



City Council Staff Report

Meeting Date: July 15, 2019

TO: Marco Island City Council

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

DATE: July 2, 2019

RE: Planning Board Recommendation on Variance Petition VP 19-000921

PROJECT DESCRIPTION:

The owners are requesting a variance to construct a 27-foot by 12-foot seawall cut in (measuring to the back of the proposed seawalls) without a nautical garage. They are citing the lot configuration as their primary justification for the request. The applicant's application, written request for the variance, support information and plans are attached to this Staff report

JUNE 7, 2019 PLANNING BOARD SUMMARY AND RECOMMENDATION

The Planning Board considered this request at their June 7, 2019 Planning Board meeting. The application was presented to the Planning Board with questions asked and answered of both Staff and the applicant. The public was invited to speak and two people spoke on behalf of the applicant and four residents spoke against the request. After the discussion and public input, a motion was made and seconded to approve the variance request that resulted in a tie vote (3-3). A second motion was made and seconded to approve a smaller cut in that, also, resulted in a tie vote (3-3). No other motions were made, and the Planning Board is forwarding the requested variance to the City Council with no recommendation.

OWNER/APPLICANT:

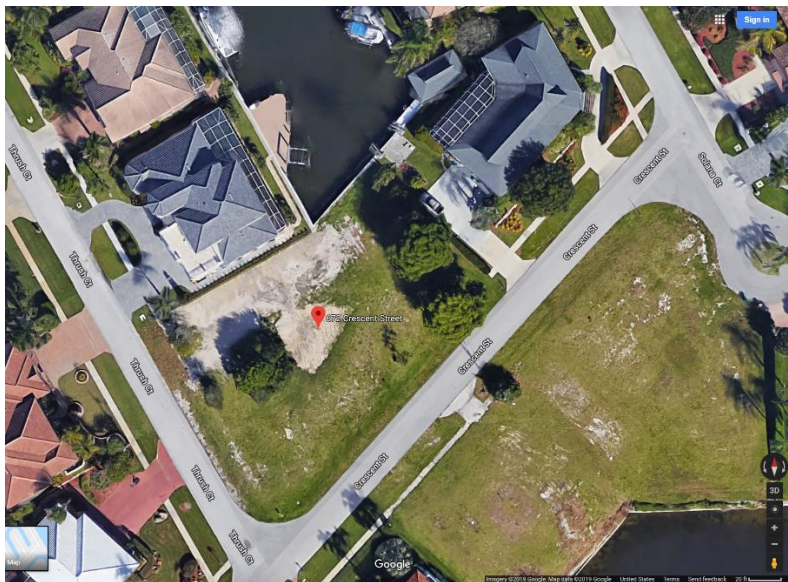
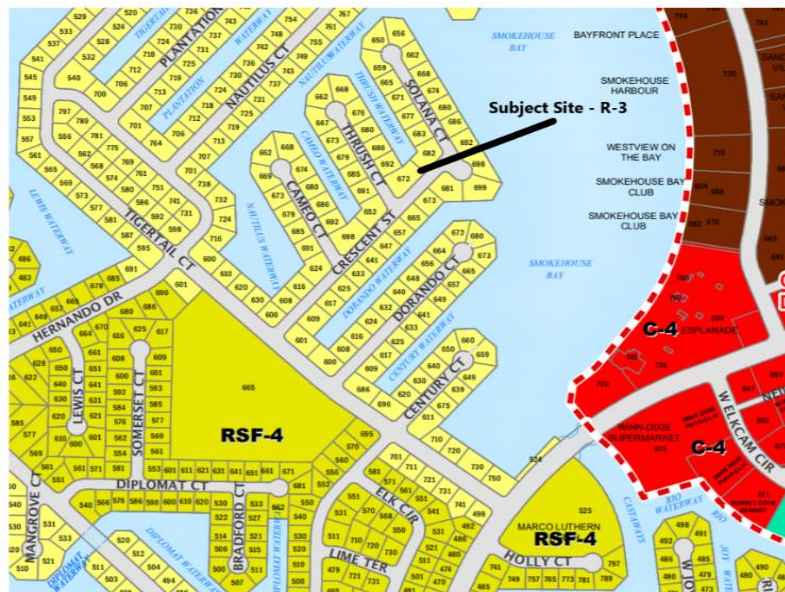
Martin Judd and Carol Cienkus
3919 School St.
Downers Grove, IL 60515

AGENT:

Craig Woodward, Esq and Zachary Lombardo, Esq
606 Bald Eagle Dr.
Marco Island, FL 34145

PROJECT ADDRESS:

Street Address: 672 Crescent Street
Marco Island, FL 33950
Legal Description: Marco Beach, Unit II, Block 361, Lot 1
Zoning: R-3



The history of this property is that a building permit (applied for in February of 2017) was inadvertently issued for a cut in and installation of a new seawall. At the time, Growth Management was not part of the review team. The building plan examiner focused on compliance with the building codes. It was this scenerio that allowed for the seawall cut in permit to be issued. Once discovered, the permit was revoked and a stop work order issued. Construction had not started. In addition, Growth Manangement is now part of the review team regarding seawalls.

