



# City of Naples

City Council Chamber  
735 Eighth Street South  
Naples, Florida 34102

**Planning Advisory Board Regular Meeting – September 9, 2009 – 8:30 a.m.**

Chairman Klaas called the meeting to order and presided.

**ROLL CALL ..... ITEM 1**

**Present:**

Richard Klaas, Chairman  
James Hughes, Vice Chairman (arrived 8:55 a.m.)  
Wafaa Assaad  
David Ball  
Dorothy Hirsch  
Gloria Kovacs  
Samuel Saad  
James Krall, Alternate

**Absent:**

Amy Taylor, School Board Rep. (non-voting)

**Also Present:**

Adam Benigni, Planner  
Brenda Blair, Technical Writing Specialist  
Robin Singer, Planning Director  
Erica Goodwin, Planner  
Robert Pritt, City Attorney

Tim Hancock  
Richard Yovanovich  
Warren Mattiello  
John Passidomo  
Maria Eaton  
Elizabeth Keller  
Jenna Buzzacco, Naples Daily News  
Other interested citizens and visitors.

*Chairman Klaas noted for the record that Member Hughes would arrive later in the meeting.*

**APPROVAL OF MINUTES ..... ITEM 2**

***MOTION*** by Ball to ***APPROVE*** the July 8, 2009, regular meeting minutes as presented; seconded by Kovacs and unanimously carried (Assaad-yes, Ball-yes, Hirsch-yes, Hughes-absent, Kovacs-yes, Saad-yes, Krall-yes, Klaas-yes).

**CHANGES TO THE AGENDA ..... ITEM 3**

Planning Director Robin Singer noted that some of the items would be heard out of order.

**..... ITEM 8**

**Public Hearing: Variance Petition 09-V7 (09-096)**

**Petitioner:** Holiday Inn of Naples  
**Location:** 1100 9<sup>th</sup> Street North  
**Agent** Warren G. Mattiello

**Request: Request for a variance to allow for a change of copy for a nonconforming sign located 5 feet from the existing driveway for the Holiday Inn.**

(It is noted for the record that documentation and exhibits pertaining to this item and referenced during the discussion are contained in the file for this meeting in the City Clerk's Office.)

Notary Public Brenda Blair administered an oath to those intending to offer testimony; all responded in the affirmative. Board Members offered ex parte disclosures to the effect that each had either visited the site or were familiar with the site.

Planner Erica Goodwin explained that the request is to allow a change in copy on an existing non-conforming pole sign located 5 feet from a driveway; the Code requires a 10-foot separation. Staff recommends approval; however, subject to the condition that the sign allowed under this variance may remain until the property is redeveloped, and also that all new signs on the site shall comply with the Code.

Warren Mattiello, representing the petitioner, explained that the Holiday Inn franchise is no longer in effect since the brand no longer allows hotels with exterior corridors. Not only is the position of the existing pole sign an issue, he said, but a water main in front of the sign would also have to be relocated at an estimated cost of \$15,000 if the sign were to be repositioned 10 feet from the drive as currently required. The petitioner's intent is to lower the sign by 42 inches by removing the area between the top logo section and lower section. The sign has recently been painted a stainless steel color to match existing signs in the area and trees have been planted around the sign to make it more attractive, Mr. Mattiello concluded.

Planner Goodwin confirmed that staff recommends approval; and Mr. Mattiello confirmed that the new logo of the new franchise had already been affixed with the relative proportion to the overall sign remaining unchanged.

***MOTION by Ball to APPROVE Variance Petition 09-V7 (09-096); seconded by Hirsch and unanimously carried (Ball-yes, Hughes-absent, Saad-yes, Hirsch-yes, Assaad-yes, Kovacs-yes, Krall-yes, Klaas-yes).***

.....ITEM 7

**Public Hearing: Text Amendment Petition 09-T5 (09-087)**

**Petitioner: City of Naples**

**Location: Citywide**

**Request: Request for approval of an ordinance to amend the Code of Ordinances to formally define the duties of the Public Art Advisory Committee, to modify the public art program and to clarify the responsibilities of the Design Review Board relative to the public art approval process.**

(It is noted for the record that documentation pertaining to this item and referenced during the discussion are contained in the file for this meeting in the City Clerk's Office.)

Planning Director Robin Singer noted the following amendments:

- add a new section to the Administrative Chapter of the Code of Ordinances to formally establish the Public Art Advisory Committee (PAAC);
- clarify the role of the Design Review Board (DRB) in the public art process (The DRB will review the location of the artwork before it moves forward.);
- redefine the applicability and procedural requirements; and
- clarify the standards for review.

Ms. Singer explained that there are no changes to the process, but merely a clarification dealing with procedural matters and applicability requirements. These amendments have already been recommended for approval by the PAAC and the DRB reviewed it with regard to its involvement in the process; in addition, staff recommends approval, Ms. Singer said.

Ms. Singer then noted for the record that the correct text amendment number is 09-T5. City Attorney Robert Pritt explained that this is before the PAB since portions of the ordinance could be considered land development regulations (LDRs); the PAB however has no authority with regard to committee structure, he added. In response to Member Ball, Ms. Singer explained that artwork placed on public property is owned by the City; artwork placed on a developer's property is owned by the developer who is also responsible for maintenance. If the artwork is damaged or stolen, the artwork would either be repaired or approval would be sought by the property owner for placement of another piece. She confirmed for Member Hirsch that \$1 per square foot of a non-residential development is paid into the public art fund; if however, the structure exceeds 5,000 square feet, the developer can petition the City to place art on the property and the aforementioned fee will be refunded. Nevertheless, if a developer chooses not to place artwork on a qualifying property, the fee would remain in the public art fund.

