CITY OF NAPLES

STAFF REPORT

To: Planning Advisory Board
From: Planning Department
Subject: Variance Petition 16-V4
Petitioner: Steven C Cantera, Manager Foresite 599, LLC
Agent: Richard D. Yovanovich, Esq.
Date: April 8, 2016, revised April 11, 2016

REQUEST: A Resolution determining Variance Petition 16-V4 to allow the development of a property that is approximately 66.67 feet wide where a minimum lot width of 75 feet is required in the R1-10 Single Family zoning district for property located at 59 9th Avenue South.

STAFF RECOMMENDATION: Staff recommends denial of Variance Petition 16-V4 due to noncompliance with Specific Criteria 1, 2 and 6. Should the PAB and City Council determine that a different approach to noncompliant lots is warranted, a text amendment would be appropriate to insure a fair application of the Code.

BACKGROUND: The petitioner would like to redevelop the subject property by removing the existing dwelling and building a new single family home. The property is located in the R1-10 zoning district which requires a minimum lot width of 75 feet for interior properties. The subject property, which consists of two platted lots, is approximately 66.67 feet in width. Section 46-35 addresses nonconformities. Nonconformities are defined as follows:

“(1) A nonconformity is a lot, structure or use of land, or any combination thereof, which was lawful before government action but no longer meets the regulations contained in this Land Development Code because of said government action. Government action includes, but is not limited to:
   a. An ordinance amendment;
   b. A "use permitted" which is changed to a conditional use or a use that is no longer a permitted use;
   c. Annexation;
   d. Rezoning; or
   e. condemnation of land for the public benefit.”

The subject property was owned collectively with the adjacent property to the west. The dwelling on the subject property was a guest house to the primary residence to the west. The property was deeded separately in 1979. The single family home on the property to the west was subsequently demolished and rebuilt. At the time the properties were placed in separate ownership the City would not have been aware of the split and, since the property to the west is compliant with Code, the issue of the inadequate property width on the subject property would not have been an issue at the time of permitting the new single family home on the neighboring property.

The subject property was purchased by the current owner and petitioner in 2014. The City was made aware of the plans to redevelop the property by a concerned neighbor. The City has had a policy to allow the redevelopment of nonconforming parcels provided that the new
structures are otherwise compliant with Code. This is based on Section 46-35(a)(7) which states:

“(7) Notwithstanding limitations imposed by other provisions of this Land Development Code, any nonconforming lot of record which was in single and separate ownership on the date of adoption of the ordinance from which this Land Development Code is derived, or amendment which made the lot of record nonconforming, may be used as permitted by the district regulations of the zone in which the lot is located. This provision shall apply even though such lot of record fails to meet the requirements for width or area, or both, that are generally applicable to it, provided that all yards and other requirements not involving area of width of lot shall conform to the regulations for the district in which the lot of record is located.”

The neighbor contested the policy to allow the redevelopment of the noncompliant property because the Code required the minimum lot width of 75 feet when the property was put in separate ownership in 1979. As such, the property was not made nonconforming as a result in an ordinance amendment, could not therefore be considered a nonconformity by definition and Section 46-35(a)(7) would not apply. Section 46-35(a)(8) would then apply which reads:

“(8) When 2 or more contiguous, vacant, nonconforming lots of record are in single ownership so as to form a single parcel, it may be divided and sold separately only if such division will result in parcels which meet the requirements of the zoning district in which they are located.”

Further research was conducted and it has been determined that the applicable Code Sections which would prevent the redevelopment of a noncompliant lot were established in 1967. The City Attorney issued an opinion which found that “The Subject parcel did not meet the requirements of the Code for favorable treatment for an existing lot or lot of record. The width requirements clearly pre-date the split. This provision thus means that while an owner may have the Property Appraiser split the property for ad valorem tax purposes into lots that were of insufficient size for the district in which they lie, it cannot expect to be able to develop it. In other words, the recognition of a split by the Property Appraiser did not and does not compel the City to allow the resulting non-compliant lot to be developed.” The resulting policy change has been that noncompliant lots created after 1967 cannot be redeveloped without the benefit of a variance.

The petitioner has submitted a list of 50 properties which they believe are in a similar circumstance in that they are noncompliant with code and could not be redeveloped. Staff has not conducted the research to confirm this assertion. However, since the issuance of the City Attorney’s opinion the Planning Department has reviewed permit applications for demolition to confirm whether or not the property meets the minimum width and area requirements and, if it does not, whether or not the lot was created prior to 1967.