In reviewing the request, the applicant cites the angled property line abutting the waterway as a reason for granting the variance. They, also, rely heavily on the fact that the building permit was revoked causing delay. While we understand this is frustrating, it is not one of the Standards to reviewing when considering a variance request.

Staff has attached the survey and plan provided for the building permit review as additional information for Planning Board to review and consider. Both pages are marked accordingly.

Staff concurs the angled property line poses a challenge for this lot, as seen by the plan submitted with the building permit application for the initial seawall. The frontage abutting the water is approximately 48.5 feet. The limited frontage coupled with the angled property lines and the riparian setbacks create a small area for construction of a dock. However it is possible to build a dock without the cut in.

Staff concerns regarding impacts of a cut in (approval could set precedence) on flood designations; impacts of bringing the water closer to neighboring structures; and water quality/flushing remain the same as outlined in the Staff report for the proposed LDC amendment but to a lesser extent since this is for an individual lot and not the whole island.

Staff has received emails of protest from five neighbors citing dredging concerns, flushing issues, adjacent seawall stability among others. Their protest emails are made as part of the record.

The Planning Board is provided with standards to review a variance request and are the basis for approval or denial. They are listed below along with Staff comments. The applicant has provided responses to the standards and are in their application attached to this Staff report.

- (1) That there are special conditions and circumstances existing which are peculiar to the location, size and characteristics of the land, structure, or building involved;

Staff Comments: The portion of the lot adjacent to the water runs at a diagonal and the corner is not at a right angle, like shoulder lots, causing a smaller area for a dock. This appears to be due to Cameo, Thrush and Solana running at an angle from Crescent.

- (2) That there are there special conditions and circumstances which do not result from the action of the applicant such as pre-existing conditions relative to the property which is the subject of the variance request;

Staff Comments: This is not a result of the applicant but that of the original developer and layout of the development. The applicant did receive a permit in error which can be considered a special circumstance although no development has taken place.

- (3) That a literal interpretation of the provisions of this zoning code work unnecessary and undue hardship on the applicant or create practical difficulties on the applicant;

Staff Comments: Staff believes a dock could be built without the cut in. Although looking at the area, it appears it would be tight.

- (4) That the variance, if granted, be the minimum variance that will make possible the reasonable use of the land, building or structure and which promote standards of health, safety or welfare;

Staff Comments: Denial of the variance will not prevent the reasonable use of the land since it is a single-family lot and construction of the home is not impeded by the denial of this variance.

- (5) That granting the variance requested will not confer on the petitioner any special privilege that is denied by this LDC to other lands, buildings, or structures in the same zoning district;

Staff Comments: Granting the variance will confer a special privilege by allowing the cut in without a nautical garage. While there are other cut ins, they were typically constructed prior to the incorporation of the City.

- (6) That granting the variance be in harmony with the intent and purpose of this zoning code, and not be injurious to the neighborhood, or otherwise detrimental to the public welfare;

Staff Comments: It does not appear that granting the variance will be in harmony with the intent of the Land Development Code.

Section 30-2. "In order to foster and preserve public health, safety, and welfare, and to aid in the harmonious, orderly, and progressive development of the city, it is the intent of Ordinance No. 02-04 that the development process in the city be efficient, effective, and equitable, in terms of consistency with established regulations and procedures, respect for the rights of property owners, and consideration of the interests of the citizens of the city."

- (7) That there are natural conditions or physically induced conditions that ameliorate the goals and objectives of the regulation such as natural preserves, lakes, golf course, or similar circumstances;

Staff Comments: There are no natural or physical conditions that ameliorate the goals and objections of the regulations.

- (8) That the granting of the variance will be consistent with the Comprehensive Plan.

Staff Comments: The granting of the variance does not appear to be consistent with the Comprehensive Plan.

PLANNING BOARD ACTION

As was stated in staff's analysis, this application was brought about due to a permit being issued in error. The permit was soon revoked once it came to the City's attention.

Staff reminds the Planning Board that any action they take must be based on the above standards and cite them as findings for approval or denial.

- (1) That there are special conditions and circumstances existing which are peculiar to the location, size and characteristics of the land, structure, or building involved;
- (2) That there are there special conditions and circumstances which do not result from the action of the applicant such as pre-existing conditions relative to the property which is the subject of the variance request;

- (3) That a literal interpretation of the provisions of this zoning code work unnecessary and undue hardship on the applicant or create practical difficulties on the applicant;
- (4) That the variance, if granted, be the minimum variance that will make possible the reasonable use of the land, building or structure and which promote standards of health, safety or welfare;
- (5) That granting the variance requested will not confer on the petitioner any special privilege that is denied by this LDC to other lands, buildings, or structures in the same zoning district;
- (6) That granting the variance be in harmony with the intent and purpose of this zoning code, and not be injurious to the neighborhood, or otherwise detrimental to the public welfare;
- (7) That there are natural conditions or physically induced conditions that ameliorate the goals and objectives of the regulation such as natural preserves, lakes, golf course, or similar circumstances.
- (8) That the granting of the variance will be consistent with the comprehensive plan.

STAFF RECOMMENCATION

Staff reommendends this variance request be denied. While the the owner did receive a permit in error, that alone does not circumvent the eight standards required by the LDC (30-65 (g) 3.) for granting a variance.