***MOTION by Kovacs to APPROVE Text Amendment Petition 09-T5 (09-087); seconded by Saad and unanimously carried (Ball-yes, Hughes-absent, Kovacs-yes, Saad-yes, Hirsch-yes, Assaad-yes, Krall-yes, Klaas-yes).***

**CONTINUED (Items 4-6 will be heard concurrently) .....ITEM 4**

**Public Hearing: Comprehensive Plan Amendment Petition 09-CPA3 (09-069)**

**Petitioner: First Christian Church of Naples**

**Location: 1789 Mandarin Road**

**Agents: Richard D. Yovanovich, Goodlette Coleman Johnson Yovanovich & Koester, P.A. and Tim Hancock, AICP, Davidson Engineering, Inc.**

**Request: Request for a small scale future Land use map amendment to change the future land use designation of a 0.61 acre property from a designation of Public, Semi-Public Institutional to a future land use designation of Highway Commercial.**

**CONTINUED .....ITEM 5**

**Public Hearing: Rezone Petition 09-R2 (09-070)**

**Petitioner: First Christian Church of Naples**

**Location: 1789 Mandarin Road**

**Agents: Richard D. Yovanovich, Goodlette Coleman Johnson Yovanovich & Koester, P.A. and Tim Hancock, AICP, Davidson Engineering, Inc.**

**Request: Request to rezone a 0.61 acre property from PS, Public Service to HC, Highway Commercial.**

**CONTINUED .....ITEM 6**

**Public Hearing: Residential Impact Statement Petition 09-RIS12 (09-075)**

**Petitioner: First Christian Church of Naples**

**Location: 1789 Mandarin Road**

**Agents: Richard D. Yovanovich, Goodlette Coleman Johnson Yovanovich & Koester, P.A. and Tim Hancock, AICP, Davidson Engineering, Inc.**

**Request: Request for approval of a Residential Impact Statement in conjunction with Rezone Petition 09-R2.**

(It is noted for the record that documentation and exhibits pertaining to these items and referenced during the discussion are contained in the file for this meeting in the City Clerk's Office.)

**Planning Advisory Board Regular Meeting – September 9, 2009 – 8:30 a.m.**

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Notary Public Brenda Blair administered an oath to those intending to offer testimony; all responded in the affirmative. Board Members offered ex parte disclosures to the effect that each had either visited the site or were familiar with the site; in addition, Chairman Klaas noted a conversation with the petitioner's attorney, Richard Yovanovich. (It is noted for the record that Member Krall noted that he would abstain from voting due to a conflict; however, Mr. Krall did not vote since he is the alternate member and all members were present following the arrival of Member Hughes prior to Board action.)

Planner Adam Benigni reviewed the three-part request described above and noted that staff recommends denial based on various policies in the Comprehensive Plan regarding extension of commercial districts into residential areas. The petitioner desires to sell the parcel across the street from the church containing a parking lot; the petitioner performed a parking analysis based on the number of seats in the church, he added. Mr. Benigni also noted receipt of one e-mail and several phone calls from residents who do not support the request.

Attorney Richard Yovanovich, representing the petitioner, displayed an aerial photograph of the subject and surrounding properties depicting the various zoning districts. He explained that the church has been in this location since the 1950's and the property is zoned "PS" Public Service; the property adjacent to the parking lot is zoned "HC" Highway Commercial. The church determined it could support its parking needs on the main property containing the 210-seat sanctuary and daycare center operation. He then noted on the aerial photograph a standalone HC zoned parcel immediately north of the parking lot, the commercial strip center zoned HC adjacent to that parcel, and the large shopping center zoned HC adjacent to the aforementioned commercial strip center. Mr. Yovanovich explained that the 0.61-acre parking lot is insufficient to meet either single family or multifamily zoning requirements; therefore, the request is to rezone the property to HC since other property in the neighborhood is also zoned HC, including HC that is adjacent to residential property. He said he felt that the Design Review Board process for commercial use would address the concerns of one resident with regard to future architecture on this property. City staff evaluated the request and determined that the necessary infrastructure is in place, he said, further noting that this is not a unique situation where residential is nearby. He gave the example of positive reports concerning the new Walgreens on US 41, which is adjacent to a residential neighborhood.

Tim Hancock, Davidson Engineering, also represented the petitioner and noted that staff's recommendation for denial is based on concerns for consistency with the policies found in the future land use element (of the Comprehensive Plan).

**It was noted for the record that Member Hughes arrived at 8:55 a.m.**

Mr. Hancock further noted on an aerial photograph various zoning districts that the property does not directly abut single family residential, that there is one home across Orchid Drive to the south, which is most affected, but is surrounded by extensive landscaping. He explained that a conversion to HC zoning would require a 60% opaque landscape buffer on the south side of the subject property and would require the developer to undergo the Design Review Board process. Secondary impacts to the R1-10 Residence zoning district, Mr. Hancock said, would relate to hours of operation and traffic, although these matters would also require a petition through both the PAB and City Council. The after-noon, peak-hour average trip generation for either a 5,000

or 6,000 square foot retail building is significantly lower than may be anticipated due to the size of the property.

