

CITY OF SANIBEL

RESOLUTION 13-069

A RESOLUTION TO ALLOW FOR THE CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE, IN LIEU OF A PREVIOUS NONCONFORMING DUPLEX STRUCTURE, AND BEYOND THE 24 MONTHS PERIOD PROVIDED BY THE BUILDBACK PROVISIONS OF THE LAND DEVELOPMENT CODE; FINDING THAT THE REQUIREMENTS OF THE LAND DEVELOPMENT CODE HAVE BEEN MET; ACKNOWLEDGING THAT THE NONCONFORMING DUPLEX LOCATED AT 1114/1116 SEAGRAPE LANE WAS SUBSTANTIALLY DAMAGED IN 2005 AND THEREAFTER DEMOLISHED; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on January 3, 2006, City Council adopted Ordinance No 05-017 amending the Land Development Code standards for building back of nonconforming structures, stating in part that “for the peace of mind of those citizens who have built or bought property containing structures which were lawful when built, but are now nonconforming due to adoption of City regulations and amendments thereto, to have buildback regulations that give reasonable assurance, insofar as City regulations are concerned, that the owner can build back a nonconforming structure or structure devoted to a nonconforming use after that building is substantially damaged by a natural disaster.”; and

WHEREAS, the former duplex structure that existed on the subject property was built prior to the City’s incorporation and was nonconforming with respect to Sanibel’s zoning for residential density, flood regulations and setback requirements; and

WHEREAS, the standards for building-back a nonconforming structure which is substantially damaged or destroyed by a natural disaster are provided in Sanibel Code Section 126-212. Nonconforming structures; and

WHEREAS, the previous owners of the subject property obtained a permit to reconstruct a nonconforming duplex within 2 years of it being substantially damaged, however the permit subsequently expired after the existing duplex was demolished and is now beyond the time limit allowed by the Land Development Code to apply to buildback or reconstruct the duplex, as Sanibel Code Section 126-212 stipulates; and

WHEREAS, the current property owners seek relief from this condition, pursuant to Land Development Code Section 82-51 Reconstruction of nonconforming structure; and

WHEREAS, a public hearing was legally and properly advertised and held on May 28, 2013 before the Sanibel Planning Commission; and

WHEREAS, on May 28, 2013 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, The Planning Commission provided recommendation to the City Council to grant relief as requested from the build back regulations and to find that the applicant's request is consistent with standards set forth in Land Development Code Sections 82-51 through 82-55;

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

SECTION 1. The City Council finds that the Applicant's proposed plans for a single-family residence are consistent with the intent of the Land Development Code's build back standards and that the Applicant's application plans demonstrate compliance with the factors and criteria City Council must consider in granting relief from the build back standards as set forth in Sections 85-51 through 85-55 of the City's Land Development Code. This approval shall be subject to the following conditions:

- 1) The single-family residence and pool shall be constructed in general conformance with the site and building plans provided in Attachment B of the Planning Department Staff Report, dated May 28, 2013, incorporated herein by reference.
- 2) The subject development shall comply with all applicable Land Development Code and Building Code requirements, including minimum setbacks, flood elevation requirements, maximum height, coverage and developed area limitations.
- 3) All other required governmental agency permits must be obtained prior to issuance of building permits for the subject development.
- 4) The applicant shall commence construction within 1 year and complete construction within 2 years of the date of adoption of this City Council resolution.

SECTION 2. Effective date.

This resolution shall take effect immediately upon adoption.

DULY PASSED AND ENACTED by the Council of the City of Sanibel, Florida this 6th day of August, 2013.

