



DRAFT
TOWN OF LAUDERDALE-BY-THE-SEA
TOWN COMMISSION
SPECIAL TOWN COMMISSION
MEETING MINUTES
Jarvis Hall
4505 Ocean Drive
Monday, January 10, 2022
6:30 PM

1. CALL TO ORDER, MAYOR CHRIS VINCENT

Mayor Chris Vincent called the meeting to order at 6:30 p.m. Also present were Vice Mayor Alfred “Buz” Oldaker, Commissioner Edmund Malkoon, Commissioner Elliot Sokolow, Commissioner Randy Strauss, Town Attorney Susan Trevarthen (attending via Zoom), Assistant Town Attorney James White, Town Manager Linda Connors, Assistant to the Town Manager Neysa Herrera, Development Services Director Jhanelle Campbell, Public Works Director Ken Rubach, Director of Finance and Budget Lucila Lang, and Public Information Officer/IT Administrator Steve d'Oliveira.

2. PLEDGE OF ALLEGIANCE TO THE FLAG

3. QUASI-JUDICIAL

Mayor Vincent advised that the Item before the Town Commission at tonight’s meeting requests Level II Conditional Use Review. The Applicant is seeking to construct a single-family dwelling unit in the RM-25 zoning district.

- a. Pursuant to Town Code Section 30-126, “Conditional Uses Review,” the Applicant has requested Level 2 Conditional Use Approval to construct a single-family dwelling unit in the RM-25 zoning district.**

Town Attorney Susan Trevarthen explained the procedures for the hearing of quasi-judicial items, and the Commissioners disclosed any ex parte communications on the Item.

Town Attorney Trevarthen added that the Town has received a number of written public comments during the time in which tonight’s Item has been pending. These are included in the backup materials, along with written summaries of oral comments made at previous Town meetings. The Town has also received two written submissions that were not included in the backup materials:

- A letter from Walter Duke dated January 7, 2022

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- A letter from Henry Handler dated January 6, 2022

Both of these individuals made comments on behalf of The Seaward Villas, which is a neighbor to the subject property.

There were no questions from either the Applicant or the neighboring party with respect to the Commissioners' ex parte communications.

Individuals wishing to speak on the Item were sworn in at this time.

Development Services Director Jhanelle Campbell showed a presentation on the Item, which requests construction of a single-family home at 4112 El Mar Drive in the RM-25 zoning district. The property is currently a vacant lot of 10,177 sq. ft. (0.23 acre) in size. Public notice of tonight's meeting was mailed to all property owners within a 300 ft. radius of the subject site, and notice was posted on the property itself, on each end of El Mar Drive, and on the Town's website.

Staff received several questions, comments, and public records requests related to the Application. These are included in the Commissioners' backup materials.

When the Application was received, the subject property owners could request approval for conditional use in the RM-25 zoning district. Since that time, however, Ordinance 2021-09 has been passed, meaning no other such requests may be brought forward. This Application was received prior to adoption of the Ordinance. Staff has reviewed all Application materials, as well as architectural submittals.

Conditional use criteria are governed by Section 30-126 of the Town's Code. This Section provides a process by which conditional uses may be granted. Conditional use applications require review by Town Staff, the Town Architect, and review/recommendation by the Planning and Zoning Board. Final review and consideration is made by the Town Commission.

Conditional uses are not permitted by right, but may be approved if substantial evidence is presented to show that an application meets the criteria listed in Code. These criteria are as follows:

- Land use compatibility
- Sufficient site size
- Site specifications
- Infrastructure sufficient to accommodate the proposed use

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- Compliance with the Town's Comprehensive Plan and Code of Ordinances
- Proper use of mitigative techniques

Staff has reviewed the Application in accordance with these criteria. The Application was presented to the Planning and Zoning Board at its July 7, 2021 meeting. After discussion and input from the Applicant, the abutting property owner, and the public, the Planning and Zoning Board recommended approval of the request by a 4-1 vote. Public comments heard at that meeting are also provided in the backup materials.

Following the Planning and Zoning Board meeting, the Application was subjected to architectural review per Code Section 30-5.1. The Town Architect initially found that the proposed structure was incompatible with the Town's preferred architectural style of Mid-century Modern. A revised design was then submitted and approved by the Town Architect. Development Services Director Campbell showed graphics of both the initial and revised designs.