Mr. Hancock then also asserted that redevelopment of the site would require conformance with open space and buffering at a minimum of 10 feet on the south side and approximately 6 feet on the other three, plus landscaped islands and perimeter plantings. Mr. Hancock then displayed several photographs depicting commercial properties throughout the City, which are adjacent to residential, and showing various types of landscape buffers. Not only is the parking lot across the street from the church, not residential, vehicle access will be from Mandarin Road only and will no longer include Orchid Drive when the property is redeveloped. Mr. Hancock also stressed the various additional petition processes that could be required and pointed out that the parcel immediately to the north is for sale and could be combined with a rezoned subject parcel to result in additional buffering with the added benefit of preventing trucks from backing into residential driveways across the street and eliminating the view of the parking lot behind existing buildings along US 41. Notwithstanding, he added, redevelopment of just the subject site under HC standards would still result in an increase in open space, eliminate a vacant property, and eliminate the driveway onto Orchid Drive which impacts the residential property south of the subject site, Mr. Hancock reiterated.

In response to Chairman Klaas, Mr. Hancock explained that the area between the property and US 41 is a City linear park zoned PS, which is slightly narrower than the subject property; if the property is redeveloped; visibility from US 41 will be limited. He suggested such uses as a small retail center with a coffee shop, or a small bank branch, but stressing that the long-term value would rest in the combination of this property with one or more parcels to the north. In response to Member Saad, Mr. Hancock confirmed that the aforementioned City park precludes access from US 41. (See Attachment 1 regarding a recommendation by the City's Traffic Engineer to remove the Orchid Drive access.) Predicting that the current uncertain economic situation could take 20 years to reverse, Member Hirsch said that a new building could remain vacant or draw a tenant from another building. Stating that smaller, standalone buildings are often needed, Mr. Hancock also pointed out that the City will receive increased revenue with the higher zoning category. The church no longer needs the parking lot, he added, due to a decrease in congregation size and therefore represents a financial burden.

Planner Benigni reiterated that staff recommends denial based on the policies in the Comprehensive Plan, although staff does concur with the petitioner's parking analysis based on the number of seats and uses involving the church.

**Public Input:** (9:11 a.m.) **Maria Eaton, 740 Orchid Drive**, noted that she resides one house to the east of the subject property. As a realtor, she expressed concern that HC zoning on the corner property would reduce property values. She further noted that installation of a coffee shop such as Starbucks would attract traffic to an already busy intersection where there have been many traffic accidents in an area already saturated with commercial. She also expressed concern with homeless people in the area and for the safety of children. In response to Member Saad, Ms. Eaton reiterated her concern about negative effects upon property values should the parcels to the north be combined under HC zoning and noted that church members park along Alamanda Drive and in the back of the church during such events as weddings, expressing concern about the condition of the surroundings if churchgoers park on the grass or the church chooses to install new hardscape for parking. **Elizabeth Kellar, 693 Coral Drive**, president of the Coquina Sands

Association, noted that while this issue had not been discussed with the board, e-mails and phone calls had been received in which residents expressed concern with the possibility of increased traffic, especially since Orchid Drive is already used as a shortcut to the nearby commercial area.

In response to Chairman Klaas, Planner Benigni explained that staff received two e-mails and three phone calls opposing the proposal, and in response to Member Assaad, Planning Director Robin Singer confirmed that if the property were rezoned, HC zoning would be contiguous. Member Assaad said he supported HC zoning, although limiting access to Mandarin Road would cause the property to have little commercial value. Planner Benigni noted that the City's analysis (Attachment 1) called for restricted, not prohibited, access on Orchid Drive, depending on what would be built in that location. Mr. Klaas suggested that the subject property would however have been zoned HC long ago if it had not been purchased by the church in the 1950's, noting its proximity to a regional mall, another large shopping center to the north, and a commercial strip center immediately adjacent.

Member Hirsch maintained that rezoning from PS to HC will create more traffic and noise and compromise access to the residential area beyond. Member Kovacs, a resident of Coquina Sands, expressed concern with unsightly conditions, particularly at the rear of commercial properties north of the subject property; she also observed that this situation would most likely only be improved if the commercial strip extending from the gas station to the subject property were also redeveloped. Member Ball suggested that the access could be improved if the petitioner were to negotiate the right of ingress/egress onto US 41 with the adjacent property owner. Attorney Yovanovich said he believed that the City's Traffic Engineer, George Archibald, had suggested an easement to the drive isles with the neighbors, but it was unknown whether that would occur. Member Saad received confirmation that the City's aforementioned linear park is a buffer strip zoned PS.

Chairman Klaas expressed reservations with an HC zoning designation since not all allowed uses are desirable for that locale and suggested that certain HC uses therefore be disallowed. City Attorney Robert Pritt noted that the Board could indeed consider adding conditions to either the rezone petition or residential impact statement petition and confirmed that the parcel was not of sufficient size to be rezoned to Planned Development (PD).

While Attorney Yovanovich agreed to consider removing some of the uses, pointed out that PS zoning allows 40% lot coverage while HC allows 30%. He then listed various uses allowed in the PS district through the conditional use process: expansion of the existing daycare, a library, a governmental administration building, and other educational, religious, and cultural facilities. He further noted that it is unrealistic to assume that the property would remain a parking lot with no traffic generation and could in fact create more traffic during certain times of the day than uses allowed in the HC district if such uses as gas stations were eliminated.