AUTHENTICATION:

Kevin Ruane, Mayor

Pamela Smith, City Clerk

APPROVED AS TO FORM:

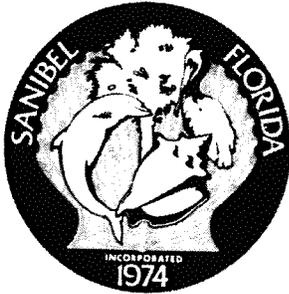
Kenneth B. Cuyler
Kenneth B. Cuyler, City Attorney

7/26/13
Date

Vote of Councilmembers:

Ruane _____
Congress _____
Denham _____
Harrity _____
Jennings _____

Date filed with City Clerk: _____



City of Sanibel

Planning Department

MEMORANDUM

DATE: July 26, 2013

TO: Judy Zimomra, City Manger

FROM: James Jordan, Director of Planning

**SUBJECT: Cristo Request to Buildback Single-Family Residence
at 1114/1116 Seagrape Lane**

The subject request is from the current property owners of 1114/1116 Seagrape Lane who are seeking relief to the buildback provisions of the Land Development Code to permit the construction of a new single family residence, and swimming pool.

The previous owner of this property had a lawfully existing, grandfathered duplex that was substantially damaged during hurricanes Charley and Wilma, respectively, in 2004 and 2005.

The Land Development Code gives a property owner up to 24 months to file an application to build back a non-conforming structure when it is substantially damaged or destroyed by a natural disaster. While the previous property owners did obtain approval to demolish the non-conforming duplex structure they never obtained the required permits for the reconstruction and replacement of this structure.

Land Development Code Section 82-51. Reconstruction of nonconforming structure; grant of relief states "When a nonconforming structure or a structure devoted to a nonconforming use, including a nonconforming resort housing use, is destroyed or substantially damaged by accidental fire or other natural and disastrous force, and the reconstruction of the structure or re-establishment of the use cannot be accomplished pursuant to the provisions of chapter 126, article V, division 5, upon application of the owner, filed with and reviewed by the city manager, the city council may grant relief from the provisions of chapter 126, article V, division 5 in accordance with the standards and limitations of this division."

In considering such an application, the city council shall give consideration to the following factors:

- (1) The extent of loss to the owner, should relief not be granted, and the extent to which such loss could have been insured by the owner;
- (2) The extent to which the damage to the structure exceeds 50 percent of the structure's pre-disaster market value;
- (3) The extent to which the nonconforming structure or nonconforming use exceeded the requirements and limitations of this Land Development Code prior to damage or destruction of the structure;
- (4) The extent to which the structure or use could be made to comply with the requirements and limitations of this Land Development Code upon reconstruction of the structure;
- (5) The extent to which other structures and uses on the site would be rendered unsightly, unsafe, or unusable if the destroyed or damaged structure is not reconstructed; and
- (6) The extent to which the nonconforming use or structure would be incompatible with or detrimental to surrounding lands and uses.

On May 28, 2013, the Planning Commission adopted Resolution No. 13-08, recommending that City Council allow for the applicant to buildback a single-family residence in lieu of a nonconforming duplex beyond the 24 month period allowed for under the City's buildback standards. A copy of Planning Commission Resolution No. 13-08 is provided with this memorandum.

RESOLUTION NO. 13-08

**CITY OF SANIBEL
PLANNING COMMISSION**

A RESOLUTION FORWARDING TO CITY COUNCIL A RECOMMENDATION TO ALLOW FOR THE CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE, IN LIEU OF A NONCONFORMING DUPLEX, BEYOND THE 24 MONTH PERIOD PROVIDED FOR UNDER THE BUILDBACK PROVISIONS OF THE LAND DEVELOPMENT CODE. THE SUBJECT DUPLEX THAT WAS SUBSTANTIALLY DAMAGED IN 2005 WAS LOCATED AT 1114/1116 SEAGRAPE LANE. APPLICATION NO. 13-7279DP.