Under the land use compatibility criterion in Section 30-126, several sub-criteria were evaluated. The building plans for the proposed structure indicate a maximum height of 33 ft. This elevation is based on the Florida Department of Environmental Protection's 100-year storm elevation. This approach has been followed since approximately 2013, based on the Town Attorney's interpretation of Section 7.2 of the Town's Charter.

The land use compatibility sub-criteria were also analyzed and aesthetics reviewed by the Town Architect, who found them to be compliant. The proposed single-family home is expected to be able to coexist with the permitted land uses on El Mar Drive and in surrounding areas without negatively affecting adjacent and neighboring properties.

For the sufficient size criterion, Staff agreed with the Applicant's analysis that the property is of sufficient size to provide adequate screening, buffers, landscaping, open space, off-street parking, internal traffic circulation, infrastructure, and similar plans and improvements necessary to mitigate against potential adverse effects of the proposed use. The Mid-century Modern design and scale of the property were found to be compatible with adjacent and surrounding properties. Staff found the Application to be compliant with both the Comprehensive Plan and the Code of Ordinances.

Regarding the proper use of mitigative techniques, the Application demonstrates use of these techniques, including changes made during revision of the initial design. The proposed design appropriately addresses all off-site impacts to ensure that land use

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activities in the vicinity, including community infrastructure, will not be burdened by adverse effects detrimental to the general public health, safety, and welfare.

The Town Manager also found that the Application met the requirements of Town Code as well as for approval of conditional use. Her approval is included in the Staff Report.

The single-family home is proposed to be constructed at 33 ft. above wave crest elevation. This elevation is based on FDEP's 100-year storm elevation, also known as a breaking wave crest elevation under 2020 Florida Building Code. For this Application, the 100-year breaking wave crest elevation is established at 17.52 North American Vertical Datum (NAVD). Development Services Director Campbell noted that the abutting property is not required to meet this elevation, as it was constructed prior to the adoption of this regulation; however, if the abutting property were to be significantly improved or a new building was constructed, the elevation of the new or improved structure must also meet the breaking wave crest elevation requirements.

Conditional use requirements are intended to ensure that a project having an adverse impact on neighboring properties is not approved. The request for a single-family home would generate less traffic and potentially fewer people using the surrounding beach. Staff does not view these as detrimental to the community.

Staff believes that the architecture of the proposed structure is unique and consistent with the Town's preferred architectural style of Mid-century Modern. It also mimics the architectural design and characteristics of smaller Mid-century Modern boutique hotels located on El Mar Drive.

Upon reviewing all plans and materials submitted by the Applicant, Staff believes these are consistent with Town Code. They have determined that the Application meets the criteria for approval. The standard conditions of approval, which would be included in the Development Order if the Application is approved by the Town Commission, would apply.

Commissioner Malkoon asked if the Application also meets all setback requirements for the property. Development Services Director Campbell confirmed this.

Mayor Vincent requested additional detail regarding the actual height and wave crest elevation of the streetside portion of the proposed building. Development Services Director Campbell explained that the NAVD point of habitable space begins at 17.52 ft.

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When this is added to the proposed building height, the top of the building will lie at an elevation of approximately 43 ft.

Commissioner Strauss asked for the height of the building located just north of the Seaward Villas. Development Services Director Campbell advised that she did not have information regarding the height of this building, which is the Sea Lord Hotel.

Mayor Vincent commented that Staff's analysis of the conditional use request appeared to be in agreement with the Applicant's analysis. Development Services Director Campbell confirmed that Staff did not believe there would be any adverse impacts, inordinate burden, or hardship on the Seaward Villas. She added that the change from the Applicant's initial design to the revised design addressed some of the potential adverse effects: for example, the balconies on the ocean side of the subject property were changed to glass, which allows for more penetration of sunlight. Mayor Vincent observed that these were material, but not substantial, adjustments to the construction of the building itself, with no changes proposed to its design, height, width, or setbacks.

Courtney Crush, attorney representing Applicants Sherri and Dave Staudacher, stated that the Conditional Use Application was originally submitted in March 2021 and included a request for administrative adjustments. Following discussions with Town Staff as well as feedback from the neighboring property to the north, the Application was revised to remove the request for administrative adjustments. The Application has been recommended for approval after analysis by Planning Staff, the Planning and Zoning Board, and general discussion of single-family homes on El Mar Drive.

