



Planning Board Staff Report

Meeting Date: May 3, 2019

TO: Planning Board

FROM: Daniel J. Smith, AICP – Director of Community Affairs

DATE: April 19, 2019

RE: 18-005882 Proposed Land Development Code Amendment to Conditionally Allow for Cut-ins on certain lots

PETITIONER or APPLICANT:

Agent:

Craig R. Woodward, Esq., Woodward, Pires & Lombardo P.A.

Applicants:

Martin H. Judd and Carol Cienkus
3919 School St.
Downers Grove, IL 60515

PROJECT DESCRIPTION:

Mr. Craig Woodward, on behalf of Mr. Judd and Ms. Cienkus, has submitted an application to change the Land Development Code to conditionally allow for cut-ins in seawalls for certain lots at the end of a canal. Below, we have copied a portion of the application (the entire application package is attached to this report) addressing the Comprehensive Plan and proposed language to be added.

3) All Comprehensive Plan policies which may be affected:

No Comprehensive Plan policies are affected. This change is similar in nature to Ordinance 17-02 which allowed for Nautical Garages, where the Planning Board found "...that the need and justification for this Ordinance is to permit improved boat docking opportunities for certain waterfront single-family residential dwellings." That Ordinance was found to be consistent with the Comprehensive Plan Objectives 1.7 & 1.8, and Policies 1.8.3.1, 1.8.3.2, 2.1.4, 2.2.1

4) Proposed Language for LDC text changes:

Section 30-10 Definitions

Lot, Corner Waterfront means a lot located on the water which is a corner lot located typically at the end of a canal, with one of its side lot lines partially abutting an adjacent lot and abutting a canal. A waterfront corner lot is distinguished from a shoulder lot in that it, unlike a shoulder lot, does not have a strip of land which is under water and which is used for the docking of a boat.

Section 30-84 Conditional Uses

(7) A seawall cut-in created in a waterfront corner lot meets the following requirements:

- a) The cut-in in the seawall does not extend into the side yard setbacks established for residential single-family waterfront homes pursuant to section 30-85(a) of this code.
- b) The cut-in extends no more than a twelve-foot (12') depth into the lot, which depth includes the construction of the cut-in's rear seawall.
- c) The cut-in complies with all federal and state requirements and permits, including, but not limited to the requirements and permits of the Florida Department of Environment Protection and the U.S. Army Corps of Engineers; provided that required federal and state permits need not be obtained prior to issuance of the conditional use but must be obtained before commencement of construction of the cut-in slip, as required by Florida law.
- d) The cut-in to comply with section 30-64 (3). Section 30-64(3) b. to also include navigable ingress and egress from adjacent waterway(s) and Section 30-64 (3) d. to include proximity to and location of the proposed cut-in to other docking facilities.

STAFF ANALYSIS/DISCUSSION:

Cut-ins have been an issue for some time. We have encountered cut-ins that pre-date the incorporation of the City (and have provided proof) and we have had requests for cut-ins. Currently, cut-ins are allowed only in conjunction with a nautical garage. The reason this Land Development Code change is being requested (as outlined in their application) is the applicants applied for, received, and then had revoked a building permit for a seawall repair with a cut-in.

Land Development Code amendments are typically dictated by a need identified by the community as a whole and this is typically seen when variance applications to a specific code section are applied for from numerous property owners, builders, developers, etc. Variances are a gauge and guide for code changes. In this instance, no variances have been applied for to allow for a seawall cut-in. This is indicative that an amendment is not warranted.

When a proposed code is written narrowly it is often viewed as special legislation for the few or "spot zoning". This proposed amendment appears to be legislation for the few (126 lots with 57 already having a cut-in) and not the whole of the community. It will bestow upon these lots a special privilege not granted to the other single-family canal lots on the island.

Another serious consideration (and has not been discussed) is the cumulative impact these cut-ins, coupled with nautical garage cut-ins, will have on the island as a whole. What will cut-ins do to the subject lots and the adjoining properties (by bringing the water that much closer to structures) during tropical storms and hurricanes? How will rising sea levels and change in topography (due to cut-ins) impact flood plain designations and base flood elevations? When taken in total, we need to consider the impacts during a storm. How much closer will the surge come to existing structures, both on the subject properties and the

adjacent properties that do not have a seawall cut-in? We believe a hazard mitigation study is needed to understand and answer these questions and others, such as, what adverse impact will altering the topography have on the future Flood Insurance Rate Map (FIRM)? Marco Island is a barrier island in the direct line of hurricanes which are accompanied by surge, waterspouts, tornados and failing seawalls.

Water quality in our canals is a concern for our community and has been a frequent topic of discussion at City Council, Planning Commission and our various committees. While there are many contributing factors to poor water quality, fertilizers and decomposing plant material contribute by releasing nutrients into the water. Allowing cut-ins would bring the water closer to areas being fertilized and mowed and reduce the pervious areas for percolation (and thereby cleaning) of storm water run off into the canals. Add to this the limited flushing ability of canals and the potential for a further decline in water quality.

The distinction between corner and shoulder lots is a corner lot is located at the corner of two streets and not on water.

Lot, corner means a lot located at the intersection of two or more streets. A lot abutting a curved street or streets shall be considered a corner lot if straight lines drawn from the foremost points of the side lot lines to the foremost point of the lot meet at an interior angle of less than 135 degrees.