WHEREAS, on January 3, 2006, City Council adopted Ordinance No 05-017 amending the Land Development Code standards for building back of nonconforming structures, stating in part that *"for the peace of mind of those citizens who have built or bought property containing structures which were lawful when built, but are now nonconforming due to adoption of City regulations and amendments thereto, to have buildback regulations that give reasonable assurance, insofar as City regulations are concerned, that the owner can build back a nonconforming structure or structure devoted to a nonconforming use after that building is substantially damaged by a natural disaster."*; and

WHEREAS, the former duplex that existed on the subject property was built prior to the City's incorporation and was nonconforming with respect to Sanibel's zoning for residential density, flood regulations and setback requirements; and

WHEREAS, the standards for building-back a nonconforming structure which is substantially damaged or destroyed by a natural disaster are provided in Sanibel Code Section 126-212. Nonconforming structures; and

WHEREAS, the previous owners of the subject property obtained a permit to reconstruct a nonconforming duplex within 2 years of it being substantially damaged, however the permit subsequently expired and is now beyond the time limit allowed by the Land Development Code to apply to buildback or reconstruct the duplex, as Sanibel Code Section 126-212 stipulates; and

WHEREAS, the current property owners seek relief from this condition, pursuant to Land Development Code Section 82-51 Reconstruction of nonconforming structure;

WHEREAS, a public hearing was legally and properly advertised and held on May 28, 2013 before the Sanibel Planning Commission; and

WHEREAS, on May 28, 2013 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 Ketteman, Tom Krekel, Holly Smith and John Talmage were present at the 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:

Chair Valiquette polled the Commission for site visits and ex-parte communications and/or any conflicts:

Site Visits / Ex-Parte Communications:

Commissioner Krekel:	Site Visit / No Ex-Parte
Vice Chair Marks:	Site Visit / No Ex-Parte
Commissioner Heidrick:	Site Visit / No Ex-Parte
Commissioner Smith:	Site Visit / No Ex-Parte
Commissioner Ketteman:	Site Visit / No Ex-Parte
Commissioner Talmage:	Site Visit / No Ex-Parte
Chair Valiquette:	Site Visit / No Ex-Parte

Sworn

Roy Gibson, City of Sanibel Planning Department
Joe Lutz, Bean, Whitaker, Lutz & Kareh, Representing the owners
Jim Jordan, Planning Director, City of Sanibel

Staff Report

Roy Gibson submitted the Planning Department Staff Report Dated May 28, 2013 as City Exhibit C1 to the May 28, 2013 Planning Commission Meeting File and reviewed the staff report highlighting the following:

- 1) This is a request from the current owners of 1114/1116 Seagrape Lane to construct a Single Family Residence, including a swimming pool on the subject property. The reason the application is before the Planning Commission is because the subject lot is a Non-Conforming lot in regards to its development intensity; the subject property is not entitled to a dwelling unit pursuant to the current zoning. For that reason this application is seeking relief from the Build Back Standards. There is some history in this Staff Report explaining why the Build Back Standards are applicable in this case. The previous owner of this property had a lawfully existing, grandfathered duplex that was substantially damaged during hurricanes Charley and Wilma that occurred in 2004 and 2005. Those events caused substantial damage to that non-conforming duplex.
- 2) The previous property owner subsequently made application to demolish and build back pursuant to the City's reconstruction standards of a non-conforming structure.

- 3) The Code provides a property owner 2 years to make application to build back a non-conforming structure that's substantially damaged or destroyed by a natural disaster. The previous owner made that application in a timely manner, and subsequently demolished the structure, but did not reconstruct the duplex. The City granted multiple extensions on that permit to allow for that owner to build back that non-conforming duplex.
- 4) This type of request to receive relief from the City's Build Back Standards must be obtained from the City Council. So Planning Commission's action today would be to consider a recommendation to City Council for the granting of relief for this build back request.
- 5) With the application and plans as proposed, Staff is supporting the Planning Commissions moving this Application for City Councils favorable consideration.
- 6) Staff is recommending that the four (4) conditions, which you'll find on page 6 of the Staff Report, be included with your recommendation to the City Council

Planning Commission Questions/Comments for Staff:

Chair Valiquette inquired if notice was sent to all neighbors within 300 feet and if comments were received about this application? **Mr. Gibson** confirmed that notice was sent and that he was not aware of any public in favor or not of this application.