Ms. Crush recalled that the Planning and Zoning Board had discussed both future policy issues and the appropriate time for architectural review. The Application was originally scheduled to come before the Town Commission in fall 2021; however, this was deferred in order for architectural review to proceed. This review was submitted to the Town Architect. The Town also directed Staff to prepare a proposed Amended Zoning Ordinance that would remove single-family homes from the RM-25 zoning district. The Planning and Zoning Board recommended approval of that draft Ordinance, which was ultimately brought before the Commission.

The Applicant also received correspondence from the Town Architect which clarified his review of the proposed structure's architectural. In this letter, the Town Architect explained that the scope of his review was limited to architectural features, pursuant to Town guidelines.

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The Commission considered the amended RM-25 zoning regulations upon first reading and adopted these changes in October 2021. The Applicant's team conducted a follow-up discussion with the Town Architect, and received a letter of approval of architectural review in October 2021.

Ms. Crush noted that uses along El Mar Drive include vacant property, residential, hotel/motel, and commercial uses. Toward the north, the built environment is varied with regard to new building placement and heights. Residential and hotel/motel uses also continue toward the north on El Mar Drive.

Ms. Crush stated that the proposed single-family home is capable of meeting criteria associated with land use, Town Code, and analysis of mitigative techniques. The subject property is a platted lot that has never been subdivided or "carved off."

Cecilia Ward, also representing the Applicant, recalled that in 2011-2012, she was hired by the Town to assist in the review of its Comprehensive Plan, Unified Land Development Regulations, and architectural design issues. She assisted with an in-depth study into existing conditions in relation to hotel, motel, and apartment hotel uses, which included significant public outreach. The result was a number of changes to the RM-25 zoning regulations in Section 30-241 of Code, which were intended to make it easier for existing hotel, motel, and apartment hotel establishments to upgrade and renovate.

Ms. Ward continued that the end result of these changes was the discouragement of conversion of existing hotel and motel uses. She emphasized that there was no intent to prohibit single-family development on vacant lots, which is why the conditional use process was available to allow this development.

Ms. Ward stated that she has analyzed the Town's Code for dimensional standards and requirements as they apply to the site design submitted with the Application. She found these to be compliant with setback and view requirements, noting that the intent of view requirements is to allow pedestrians on El Mar Drive to be able to see the ocean. The Application also complies with height restrictions and parking requirements.

Ms. Ward next addressed conditional use review criteria, noting that the density of the subject zoning district allows roughly seven dwelling units, or 14 units for a hotel or motel. These are significantly less dense than what is permitted. The subject area must also be in harmony with existing residential uses in the surrounding vicinity. The location does not result in substantially less public benefit. Some provisions among the

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conditional use criteria, including hours of operation, do not apply to a single-family home. The proposed use is also consistent with the characteristics of El Mar Drive and its varying densities and design types.

There are four overriding categories of conditional use review:

- Land use compatibility
- Size of the site
- Compliance with the Comprehensive Plan
- Mitigative techniques

Regarding land use compatibility, the proposed single-family use is compatible, as it is less intensive than other uses that are permitted by right. The use is permitted in the RM-25 zoning district and Medium Residential Future Land Use category.

The proposed single-family use satisfies the Town's architectural review. Ms. Ward reiterated that the intent of the architectural design guidelines was to move from requiring Mediterranean-style architecture and instead encourage preservation of Mid-century Modern. The Town Architect has confirmed that the proposed structure is compatible with this criterion.

The Applicant's team performed a traffic analysis that shows the proposed single-family structure would result in significantly less traffic than would be generated by seven or 14 units, each of which would be permitted by right. The proposed use complies with all dimensional requirements of the RM-25 zoning district. Ms. Ward advised that Code requires a site design or plan of site design as part of the Conditional Use Application: single-family dwellings are not required to submit a Site Plan application.

The Application is also in compliance with several policies and objectives, some of which address infrastructure capability to serve the proposed development, level of service standards, and design of the proposed use to pedestrian scale. Ms. Ward clarified that the latter refers to the preservation of view requirements from El Mar Drive for pedestrians.