City Attorney Pritt cited permitted and conditional uses in the HC district from the Code of Ordinances and Planning Director Singer clarified for Member Assaad that a condition could be imposed on the residential impact statement to deed restrict the property to prohibit certain uses. However, the Board did not support a request by Chairman Klaas for a consensus in this regard. In further discussion, Attorney Yovanovich noted that the petitioner had placed a barrier to stop vehicular traffic to the site from the adjacent property and that he would work with the adjacent property owner to remove it so as to address residents' concerns with vehicular traffic accessing

the site from Orchid Drive and Mandarin Road. He further noted that there may be a need for emergency vehicular access from Mandarin Road.

City Attorney Pritt then pointed out that the "O" Office zoning designation is a simple district with few permitted uses but could be utilized to address concerns noted. He read a portion of the ordinance into the record: "The O district is a district intended to accommodate office uses of various types, and serves to buffer residential districts from commercial districts. Permitted uses include the following:

- (1) Professional, business, financial, civic or public utility offices.
- (2) Medical offices and clinics (not animal).
- (3) Accessory uses and structures which are incidental to and customarily associated with the permitted uses...

Conditional uses:

The planning advisory board may, through the review and approval of a conditional use petition and with the approval of the city council, permit in the O district other uses which are similar to and no more intense than any conditional uses which may be enumerated for the district..."

Although Director Singer noted that there is no O District zoned property contiguous to this property, Mr. Pritt said that this would nevertheless not be considered spot zoning because there is arguably good reason for its application in this location.

After reiteration of the various possibilities discussed above, Director Singer explained that the Board could place a condition on the residential impact statement (RIS) indicating that the property would be deed restricted as to use or access; therefore, anyone purchasing the property would be fully informed. Member Ball suggested that Traffic Engineer Archibald issue an opinion concerning removing the Mandarin Road ingress/egress for emergency vehicular access since the adjacent lot to the north only has access from US 41 or through the alley; however, Director Singer explained that Mr. Archibald cannot provide an exact opinion until the submission of a development proposal and that Mr. Archibald's opinion (Attachment 1) was based on reducing traffic impacts, proximity to the intersection, and the location of ingress/egress. City Attorney Pritt concurred, and further noted that traffic personnel have their own concerns and their work is independent of zoning designation or PAB action.

In response to Member Krall, Attorney Yovanovich expressed uncertainty with the outcome of another petition process for creating a new zoning district and expressed hope for approval through the addition of deed restrictions and elimination of certain HC uses, combined with a condition for access to the property by working with the adjacent property owner. City Attorney Pritt confirmed for Attorney Yovanovich that the PAB could procedurally act only on the Comprehensive Plan amendment (Item 4) at that time if so desired.

***MOTION by Hirsch to DENY Comprehensive Plan Amendment Petition 09-CPA3 (09-069); seconded by Assaad and carried 4-3 (Hirsch-yes, Saad-yes, Hughes-yes, Ball-no, Assaad-yes, Kovacs-no, Klaas-no).***

***MOTION by Hirsch to DENY Rezone Petition 09-R2 (09-070); seconded by Assaad and carried 5-2 (Assaad-yes, Ball-no, Hughes-yes, Saad-yes, Hirsch-yes, Kovacs-no, Klaas-yes).***

***MOTION by Hirsch to DENY Residential Impact Statement Petition 09-RIS12 (09-075); seconded by Assaad and carried 4-3 (Hirsch-yes, Saad-yes, Hughes-yes, Ball-no, Kovacs-no, Assaad-yes, Klaas-no).***

Member Hughes stated that he would be willing to proffer a motion to reconsider the aforementioned actions if a plan can be devised to determine the right category for this project since he is not doctrinally opposed to the request. Discussion then ensued concerning whether to reconsider or move the items forward to City Council. Member Assaad noted a desire to be helpful to the church, but characterized the land as problematic and suggested that the petitioner pursue the matter with staff or the City Attorney. Chairman Klaas concurred with the desire to be helpful, but noted that the PAB is merely a recommending body to City Council. City Attorney Pritt read the following applicable sections from the PAB Bylaws:

- A. "During a meeting in which a PAB matter has been voted on, the PAB may re-open the matter by approving a motion to reconsider by a simple majority vote. The motion to re-open the matter must be made by a Board Member who voted in the majority on the issue to be reconsidered. If the vote were a tie, any member may bring the matter back up.
- B. After adjournment of the meeting in which a matter was finally voted upon, reconsideration is only available where the PAB's action constitutes final agency action (GDSPs) and must adhere to the following..."

Mr. Pritt further noted that the Bylaws continue with a list of how to accomplish that action. The PAB can reconsider the matter before the conclusion of the meeting; then either discuss it, vote, or continue the matter, he added.

In response to Member Ball, Mr. Pritt clarified that the petitioner can make changes to the petitions at the City Council level since Council makes the final decision; Dr. Ball therefore suggested moving forward in that manner. Member Saad stated that he is not opposed to the property being rezoned, but noted that not all of the concerns had been addressed. Attorney Yovanovich requested clarification concerning whether the Board agreed with an "O" Office zoning designation but not general retail. Member Hughes said he was opposed to a designation as broad as HC when there are other categories that may be more agreeable to those in opposition. Attorney Yovanovich asked whether the Board would continue this project to the October PAB meeting, which would give him the opportunity to address the concerns in a finite direction. Member Hughes stated that he would proffer a motion to reconsider and then a motion to table the matter; Board action is embodied in the motions below.