The City has established a Minor Subdivision process in Chapter 54 of the Code. Under this process specific standards are applied to allow for the splitting of property in areas where the underlying platted lots do not meet the minimum lot width and area requirements but where the resulting lots are compliant with Code.

While the current structure on the property is very old, the property falls outside the boundaries of the City’s Historic Preservation District and was not listed as a contributing structure on the historic map. The petitioner has applied for a demolition permit.
• **LOCATION:** 59 9th Avenue South

• **SIZE OF PARCEL:** Approximately 0.23 acres.

• **EXISTING LAND USE:** Single Family Home

• **CURRENT ZONING:** R1-10 Residence District

• **PREVIOUS ACTION:** The petitioner has applied for a demolition permit

• **PENDING AND/OR SUBSEQUENT ACTION:** The Planning Advisory Board (PAB) will hold a public hearing on this petition at its meeting on Wednesday, April 13, 2016. At the close of the public hearing, the PAB will make a recommendation to the City Council. The City Council should consider the PAB’s recommendation at its meeting on Wednesday, May 18, 2016 with final action by resolution.

**COMPREHENSIVE PLAN:** This property is designated Residential Low Density on the Future Land Use Map. These areas are intended to accommodate single-family or other similar residential uses up to a maximum of six (6) dwelling units per net acre. The residential housing types in these areas may include traditional single family detached homes and innovative cluster housing types, when such housing types can introduce a positive element of diversity into a neighborhood. This land use type is the most sensitive to disruption from the encroachment of incompatible uses; and protective strategies, such as transition zones of higher density residential areas, landscaped buffer areas, natural barriers, and other screening devices may be required.

The proposed Variance request is consistent with the following objectives/policies in the Comprehensive Plan:

- **Objective 1:** Manage new development, redevelopment and reuse to ensure that it is orderly, balanced, and compatible with the City's desire to maintain and protect its existing residential character, to maintain the viability of its commercial areas, provide open/green space, encourage pedestrian/bicycle linkages, and protect environmentally sensitive lands.
  - *The construction of a new single family home on this parcel will be consistent with the character of the neighborhood but it will be a smaller home on a smaller lot.*

- **Policy 1-2:** Unless otherwise permitted in the Comprehensive Plan, new development, redevelopment and reuse shall be consistent with the permitted use and density/intensity of each designation.
  - *Building a new home at this location would be consistent with the density and intensity of the future land use and comprehensive plan.*

- **Policy 1-3:** Preserve and protect stable residential neighborhoods through development practices that promote compatibility and consistent character.
  - *The new single family home will be compatible with the neighborhood.*
• **Policy 2-2:** Permit new development only in areas where adequate public facilities (as defined by level of service standards), and access exists or will be provided prior to occupancy.
  - Adequate public facilities are in place to serve the single family home.

• **FUTURE LAND USE MAP:**

![Future Land Use Map]

• **SURROUNDING PROPERTIES:**

<table>
<thead>
<tr>
<th></th>
<th>North</th>
<th>South</th>
<th>East</th>
<th>West</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zoning</td>
<td>R1-10</td>
<td>R1-10</td>
<td>R1-10</td>
<td>R1-10</td>
</tr>
<tr>
<td>Future Land Use</td>
<td>Low Density Residential</td>
<td>Low Density Residential</td>
<td>Low Density Residential</td>
<td>Low Density Residential</td>
</tr>
</tbody>
</table>
• ZONING MAP

• AERIAL OF SUBJECT PROPERTY
• **ANALYSIS:** The applicant has applied for a variance. Section 46-37(c) of the Naples Land Development Code allows for the approval of a variance in instances where the established criteria for approval are satisfied. A review of the petition in light of the required criteria is provided for your consideration. The applicant’s response to each of the criteria is provided within the applicant’s petition.

**(c) Variance Criteria**

**(1) General.**

- If, upon consideration of the variance criteria set out in this subsection and (c)(2) below, it is determined that the case for approving a variance clearly outweighs the case for denial, the variance may be approved, providing that:

  1. The variance does not permit the establishment or enlargement of any use or structure devoted to a use which is not permitted in the district in which the variance is requested.
     - Single family residences are a permitted use in the R1-10 Residence District.
  2. The variance will be consistent with the comprehensive plan.
     - The variance request is consistent with the Elements, Objectives and Policies of the City of Naples Comprehensive Plan.

