the money. Vice Chair Marks asked what happens if one of the workers is sick. Edith Rood stated they have a person who comes in, Dave Adams. He is paid on an hourly basis when he is needed. Vice Chair Marks said he noticed that the food preparation area is next to the restroom. There is a 1" wall of wallboard and a door

separating the restroom from the food prep area. When the door is opened and closed it can act as a piston to push things that come out of a restroom to the food prep area. Vice Chair Marks said he assumed that the sink and toilet and the vegetable/fruit washing sink drain into the same drain. There could be sewage backup in this drain. Today, the greatest contamination of food is not through meat products but through fruits and vegetables. E. coli has been transmitted through salads, spinach and tomatoes. The CDC recommends that you wash vegetables after you peel them and you should be very careful with uncooked foods. Vice Chair Marks further stated that animal fertilizers are used to grow organic food; organic doesn't mean free from pathogens. Vice Chair Marks recommended that the storekeepers use disposable gloves. Vice Chair Marks recommended that the Lee County Health Department inspect the food preparation area and the adjacent restroom before a permit is issued. The Health Department will do this at no cost. If this isn't included in one of the recommendations Vice Chair Marks said he would have to vote against the application. Nikki Good said the Department of Agriculture visited the store and made stipulations regarding the bathroom door and location. Vice Chair Marks emphasized that he would like the Department of Health to conduct the inspection.

Director Jordan stated that the Lee County Health Department is involved with any business that conducts food preparation. Mrs. Rood would have to comply with the requirements of the Health Department. A requirement is to have a three compartment sink and a hand washing sink. Vice Chair Marks said this is critical. Director Jordan said there is also a requirement for the bathroom door to have some type of self-closing mechanism. Director Jordan further stated that Vice Chair Marks concerns are warranted; however, to obtain a license for this type business you have to be certified by the Health Department by taking a food safety course. When you complete the course you receive a certificate regarding pathogens, hygiene, how to sanitize dishes and cutting utensils, etc. Once you receive this certification you can instruct your employees in how to follow these requirements.

Vice Chair Marks stated he didn't see in the staff report any reference to this inspection. Director Jordan said this wasn't included because it is a requirement for all food preparation businesses.

Commissioner Talmage said the County is very rigorous in their inspection. This is not a once-a-year inspection it occurs multiple times during the year.

Vice Chair Marks said he wanted to be thorough. The exhaust fan in the bathroom is probably adequate for a home but more the cubic feet per minute should be increased to keep any bacteria, etc., in the restroom.

Chair Valiquette asked Vice Chair Marks if he was satisfied with the language included in the conditions. Vice Chair Marks said he believes that Commissioner Talmage and Director Jordan are correct in what they reported but he would like to add a condition that the Lee County Health Department makes an inspection.

Commissioner Kettelman asked Director Jordan if he heard him say that for the Sanibel Sprout to provide the juice bar they have to go through the Health Department processes. Director Jordan said this is correct. Commissioner Kettelman said he believed including this requirement in the resolution was redundant unless Vice Chair

Marks is suggesting that the applicant has to do more than the Health Department requires. Commissioner Kettelman added that Vice Chair Marks' comments were well taken but he didn't believe the condition needs to be included. Director Jordan stated this requirement is covered by the Health Department; a permit cannot be issued until Health Department requirements are satisfied and he did not recommend adding the condition. Director Jordan stated that hygiene certainly is a concern.

Commissioner Krekel said nothing additional is being done by including this requirement.

MOTION: Commissioner Kettelman moved to approve the application as submitted; prepare a Resolution to come back to the Planning Commission on May 8, 2012 and to close the hearing. Commissioner Smith seconded the motion. The motion carried by a 6 to 1 vote; Vice Chair Marks dissenting.

Director Jordan stated that a condition could be added that all other agency permits must be obtained. Director Jordan said even though this was not part of the application, if the applicant wanted to prepare and sell salads this approval would allow them to do so.

The Commission recessed from 9:47 A.M. until 9:59 A.M.

Commissioner Kettelman reported that he remembered during one of the previous meetings that the Commission requested that a Resolution be prepared for execution when a Conditional Use application was straight forward. If the application was approved the Chair could sign the Resolution and it wouldn't have to come back to the Planning Commission at a future meeting. Director Jordan stated that he understood this process would be when there was a reason not to delay the Resolution; however, this would not be the normal process. One of the reasons is that staff needs to have time to prepare a resolution. This applicant did not request that the Resolution be adopted during the hearing. This would be addressed on a case-by-case basis. Commissioner Kettelman said the applicant might not know they could request this and encouraged the Planning Department to make this process as efficient as possible.