***MOTION by Hughes to RECONSIDER Items 4-6; seconded by Saad and carried 5-2 (Hughes-yes, Saad-yes, Assaad-no, Ball-yes, Hirsch-no, Kovacs-yes, Klaas-yes).***

***MOTION by Hughes to CONTINUE Items 4-6 to the next PAB Meeting; seconded by Saad and unanimously carried, all members present and voting (Assaad-yes, Ball-yes, Hirsch-yes, Hughes-yes, Kovacs-yes, Saad-yes, Klaas-yes).***

.....ITEM 9

**Public Hearing: Variance Petition 09-V8 (09-097)**

**Petitioner: Montana Realty Company**

**Location: 4370 Gordon Drive**

**Agent: John M. Passidomo**

**Request: Request for a Variance from Section 56-90 of the Code of Ordinances in order to allow a second guest unit where one guest unit is allowed.**



(It is noted for the record that documentation and exhibits pertaining to this item and referenced during the discussion are contained in the file for this meeting in the City Clerk's Office.)

Notary Public Brenda Blair administered an oath to those intending to offer testimony; all responded in the affirmative. Board Members offered ex parte disclosures to the effect that each had either visited the site or were familiar with the site, except Members Assaad and Hirsch who were away from the dais during disclosures.

Planning Director Robin Singer noted for the record a correction to the staff report (Attachment 2) as follows: the statement that the petitioner cannot exceed 450 square feet is incorrect since the property exceeds 30,000 square feet in area. According to the Code, the petitioner is limited to 40% of the area of the primary residence, which would allow the petitioner more than 5,000 square feet for guest units. That portion of the request is no longer an issue, she noted, since the petitioner is not requesting to exceed the floor area requirements in the Code.

Ms. Singer further noted that the remaining request is to allow two guest units where one detached guest unit is permitted on lots exceeding 30,000 square feet; the staff report also contains definitions and a determination by a previous Planning Director for review.

Attorney John Passidomo represented the petitioner and reviewed the project utilizing a computerized display and summary of facts (Attachment 3) included in the petitioner's application. He displayed an aerial photograph of the property and explained that the request is for a second guest unit on property 63,162 square feet in size in the R1-15A Residence District, which is two to three times larger than the minimum lot size in the aforementioned district and approximately 50% larger than nearby lots. Mr. Passidomo reviewed the applicable Code of Ordinances Section 56-91 for guest units, required lot size, and Code as it applies to the subject residence (Attachment 4). He explained that the proposed home is 12,903 square feet in size on a 63,162 square foot lot; permissible guest unit habitable floor area at 40% is 5,161 square feet although the combined square footage of the two proposed guest units is approximately 1,400 square feet, representing just 28% of what is allowed. Mr. Passidomo then reviewed the floor plan depicting the detached beach cabana approximately 500 square feet in size, and the location of the guest suite, which staff determined is detached since it is connected to the home only by an open-air breezeway. Staff determined that the problem could be addressed by enclosing the breezeway so the guest suite would be connected to the home by an air-conditioned hallway, Mr. Passidomo said, with the question remaining whether the petitioner will be required to do so in a location that is 112 feet from the road. He enumerated for Member Hirsch the reasons for retaining the open air breezeway which he read into the record (see Attachment 3); he then read into the record a letter addressed to Chairman Klaas from Harrison Design Associates (Attachment 5, Pg. 1) articulating the benefits of the breezeway; and then an e-mail from builder David Rogers, president of Newbury North (Attachment 5, Pg. 2) responding to his request for a cost estimate to convert the breezeway into an air conditioned hallway (estimated at \$325,000). He said he believed that there is no public purpose or benefit for requiring the owner to convert the open-air breezeway.

Planning Director Singer noted for the record that the notice of this petition was sent to the president of the Port Royal Property Owners Association, however, the president was unavailable; therefore, the staff report was forwarded to Port Royal representative Donna Krall who reviewed it with the Port Royal architectural committee. Ms. Krall's response was that the

committee concurs with staff's analysis. She further noted for the record that the Port Royal architectural committee had reviewed and approved the building plans, but said she felt that they perhaps had not recognized that it represented a second guest unit. She further noted that technically the proposed guest unit is considered detached since access is from the exterior stairs and not through air-conditioned space from the main residence.

In response to Chairman Klaas, Director Singer clarified that the unit would be considered part of the main residence if the breezeway were enclosed and suggested that the PAB and City Council review the Code definition in the future since a glassed in enclosure would represent an attached unit although the two dwelling units were separate. She further noted that she must abide by the Code regardless of the size of the lot since it is unclear where someone could potentially build a duplex and argue that it is not a guest unit since it is not detached. The Code should include language for units such as full kitchens; however, the Code at that time states that it must be attached through conditioned space.

Ms. Singer further noted that the petitioner has the right to move forward with the variance and the PAB has the ability to review variances on a case-by-case basis. If the petitioner had moved forward with an appeal of an administrative decision, she indicated that she would have strongly argued that this is a separate detached guest unit; however, the petitioner submitted a variance petition, not to argue the definition, but requesting that the balcony area remain open instead of enclosing it. She recommended denial since there are two separate units. There is also no hardship since a second guest unit is not required; therefore, a variance is required.

Chairman Klaas noted that there is no argument that it is separate since it has its own stairwell; whether it is air-conditioned is meaningless; and Member Hughes questioned whether the petitioner would be required to air condition the breezeway if the entire home were un-air-conditioned. A motion to approve was proffered by Member Hughes; seconded by Member Saad (see below). Attorney Passidomo explained that staff did not request that the space be enclosed or prohibit access from anything but the interior space, but instead requested that access must be through the house through air-conditioned space. With regard to access from the exterior, Mr. Passidomo said he felt that every other house along the beach has access from the exterior.