Ms. Ward concluded that the proper use of mitigative techniques, as noted earlier by Town Staff, includes the placement of windows in relation to adjacent properties, addition of glass railings, and other architectural design features, including both horizontal and vertical design elements.

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Ms. Crush recalled that when the Application went before the Planning and Zoning Board, Board members and community residents evaluated the criteria discussed above and asked questions related to design, setbacks, height, minimum flood elevation, and grade. One neighboring property showed a graphic suggesting that a building feature of the proposed structure could be flipped so it faces the south rather than the north. Following the Planning and Zoning Board meeting, the Applicant's team reached out to this neighbor and was advised by their counsel that the proposed flip would not be sufficient.

There was also discussion by the Planning and Zoning Board that the approval of the proposed single-family home might result in the proliferation of single-family homes on larger vacant properties. The Town has since amended its Code to address this concern.

Once the Planning and Zoning Board approved the Application, it proceeded to architectural review. Ms. Crush advised that the Planning and Zoning Board's findings that the proposed structure is compliant with setbacks, setbacks, and other requirements are maintained in the Application. Changes include the incorporation of specific critical elements from the Town's architectural guidelines into the property. She showed renderings of the two designs, noting that the building maintains its footprint and that a variety of different features, include architectural elements and the color palette, have been introduced.

Tara Patton, also representing the Applicant, addressed the design enhancements that were added following initial architectural review. She also showed a graphic clarifying the changes from initial to final submittal, pointing out that while the overall style remains the same, there are variations. These consistent elements include asymmetrical design, cantilevered canopies, use of geometric shapes, intersecting planes, and cutouts. She noted that the primary change in the two designs is the color.

Other details that changed following Planning and Zoning Board approval include highlighting of asymmetry with like colors, Mid-century Modern elements near the front door and around the walls, use of glass railing materials, changes to the balcony areas, "eyebrows" over windows, and cutouts to both rear and front walls. The lighter color palette contributes to a more coastal appearance.

Ms. Patton continued that when the Applicant's team looked at nearby structures on El Mar Drive, they found that the surrounding architectural styles are varied, with Mediterranean and Mid-century Modern elements as well as traditional architecture.

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Ms. Crush concluded that the Applicants have listened to the input of Town Staff, the Planning and Zoning Board, and prospective neighbors in proposing the design for their property. She reiterated that conditional use is permitted subject to assurance that an applicant complies with land development regulations, the residential Comprehensive Plan, Code requirements, and conditional use criteria. The Application has been reviewed at multiple levels and was found to meet these criteria.

Ms. Crush requested the opportunity to make follow-up comments as necessary after other speakers have addressed the Commission.

Commissioner Malkoon stated that he did not feel it was accurate to suggest that the proposed structure would have no impact at all on neighboring properties. While the building is permissible according to the analyses provided, he noted that it is likely to be the last single-family home in the subject area, due to steps taken to prohibit more such developments. He also suggested that more could have been done by the Applicant to mitigate the property's effects on its neighbors, even though the size and height proposed are permitted by Code.

Commissioner Malkoon continued that the Seaward Villas had expressed concern regarding the potential shadows cast by the proposed building, and had provided a rendering that showed its pool deck would be in shadow for most of the year. He asked if it might make sense for the Applicant to move their proposed pool to the north side, which would create more space between the two properties and potentially benefit both parties.

Ms. Crush replied that the Applicants' team had reached out to the Seaward Villas' counsel to indicate they were willing to discuss this possibility; however, counsel responded that this change would be insufficient to address his clients' concerns. She read from the letter of response from Seaward Villas' counsel, which indicated that the Applicants must also be willing to discuss the height and proximity of their planned structure to both the Seaward Villas property and El Mar Drive.

Commissioner Malkoon explained that his intent was to acknowledge that the planned structure will have an impact on neighboring properties. He pointed out that even a smaller building would have an effect on Seaward Villas, as that property's doors and windows face south and the new structure would still affect its views. He concluded that he would like to see these two parties meet to discuss realistic mitigation of impacts.

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Ms. Crush advised that her clients were happy to discuss this further with their neighbors.

Mayor Vincent shared Commissioner Malkoon's concerns that the redesign of the property after its first architectural review had not included any material changes to the structure, but only to architectural features and elements. He added that while the proposed project now meets architectural standards, this does not mean that it will meet conditional use requirements with respect to its impact. The Town Architect has not opined on aspects such as impacts or an inordinate burden on adjacent properties.