Commissioner Krekel questioned that if the original property owner did not follow through with build back, at that point, was the land then not buildable anymore? Two years later the Applicants buy what is now an unbuildable lot, is that correct? **Mr. Gibson:** The lot is a non-conforming lot as far as development intensity goes, however it had a history of being developed and under the provisions of Build Back, the City Codes wanted to protect these types of property owners with the ability to build back and have some beneficial use of the property. **Commissioner Krekel:** I agree that we don't take away an existing property from a person, but the person who owned that property at the time of the damage, did not take advantage of Build Back. Is the right to Build Back transferrable between owners? **Mr. Gibson:** If that previous owner had maintained that permit, that permit would have been transferred to any new buyer or owner of the property. In this case, there is a history different than what your questions raises. This is not your standard Build Back scenario; if it were, Staff and the Planning Commission would be able to consider that type of application. In this case, the relief from any Buildback Standard must be considered by City Council. **Chair Valiquette:** Why don't we ask the City Attorney for an opinion: **Ken Cuyler:** The bottom line is that the City Council is going to have the authority to take a look at this and decide whether they feel the relief is appropriate. In terms of your question, if you had a non-conforming property immediately after the disaster, within the time periods, and somebody said, for example, "it's damaged, I don't want to deal with it; I'm going to sell it to somebody else", then clearly that person would have the right to take advantage of the Buildback Regulations. In this case, we dealt

with this past owner for years, tried to encourage him to have the reconstruction occur within the appropriate time frames. It didn't happen. These purchasers have come in and said that they don't need any further relief. In other words it is a Single Family lot, they will build a Single Family dwelling, they are not looking for any variance, and they want to basically step in the shoes of the owner to at least ask for relief for the purposes of rebuilding the structure. Every question you've raised is appropriate; it's a good question. It's been considered by Planning Staff, we have the hand we're dealt and the question is do you go to City Council and say here's what the situation is, here's the history, make sure everybody understands every fact involved. In my opinion, yes, the City Council can take a look at it and grant the relief. So the question at this point is, based on your debate and discussion, what will your recommendation be to City Council. **Commissioner Krekel:** But was public knowledge at the time, that this was an unbuildable lot? **Mr. Cuyler:** Well, you keep using the term "unbuildable". If you go to the records and say is there a unit of density on this parcel, the answer is no, there's not, but I wouldn't use the word unbuildable because if there is a mechanism for relief to be granted by the City Council, then it's not unbuildable until they say it's unbuildable. I think there are some arguments on the other side, but I think Staff has decided that, taking the whole history of this situation into account and what the new owners want to do with the property, this is the best answer to what has been a messy situation for the last 8 years or so.

Vice Chair Marks: The damage to this rental unit, which was a duplex, occurred with Charley, really not with Wilma which just caused additional damage. It was last occupied after Charley. At that point Lee County and LCEC declared it a health issue and it was condemned. I looked at the lot and the plans and it seems that this Single Family home is smaller than the duplex and is conforming to setbacks. Regarding development intensity, that lot may not have allowed any units, but it's certainly smaller than what was there before and it certainly complies with flood elevations. After it was torn down in 2007, it's just been an empty lot that's been an eye sore. I think putting a modern, new home there meeting all the provisions is better for the public health, welfare and safety.

Commissioner Smith: When you say it's not a buildable lot, that's not actually true because if the lot next door sells and buyers want to purchase that other adjoining lot, I believe they can combine those two lots, and then you'll possibly have a much larger house on that property, and what they're putting on this lot is very suitable for the neighborhood. That's an older house to the north of it. And if somebody wanted to hold off and buy that house and combine the two we might be having a much different conversation about what's being built there. I think they've done a great job with what they're trying to do and I support it.

Chair Valiquette: And there's the fact that it's 50% less density than it was before.