***MOTION by Hughes to APPROVE Variance Petition 09-V8 (09-097); seconded by Saad and unanimously carried, all members present and voting (Saad-yes, Ball-yes, Hughes-yes, Kovacs-yes, Assaad-yes, Hirsch-yes, Klaas-yes).***

During the vote, Member Ball attributed his affirmative vote to the roof being contiguous, but also concurred with the desirability to review the applicable ordinance; Member Kovacs concurred with Member Ball's comments. Member Hirsch spoke against requiring the petitioner to enclose the breezeway since it is part of the main residence and since such enclosure is not practical; however, she also concurred with reviewing the applicable ordinance.

**CORRESPONDENCE AND COMMUNICATION.....ITEM 10**

None.

**ADJOURNMENT** .....  
10:35 a.m.

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Richard Klaas, Chairman

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Robin Singer, Planning Director

Minutes Prepared By:

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Brenda A. Blair, Technical Writing Specialist

Minutes Approved: October 14, 2009



# Memo

## Streets & Stormwater

Streets & Traffic • Stormwater

**TO:** Adam Benigni  
**FROM:** George Archibald  
**DATE:** May 27, 2009  
**SUBJECT:** Public Works/Transportation Review of Petitions 09-CPA3 & 09-R2/17 Mandarin Road/First Christian Church Project

Comments and recommendation from review of the subject petitions are as follows:

**Plat & Lot Issues:** It should be noted that the legal description in the petitions include both the property upon which the church buildings and facilities are located and also the parking lot along the east side of Mandarin Road. The notes that following 'assume' that the petitions are restricted to the parking lot parcel, not the parent tract and that the legal descriptions in the petitions will be corrected. As platted, the subject property abuts a platted park on the east side, existing highway commercial on the north side and City streets on the west and south sides.

**Utility Issues:** City utilities are currently available to the site, both potable water and central sewer. The future site specific development will remain responsible for actual design, utility connections and any and all utility upgrades, if necessary, to service the future use.

**Stormwater Issues:** A stormwater conveyance system is currently available at the intersection of Orchid and Mandarin; the system discharges to the U.S.41 stormwater trunk line. Future site development will be required to comply with current/applicable City codes for water quality requirements (Ref: Ord. 07-11807 as may be amended) and may utilize the existing conveyance system subject to recognition of capacity limitations.

**Parking:** The current land-use of the subject parcel is for church overflow parking in support of church facilities and activities at the parent tract. A parking analysis to include a demand study (use per days/hours of a week) shall be submitted by the petitioner to confirm sufficient parking for the current approved activities at the Church. If overflow/off-site parking capacity remains necessary for parent tract functions and such parking capacity is to be a condition of a future sale/re-development of the parking lot, such parking capacity (number of parking spaces/days) and land-use provisions of

such parking (day per week/hours per day when surplus capacity is available to the church) may be a condition of future action by the City and potentially a restriction to any future land sale/lease/transfer/re-development.

Project Access: Based upon the plat notes above and intersection conditions on Orchid Drive at U.S.41, recommended vehicular access conditions for approval are as follows:

1. There shall be no access to the lots from U.S.41.
2. Future re-development access to the lots from Orchid Drive may be restricted or prohibited depending upon a future trip analysis and the impacts of such traffic on Orchid Drive and its intersection with U.S. 41.
3. In the case of future re-development, cross-easement agreements and/or provisions shall be established with parking aisles on adjacent property consistent with provisions of the Code and/or compatibility of land-use.
4. Future re-development access to the lots from Mandarin Road shall be designed to assure maximize throat length and minimize delay/conflict with traffic on adjacent streets.

Intermodal Facilities: The City reserves the right to provide sidewalks and/or bike lanes on adjacent streets. Where such facilities may be proposed along the properties frontages with Orchid Drive and Mandarin Road, the City may require such improvements as part of future re-development. Future intermodal access from the U.S.41 sidewalk shall be subject of City right-of-way permitting.

Based on the above review and subject to the comments above, this office has no objections to the referenced petitions.

For any additional information or analysis, don't hesitate to call.

GFA/27May09

Meeting of 9/9/09  
Agenda Item No. 9

**CITY OF NAPLES**

**STAFF REPORT**

To: Planning Advisory Board  
From: Robin D. Singer, Planning Director  
Subject: Variance Petition No. 09-V8  
Petitioner: Montana Realty Company, LLC  
Agent: John M. Passidomo, Cheffy Passidomo  
Date: August 27, 2009

- 
- **REQUEST:** This is a request for approval of a variance to allow two guest units where one is permitted and to allow both guest units to exceed the 450 square feet allowable square footage on property located at 4370 Gordon Drive.
  - **STAFF RECOMMENDATION:** The Planning Department recommends denial of variance petition 09-V6 based upon the request not meeting the Specific Criteria 1, 2, 3, 4, 6 and 7 (see Analysis below).
  - **LOCATION:** 4370 Gordon Drive
  - **SIZE OF PARCEL:** approximately 63,162 square feet or 1.45 acres
  - **EXISTING LAND USE:** vacant
  - **CURRENT ZONING:** R1-15A
  - **PREVIOUS ACTION:** None
  - **PENDING AND/OR SUBSEQUENT ACTION:** The Planning Advisory Board (PAB) will hold a public hearing on this petition at its meeting on Wednesday, September 9, 2009. 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 October 7, 2009, with final action by resolution.
  - **COMPREHENSIVE PLAN:** This property is designated as Low Density Residential on the Future Land Use Map (FLUM) of the Comprehensive Plan.
  - **SURROUNDING PROPERTIES:**