Mayor Vincent continued that when the Town rewrote an Ordinance regarding this zoning district in 2012, the Commission at that time had not indicated any opposition to residential use, which could have included not only single-family homes but condominiums or other multi-unit development. He clarified, however, that he did not believe the 2012 Commission had any intention of permitting the development of single-family homes, but had unfortunately neglected to address this.

Mayor Vincent also noted that while the Planning and Zoning Board had recommended the Application by a vote of 4-1, they also voted 3-2 against grandfathering the Application, which he felt was significant. Ms. Crush suggested that this may have been the result of those two votes being taken under "two different sets of criteria."

Vice Mayor Oldaker asked if the Applicants' architect had been permitted to design their home "to the max" for what could be built on the property, or if they provided the architect with a design to try to fit onto the lot. Ms. Crush replied that the architect was given parameters for the design, based upon the family's preferences as well as wave crest elevation requirements.

Vice Mayor Oldaker asked if, during the design process, the Applicants had acted with "compassion to the neighborhood." Sherri Staudacher, Applicant, advised that neighbors had asked that three large air conditioning units be relocated. She recalled that she and her husband had spoken with the neighboring property owners and their family on several occasions. Those owners had provided the Applicants with an architect's renderings of what they would find acceptable, although this did not reflect her own wishes for her property.

Vice Mayor Oldaker requested clarification of the timeline for these discussions. Ms. Staudacher stated that these discussions began in spring 2021. She added that when the plans for the home were brought before the Planning and Zoning Board, it had come

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as a surprise when neighbors reacted negatively to the design, as the Applicants' team had reviewed the design of the building in detail with the neighboring property owners. By the time the Planning and Zoning Board saw the Application, the neighbors adamantly opposed the conditional use.

Ms. Crush continued that following the Planning and Zoning Board meeting, the Applicants' team had offered mitigative techniques, which included the architectural modifications referred to earlier. These changes were made prior to architectural review and were part of the presentation to the Planning and Zoning Board. Following that Board meeting, the Applicants had minimal contact with their neighbors except through both parties' counsel.

Commissioner Strauss addressed the alternate architectural drawings provided to the Applicant by their neighbors, asking if those drawings proposed height differences for the property. Ms. Crush explained that the neighbors' architect had communicated with the Applicants' architect: this contact did not occur between the Applicants and either the neighbors or the neighbors' counsel. The proposal had included "sliding the building" from one position to another rather than reducing its height. The architects' contact occurred in December 2021, on or after the time at which the neighboring property owners had requested deferral of the Item.

The Commissioners took a brief recess from 7:11 p.m. to 7:25 p.m.

Henry Handler, attorney representing the Siletti Family Limited Partnership, which owns the Seaward Villas property at 4128 El Mar Drive, stated that his clients opposed the Application. He submitted a letter dated January 7, 2022, by the team's property appraiser, Walter Duke, as well as his own letter dated January 6, 2022, both of which were previously sent to the Town.

Mr. Handler advised that the Town's zoning Code previously included single-family residential development as a permitted use in the RM-25 zoning district. In 2012, the Town amended its zoning Code to eliminate this permitted use from that district, instead making single-family residential use a conditional use in RM-25.

Mr. Handler asserted that the Commission's reasons for eliminating this permitted use were stated during various Town Commission and Planning and Zoning Board meetings held in connection with this Code revision. This was because the Town wished to keep single-family residential neighborhoods separate and distinct from the business and

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commercial hotel district: hotels were encouraged within the RM-25 zoning district, and single-family residential uses were discouraged.

The Town also amended Policy 1.2.1 of its Comprehensive Plan to reflect its intent to keep single-family residences separate from high-density multi-family or tourist-oriented land uses. The RM-25 zoning district is a significant commercial district within the Town and is intended to permit single-family residential uses “only in rare circumstances.”

Mr. Handler continued that the purpose of the Conditional Use section of Town Code is to ensure that these uses are only permitted on specific sites where the proposed use may be adequately accommodated without adversely affecting properties and land uses within the immediate vicinity. Conditional uses may only be permitted upon the finding that the proposed use satisfies the specific review criteria in Code.