Commissioner Krekel: Is it or is it not an unbuildable lot? **Mr. Gibson:** As far as development intensity goes, and that pertains to residential density for calculation of number of dwelling units, this parcel is non-conforming lot. To respond to your

question about the intent, let me read this. It's a quote of the City Council's Ordinance of the intent for Buildback, and I think this might address part of your question: "...The intent of the Build Back Standards is for the peace of mind of those citizens who have built or bought property containing structures which were lawful when built, but are now non-conforming due to the adoption of the City's regulations and amendments thereto, to have Buildback regulations that give reasonable assurance insofar as City regulations are concerned, that the Owner can build back a non-conforming structure or structure devoted to a non-conforming use after that building is substantially damaged by a natural disaster..." So I just want that, for the record, to show that was the main basis for the Staff's support of this application. **Chair Valiquette:** Site specific case by case. We don't know what that original owner had to go through. He had a duplex, it was an income property, it got damaged and all of the sudden he couldn't put anybody in there, and he ran out of money, couldn't remodel it, then it got hit by the second storm and that was the end of that. We can't punish the lot for that. **Commissioner Krekel:** No, I'm just discussing it in the sense of fairness to other property owners who have an unbuildable lot around the island. It just seemed to me that the ability to transfer the right to build on that is tenuous, that's all. I'm just concerned if we're setting a precedent. **Mr. Cuyler:** Let me get on the record right now; there is no precedent for anything. This has a unique history that you're not going to find anywhere else on the island.

Applicant Presentation / Report

Mr. Lutz noted that the Staff report was very complete and he had nothing to add to that. **Chair Valiquette** inquired if he and his applicant were okay with the four (4) conditions that are part of it? **Mr. Lutz** indicated they agree.

There were no questions from Planning Commission for Applicant, and no questions or comments from the public.

Motion: **Commissioner Smith** motioned to accept the application as written; close public hearing and authorize the Chair to execute the Resolution without returning to Planning Commission. **Commissioner Ketteman** seconded the motion.

Commissioner Ketteman noted: Tom raises an interesting issue of when the ability for relief has lapsed. But I would suggest, in this case especially, the alternative of not allowing this is a negative for the City and a negative for the neighborhood and that relief will allow a single family home, added to the tax rolls, that is certainly consistent with the neighborhood, that assures the neighborhood that this land won't continue to be overgrown and a source of who-knows-what and a negative in the community, and you end up with less density than when we started. Seems to me, if ever there were one we could recommend, and City Council ought to agree with providing relief, this is the one to do it.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission of the City of Sanibel finds that the Applicant's proposed plans for a single-family residence are consistent with the intent of the Land Development Code's build back standards and that the Applicant's plans demonstrate compliance with the factors and criteria City Council must consider to grant relief from the build back standards. The Planning Commission gives a favorable recommendation to the City Council to grant relief as requested from the build back regulations and to find that the applicant's request is consistent with standards set forth in Land Development Code Sections 82-51 through 82-55. The Planning Commission supports approval of Application No. 13-7279DP with the following conditions:

- 1) The single-family residence and pool shall be constructed in general conformance with the site and building plans provided in Attachment B of the Planning Department Staff Report, dated May 28, 2013.
- 2) The subject development shall comply with all applicable Land Development Code and Building Code requirements, including minimum setbacks, flood elevation requirements, maximum height, coverage and developed area limitations.
- 3) All other required governmental agency permits must be obtained prior to issuance of building permits for the subject development.
- 4) The applicant shall commence construction within 1 year and complete construction within 2 years of the date of adoption of a City Council resolution authorizing the subject development.

The foregoing Resolution was adopted by the Planning Commission upon a motion by Planning Commission Member Holly Smith and seconded by Planning Commission Member Chuck Ketteman, 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>Yes</u>		

DULY PASSED AND ADOPTED this 28th day of May 2013.

SANIBEL PLANNING COMMISSION

Signed: Michael Valiquette
 Michael Valiquette, Planning Commission Chairman 7/26/13
 Date Signed

Approved As To Form: Kenneth B. Cuyler
 Kenneth B. Cuyler, City Attorney 7/24/13
 Date Signed

Date Filed With City Manager: 7/26/2013