	North	South	East	West
Zoning	R1-15A	R1-15A	R1-15A	R1-15A
Land Use	Single Family	Single Family	Single Family	Gulf of Mexico

A determination by City of Naples Community Development Director Missy McKim, issued July 27, 1994 states:

*"The use of the work "detached" in the definition of a guest unit" was intended to describe any structure which is not part of the principal dwelling unit. Basically, a detached structure is a structure which is separate from the principal dwelling and cannot be accessed from the principal dwelling without going outside. Typically the use of this structure can function separate and independent of the principal dwelling.*

*Conversely, an attached structure is a structure connected to the principal dwelling by conditioned space and can be accessed from the principal dwelling without going outside or through non conditioned space."*

Under staff's interpretation of the code, the proposed development of this property includes two guest units and a variance is required. The code is clear that only one guest unit is permitted per single family residence where the property meets the standards of Section 56-91.

- **ANALYSIS:** 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.***

- Guest houses are permitted in the district but are limited in number.

**2. *The variance will be consistent with the comprehensive plan.***

- The primary use of the property will be a single family home, consistent with the future land use of the property. The density permitted under the Low Density Residential land use is 6 units per acre so the proposed use will not be inconsistent with the 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.***
  - There are no unique circumstances that require additional guest quarters on this property or would require that the units exceed the allowable square footage.
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.***
  - There are no special conditions that make this property unique in a way that would necessitate this variance.
3. ***Whether the failure to grant the variance would result in unnecessary and undue hardship to the property.***
  - To comply with the code as interpreted, the petitioner needs only to provide an air-conditioned attachment between the main house and this living space in order for it to be considered part of the primary use.
4. ***Whether the failure to grant the variance would deprive the owner of the reasonable use of the property.***
  - Resolving the code deficiency by providing an air-conditioned connection would not deprive the owner of the reasonable use of the property.
5. ***Whether the variance will promote, or will not be inimical to, the health, safety and welfare of the community.***
  - Granting this variance will not directly harm the community in any way.
6. ***Whether the variance will be otherwise consistent with and in harmony with the general intent and purpose of this land development code.***
  - The permitted use of the property is one single family home and one accessory guest unit. Allowing additional guest units would undermine the purpose and intent of the district to restrict the property to single family use.
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.***
  - The use permitted in the district is a single family home. Guest units are to be secondary, incidental and are limited in number to insure the single family character of the area. There is no need for relaxation of the code.
8. ***Whether the variance will be injurious to the surrounding neighborhood or adjacent properties.***



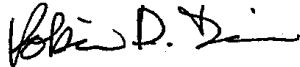
- The variance should not diminish the value or otherwise harm the neighborhood or adjacent properties.

**PUBLIC NOTICE:** On August 26, 2009 a total of 22 letters were mailed to all property owners located within 500 feet of the subject property. As of the date of this report, there have been no responses or inquiries received.

**DEPARTMENTAL REVIEW:** No objections were received from other departments.

**STAFF FINDINGS:** Staff finds that the request is inconsistent with Specific Criteria 1, 2, 3, 4, 6, and 7 and recommends denial.

Respectfully submitted by:



Robin D. Singer  
Planning Director

Petition Request and Summary of Facts – Detail how the project varies from the code

Controlling Legal Authority. Section 56-91 of the Naples Code defines “guest unit” as “an accessory unit which is detached from the principal dwelling ...” and provides that “on lots 30,000 square feet and greater, 1 guest unit may be constructed as a permitted accessory structure”. The guest unit may exceed 1 habitable story. Said guest unit’s habitable floor area shall not be more than 40 percent of the principal dwelling’s habitable floor area (collectively, the “Ordinance”).

Relevant Facts: The Subject Property is located in the R1-15A Residence District. Minimum lot area in the R1-15A Residence District is one platted lot; minimum lot width is 100 feet. The Subject Property is comprised of two platted lots and a portion of a third platted lot; actual lot width is 227.70 feet. The Subject Property is on average approximately 50 percent larger than other nearby beachfront lots.

The Property Owners are building a home of approximately 12,903 square feet in size and a gulf front beach cabana (the “Beach Cabana”) of approximately 503 square feet in size on the Subject Property. The Beach Cabana is detached from the principal residence and it is therefore considered to be a permitted guest unit. Staff has determined that an approximately 927 square foot portion of the principal residence located on one habitable floor above an attached garage (the “Guest Suite”) constitutes a guest unit because it is connected to the main structure by a proposed open air breezeway rather than by an air conditioned hallway.

The Guest Suite is therefore considered a prohibited second guest unit which cannot be maintained on the Subject Property unless:

- (1) The Property Owners enclose the open air breezeway and thereby connect the Guest Suite to the main structure by an air conditioned hallway; or
- (2) City Council grants a variance authorizing the Guest Suite as a permitted second guest unit on the Subject Property.

In either event, the Guest Suite will be built as part of the principal residence on the Subject Property pursuant to an existing building permit and legally issued development order, and the only question to be determined by City Council under this Petition is whether or not the city will require the Property Owner to enclose the open air breezeway with an air conditioned hallway.