**(2) Specific.**

- Prior to approving, approving with conditions or denying a variance, city council shall consider and determine, based upon substantial competent evidence, the following criteria:

  1. Whether the plight of the applicant is due to unique circumstances not created by the applicant, an agent of the applicant or a predecessor in title of the applicant.
     The property was previously compliant with Code when it was held in common ownership with the parcel to the west. The property was made noncompliant when it was placed in separate ownership in 1979. This split was accomplished by separately deeding the properties and recording this split with the Property Appraiser. No variance or approval was acquired from the City at the time. The current property owner obtained the property in 2014. No confirmation was received, that City staff is aware of, that the property was a buildable lot at the time the property was purchased.

  2. Whether special conditions or circumstances exist which are peculiar to the land or structure involved, and which are not applicable to other lands or structures in the same neighborhood or district.
     The petitioner has indicated that there are approximately 50 other properties in the Old Naples area that may be developed and in separate ownership but inadequate in width. However, it is difficult to determine which if any were created after 1967 and would not be considered a buildable lot. Staff is making the determination on a case by case basis as demolition permits are reviewed. Staff has not denied any other demolition or construction permits based on inadequate lot width since the legal opinion was issued regarding the subject property.
3. **Whether the failure to grant the variance would result in unnecessary and undue hardship to the property.**
   Failure to grant the variance would result in the inability to redevelop the property. The petitioner indicates that the property will fall into disrepair as they will not be able to obtain permits for maintenance or repairs due to the illegal status of the property. The Code provides for the repair and maintenance of nonconformities. In this case, the lot is noncompliant but does not meet the definition of a nonconformity. The existing structures, however, are conforming to all but one setback. That setback is in the front and may qualify as a nonconformity. If the structures are considered nonconformities they may be maintained and repaired.

4. **Whether the failure to grant the variance would deprive the owner of the reasonable use of the property.**
   Should the existing structure be demolished, the property would not be able to be redeveloped absent this variance.

5. **Whether the variance will promote, or will not be inimical to, the health, safety and welfare of the community.**
   Granting the variance will allow the existing structure to be demolished and a new single family home to be constructed consistent with required setbacks and height limitations. As the property currently accommodates one dwelling unit, there would be little change and the redevelopment would not adversely affect the community.

6. **Whether the variance will be otherwise consistent with and in harmony with the general intent and purpose of this land development code.**
   Granting the variance and allowing a new home to be built would be generally consistent with the intent and purpose of the Code and this specific zoning district. However, the regulations governing nonconformities are intended to limit and eliminate nonconformities over time. Allowing a new home to be built would perpetuate this nonconformity.

7. **Whether the variance is the most practical or logical solution to the need for relaxation of the literal requirements of this land development code.**
   There are two options to allowing the redevelopment of this property: to grant this variance; or to amend the Code to allow for the redevelopment of properties created after 1967 but before the City’s Minor Subdivision Ordinance.

8. **Whether the variance will be injurious to the surrounding neighborhood or adjacent properties.**
   Granting the variance will allow a single family home to be constructed consistent with the development standards and consistent with the development in the neighborhood. While this is a substandard lot, there are other similarly situated substandard lots in the area, including the lot immediately to the north.

9. **Whether the construction resulting from the variance will be compatible in character and scale with the surrounding neighborhood, preserve natural resources, and preserve historic structures by maintaining the architectural character of the original building in keeping with the period in which it was built.**
According to the Property Appraiser’s records the home was constructed in 1938 but it is not considered a contributing structure. The expected development proposal would result in the demolition of the existing home and building a new single family home.

- **FINDINGS:** Staff has reviewed the petitioner’s application for a Variance against the applicable criteria and recommends denial of the request based on it not meeting Specific Criteria 1, 2, and 6

- **PUBLIC NOTIFICATION:** On March 28, 2016 a total of 40 letters were mailed to all property owners located within 500 feet of the subject property. It was noted that the notice had an incorrect reference to the petition type and the notice was mailed again on March 29, 2016. The neighboring property owner has requested public documents associated with this petition and has requested that this item be continued.

Respectfully submitted,

Robin D. Singer, AICP
Planning Director