A shoulder lot is defined in our codes as:

Lot, shoulder means a waterfront corner lot which straddles the waterway, has a property line which extends into the water and contains a seawall or bulkhead or shoreline which is indented from the property line thus creating a strip of land which is under water and is usually used for the docking of a boat.

Below is their proposed definition that confuses the matter for both a shoulder and corner lot and not necessary.

Lot, Corner Waterfront means a lot located on the water which is a corner lot located typically at the end of a canal, with one of its side lot lines partially abutting an adjacent lot and abutting a canal. A waterfront corner lot is distinguished from a shoulder lot in that it, unlike a shoulder lot, does not have a strip of land which is under water and which is used for the docking of a boat.

When a Land Development Code amendment is proposed, we review the Comprehensive Plan to ensure compliance. This particular request is inconsistent with the below section of our Comprehensive Plan:

I FUTURE LAND USE

Goal: to enhance Marco Island's quality of life, environmental quality, and tropical small town and resort character by managing growth and assuring a stable residential community with sufficient businesses to serve the needs of residents and visitors.

Objective 1.2: The Future Land Uses depicted on the Future Land Use Map shall be compatible and coordinated with existing topographic, soil, base flood, and infrastructure services.

Policy 1.2.1: Proposed changes to the Future land Use Map will be thoroughly reviewed for compatibility and coordination with underlying topographic, soil, flooding probability, and existing infrastructure services to ensure the development envisioned in the proposed

change can be accommodated without adverse impacts or severe limitations due to topographic, soil, or infrastructure services.

Policy 1.2.3: All new development shall be required to comply with minimum base flood elevations as established on the applicable FEMA Flood Insurance Rate Map (FIRM) or not less than 10.0 NGVD as mandated by the City of Marco Island to ensure projects approved and permitted will not be adversely impacted by flooding. Remodeling of existing structures may occur at existing structure elevations in which case minimum FEMA elevations shall apply.

Objective 1.4: Upon receipt of a valid hazard mitigation report from an authorized agency, the City shall review and eliminate or reduce such uses consistent with the hazard threat identified in the report.

Policy 1.4.1: Should the City receive a valid hazard mitigation report from an authorized agency, the City shall review such report and take prudent action toward the elimination or reduction of such uses consistent with the threat identified in the report.

V. CONSERVATION AND COASTAL MANAGEMENT ELEMENT

Goal 1: to continue to protect, promote, and enhance the coastal and natural resources in and around the Marco Island community through prudent management, public education, appropriate regulations and enforcement, and active partnerships with all other interested parties.

Policy 1.5.3: Regularly monitor activities that are within the City's jurisdiction to assess whether local rules and regulations or other actions are needed to ensure that the natural resources are conserved and protected for long-term viability.

Goal 3: To minimize human and property loss due to tropical storms and hurricanes,

Objective 3.1: Reduce the threat of loss of life and property resulting from tropical storms and hurricanes through diligent, cooperative preparation planning, improved evacuation and sheltering facilities, and public education.

Per Section 30-62.(c)(3) d. Staff has reviewed the below criteria and provided our responses.

d. *Amendment to the LDC; nature of requirements of planning board report.* When pertaining to an amendment to the text of the LDC and other than a proposed rezoning, the planning board shall consider, study, and make findings with regard to:

1. The need and justification for the change;

Staff Comment: Justification or need has not been shown or found due in large part, by the lack of variances applied for to allow for a cut-in without a nautical garage. As discussed above, variance applications are a good indication that a Land Development Code amendment is warranted.

Justification or need would include a comprehensive engineering report indicating no impacts to the Island as a whole should cut-ins be conditionally allowed (nautical garages would need to be included since they are already conditionally allowed). The report should address how water is being brought closer, not to just the subject lot and house, but adjacent homes and structures with regard to stability, storm events, storm surge, wave action, etc.

2. The relationship of the proposed LDC amendment to the purposes and goals, objectives, and policies, of the city's comprehensive [plan], with appropriate consideration as to whether the proposed change will further the purposes of the LDC and other city codes, regulations, and actions designed to implement the growth management plan.

Staff Comment: The proposed amendment will not further the goals of our current Comprehensive Plan, codes and regulations. We are concerned the proposed amendment will do more harm by allowing the cut-ins and bringing the water closer to the structures, both on and off the subject lot. We are a barrier island with multiple flood zones and bringing water closer to structures, including those on adjacent properties, is not what we strive for as a City.

As indicated above, the proposed amendment does not further the goals, objectives and policies of the Comprehensive Plan. Nor does it further the goals of our Flood Plain Management code or current Land Development Code. In addition, it has the real potential to further reduce water quality, which does not support our other regulations protecting water quality.

STAFF RECOMMENDATION:

Staff recommends the Planning Board deny LDCA 18-005882 based on the below findings:

1. The proposed amendment does not further the goals, objectives and policies of our Comprehensive Plan.
2. The proposed amendment does not support or further the goals of our existing codes, such as the Flood Plain, Land Development Code or protecting water quality.
3. There is no need or justification for the proposed amendment due to the lack of variances applied for seawall cut-ins.
4. There has been no comprehensive study on the potential impact to Marco Island as a whole, subject properties, adjacent properties to a seawall cut-in, flood plain designations, storm surge, wave actions, etc.
5. The proposed amendment is narrow in scope and will grant special privilege on just a few single-family lots not available to other single-family lots.
6. The proposed amendment will not benefit the whole of the community.

Daniel J. Smith, AICP

Director of Community Affairs