Chair Valiquette asked if the Commission could go back in time and amend the motion or make a new motion.

Attorney Cuyler stated this is difficult for staff to establish an appropriate time for this to be done. If there is a challenge regarding an application Attorney Cuyler wants to have time to prepare a Resolution to clearly state what the Planning Commission has done and include the appropriate findings. There is less concern when there is no public comment or issues, no objections and almost a unanimous vote.

Commissioner Kettelman said he understood this but encouraged staff to prepare a Resolution when it is appropriate.

Commissioner Talmage agreed with Commissioner Kettelman and stated especially when there are no material conditions or issues raised by staff.

Chair Valiquette stated that he informed the applicants that they don't have to come back in two weeks.

Attorney Cuyler stated that the Commission could make a motion directing staff to prepare a Resolution that would be executed by the Chair. This Resolution would not have to come back to the Planning Commission.

MOTION: Commissioner Kettelman moved to have a Resolution prepared for Chair Valiquette's signature that would not come back to the Planning Commission. Commissioner Smith seconded the motion. The motion carried by a unanimous roll call vote.

NOW, THEREFORE, BE IT RESOLVED, by the Planning Commission of the City of Sanibel, that all Conditional Use Criteria and Application Requirements have been met and that Application No. 12-6675CUP is **APPROVED** with the following conditions:

1. The applicant shall obtain a development permit to implement the conditional use approval.
2. The applicant shall obtain any required building or plumbing trade permits required to make the necessary changes to implement the use.
3. The applicant shall pay for any additional required central sewer service capacity prior to the issuance of a completion certificate.
4. The juice bar use shall be operated as part of the Sanibel Sprout health food store and shall not be operated as a separate commercial use.
5. The juice bar shall not be associated with a formula brand or franchise.
6. No formalized indoor or outdoor seats are permitted in conjunction with this approved use, as such seating shall require separate permit approval.

EXPIRATION OF PLANNING COMMISSION ACTION: In accordance with Land Development Code Section 82-116, approvals of Conditional Uses shall expire if any necessary development permit to implement such approval is not obtained within a period of twelve (12) months after Planning Commission approval, or, if a development permit is obtained within 12 months, upon expiration of the development permit. **CONDITIONAL USE NO. 12-6657-CUP SHALL EXPIRE ON APRIL 24, 2013 IF THE DEVELOPMENT PERMIT NECESSARY TO IMPLEMENT PLANNING COMMISSION APPROVAL GRANTED HEREIN IS NOT OBTAINED BY THAT DATE.**

EFFECTIVE DATE OF PLANNING COMMISSION ACTION: 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 the expiration of the time-period for filing an appeal to City Council, if applicable, has elapsed; or if an appeal has been timely filed, until the City Council has finally disposed of the matter.

RIGHT TO APPEAL PLANNING COMMISSION ACTION: In accordance with Land Development Code Section 82-98, 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, the appeal shall be filed in writing with the City Manager within fifteen (15) days after the date that the Planning Commission decision was filed; and the appeal filing fee shall be paid as a prerequisite to filing.

The foregoing Resolution was adopted by the Planning Commission upon a motion by Planning Commission Member Chuck Ketteman and seconded by Planning Commission Member Holly Smith, and the vote was as follows:

Christopher Heidrick	<u>Yes</u>	Holly Smith	<u>Yes</u>
Chuck Ketteman	<u>Yes</u>	John Talmage	<u>Yes</u>
Tom Krekel	<u>Yes</u>	Michael Valiquette	<u>Yes</u>
Phillip Marks	<u>No</u>		

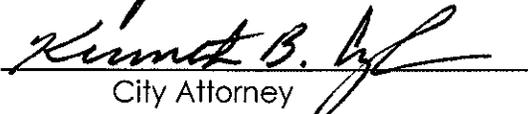
A second motion to allow the Chair to execute the Resolution and amend the first motion was made by Commissioner Member Chuck Ketteman and seconded by Commissioner Member Holly Smith authorizing the Planning Commission Chair to sign Resolution 12-05 without further review by the Planning Commission. This motion was adopted; the vote was as follows:

Christopher Heidrick	<u>Yes</u>	Holly Smith	<u>Yes</u>
Chuck Ketteman	<u>Yes</u>	John Talmage	<u>Yes</u>
Tom Krekel	<u>Yes</u>	Michael Valiquette	<u>Yes</u>
Phillip Marks	<u>Yes</u>		

DULY PASSED AND ADOPTED this 24th day of April 2012.

SANIBEL PLANNING COMMISSION

Signed:  Chairman
Date Signed: 5/1/2012

Approved As To Form:  City Attorney
Date Signed: 4/30/12

Date Filed With City Manager: 5/1/2012