Petition. The Property Owners respectfully request that City Council relieve it of the burden of converting the open air breezeway into an air conditioned hallway for the following reasons:

- (1) The open air breezeway is an integral part of the architectural, aesthetic and practical design of the home.
- (2) The Guest Suite will look and function the same as an integrated part of the principal residence whether it is connected to the home by an open air breezeway or an air conditioned hallway.
- (3) The presumed purpose of the Ordinance as espoused in Zoning Interpretation 94-02 “to regulate separate dwelling structures in single family dwelling zones” is in no way advanced by requiring that the open air breezeway be converted into an air conditioned hallway.

- (4) No public purpose is served and no adverse effect on adjacent neighbors is averted by requiring that the open air breezeway be converted into an air conditioned hallway.
- (5) The Ordinance authorizes a guest unit exceeding one habitable story in a maximum size of approximately 5,161 square feet (i.e., 40 percent of the principal dwelling's 12,903 square feet of habitable floor space). The Guest Suite at 927 square feet and the Beach Cabana at 503 square feet in the aggregate comprise less than 28 percent of the size of one guest unit permitted as of right on the Subject Property. It is respectfully submitted that the proposed distribution of space authorized for a guest unit in the Beach Cabana and the Guest Suite yields a design preferable to what is otherwise permitted as of right under the Ordinance.
- (6) The size of the Subject Property at (a) two to three times the required lot size in the underlying district, (b) on average approximately 50 percent larger than other nearby beachfront lots, and (c) twice the required size of lots in the R1-E Estates District where second guest units are permitted with conditional use approval suggests that (i) compatibility considerations in standards of approval for a conditional use may provide appropriate guidelines for assessment of this Petition, and (ii) there is ample justification to support a conclusion that requiring the Property Owner to convert the open air breezeway to an air conditioned hallway will not promote or otherwise affect the compatibility of the Guest Suite and nearby properties.

## NAPLES CODE

### Sec. 56-91. Guest units.

(a) *Definition.* Guest unit means an accessory unit which is detached from a principal dwelling, limited to 1 habitable story, which consists of 1 or more habitable rooms including any combination of living rooms, bedrooms, dens, studios, play rooms, wet bars, or kitchens. Garages, utility sheds, open air shelters, pool baths, and similar structures not intended for habitation shall not be considered guest units.

(b) *Required lot size.*

(1) In the R1-E district, 1 guest unit is permitted. Additional guest units may be permitted as a conditional use and must be approved by the process provided in section 46-34. Guest units may exceed 1 habitable story. The habitable floor area of all guest units on the site shall not exceed 40 percent of the habitable floor area of the principal dwelling. No single guest unit shall exceed 2,200 square feet.

(2) On lots 30,000 square feet and greater, 1 guest unit may be constructed as a permitted accessory structure. The guest unit may exceed 1 habitable story. Said guest unit's habitable floor area shall not be more than 40 percent of the principal dwelling's habitable floor area.

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### Naples Code as Applied to Home Under Construction at 4370 Gordon Drive

Principal Dwelling Habitable Floor Area – 12,903 square feet

Permissible Guest Unit Habitable Floor Area @ 40% – 5,161 square feet

Guest Units Habitable Floor Area as Proposed – 1,430 square feet  
(Beach Cabana – 503 square feet)  
(Guest Suite – 927 square feet)

Portion of Allowable Guest Unit Habitable Space Actually Employed – 28%

HARRISON  
DESIGN  
ASSOCIATES

3198 Cains Hill Place, NW, Suite 200 \* Atlanta, GA 30305  
Phone: 404 365-7760 Fax: 404 365-7769

September 8, 2009

Richard Klaas  
Chairman  
Naples Planning Advisory Board  
City of Naples

RE: Proposed breezeway 4370 Gordon Drive

Richard,

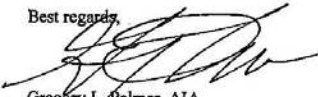
John Passidomo asked that I write you to articulate our design considerations and client requests which make the use of an open air breezeway more desirable vs. an air conditioned enclosed structure.

The benefits of the breezeway are as follows:

- 1) The breezeway is a much lighter structure and introduces a greater level of shadow than an enclosed structure would. This serves to diminish the mass to the façade which faces Gordon Drive and produces a superior overall design.
- 2) The breezeway allows for the movement of air from west to east in venturi fashion through the screen door on the east side of the screen porch. The enclosed structure would eliminate the west/east cross breezes and would allow only two walls of screening.
- 3) The breezeway design is intended to provide a horizontal connection between the guest suite and the public areas of the main level while also providing privacy for guests. The connectivity will be maintained by the enclosed structure but the level of privacy will be diminished.

Please do not hesitate to call with any questions of if you wish to discuss in grater detail.

Best regards,

  
Gregory L. Palmer, AIA  
Principal, Harrison Design Associates

**John M. Passidomo**

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**From:** Aubrey Haering [AubreyHaering@newburynorth.com] on behalf of David Rogers  
[DavidRogers@newburynorth.com]  
**Sent:** Wednesday, September 09, 2009 8:26 AM  
**To:** John M. Passidomo  
**Cc:** Greg Palmer  
**Subject:** 4370 Gordon Drive - Guest Unit Variance

Dear John,

With regard to the Guest Area over the Garage that my client, Montana Realty Company, LLC has applied to the City of Naples for a variance - The architect has prepared a plan for the Breezeway Area as an alternative to the current plan in the event the variance is denied. This plan closes in the Breezeway and makes this an air conditioned space, as per the direction from Robin Singer. We have prepared an approximate cost for the changes as shown.

Considering the architectural, engineering and consultant costs along with the construction costs, we estimate the added expense to the project to be approximately \$3,25,000.00.

Sincerely,

David S. Rogers