One requirement of a conditional use application is a description of any mitigative techniques used to abate any possible adverse impacts of the proposed use on properties in the immediate vicinity. This means the Applicant must demonstrate the following:

- Land use compatibility of the conditional use, including its proposed scale, traffic-generating characteristics, and off-site impacts
- Compatibility shall be measured based upon characteristics of the proposed use or development in relationship to surrounding development in the immediate area

Mr. Handler asserted that the design of the Applicants’ proposed residence does not employ sufficient mitigative techniques to reduce the structure’s negative impacts, which include loss of light and diminishment of view corridors. He added that the size and shape of the site are inadequate to accommodate the scale and intensity of the proposed conditional use.

Mr. Handler continued that the proposed use is contrary to the Town’s historic character and RM-25 zoning district as well as to its policies regarding the separation of single-family residential areas from higher-density multi-family and tourist-oriented land uses. The adverse effects of the proposed structure on the Seaward Villas are expected to include projected loss of income and property value.

William Schenck, also representing the Siletti Family Limited Partnership, stated that he was hired in June to investigate potential adverse impacts of the proposed residence to the south of his clients’ property. He advised that the Seaward Villas include four units

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with both south- and east-facing windows, as well as a beachfront pool. The proposed residence is 40 ft. 6 in. in height as opposed to the 22 ft. height of the Seaward Villas.

Mr. Schenck stated that the proposed residence extends its maximum distance to the beachfront side, which he estimated was 18.5 ft. beyond the edge of the Seaward Villas. The proposed plans, as of October 19, 2021, extend to the maximum rear setback limit line. The building is set back the maximum distance of 35 ft. from El Mar Drive.

Mr. Schenck commented that the proposed structure's height is 33 ft., or three stories, above the wave crest elevation. He pointed out that the Town's single-family residential district allows a height of two stories above grade.

Mr. Schenck continued that the current design's setbacks are calculated based on the overall length of the building, which is listed in the Applicants' plans as 110 ft. He stated that the revised plans include a 3 ft. balcony, which can be occupied, to the west of the building, which extends the building's overall length to 113 ft. He felt the setback should be calculated using this distance rather than 110 ft.

Another concern was for inconsistencies within the plans. Mr. Schenck noted that renderings and elevations indicate a "bump-out" to the north and south with no set dimension. This would extend beyond the walls shown on the Site Plan and constitute a setback violation.

Mr. Schenck provided a shadow study dated December 1, 2021 at 1 p.m., stating that while the Seaward Villas currently have good access to natural lights both in the units and to their pool area, the proposed residence would have excellent light and panoramic views on a year-round basis at the expense of the Seaward Villas. Other shadow studies occurred during prime rental months of November, December, January, and February and also show shadows cast upon the Seaward Villas. He identified this as an adverse impact.

Mr. Schenck continued that there is also an impact of shadows into the Seaward Villas' units themselves on the south and east faces of the building. Views from inside the units would also be adversely affected. He suggested it may be possible for the Applicant to do more to mitigate this issue.

In December 2021, the Siletti Family Limited Partnership offered a proposal to the Applicant that would allow them to enjoy the benefits of their home while introducing

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more substantial mitigative impacts. This plan was sent to the Applicant's team with the request that it be shared with their counsel and the Applicants themselves. Mr. Schenck reviewed the differences between the Applicant's proposed design and the mitigative impacts, which include:

- Reducing the planned 35 ft. setback from El Mar Drive to 25 ft. in order to further open the right-of-way to views and light
- Flipping the plan to place parking on the southern portion of the site, and flipping large balconies to the northern side
- "Wraparound" back balconies rather than the current design to lessen shadows

Mr. Schenck asserted that these changes would allow both the Applicant and the Seaward Villas to retain ample sunlight on their pools and provide more cohesive alignment between the east and west ends of the proposed structure. The house would retain the same square footage as in the current design.

Mr. Schenck recalled that receipt of the mitigative proposal had been forwarded to the Applicants, but there was no response.

Walter Duke, architect retained by the Siletti Family Limited Partnership, explained that he was brought onto the team to analyze potential adverse financial impacts of the proposed structure to the south of the Seaward Villas. He noted that the Seaward is a boutique hotel located directly on the beach, and the components creating value for the property include its ocean view. The hotel market currently reflects record increases in pricing, which are related to the types of amenities this hotel can provide.

Mr. Duke stated that while there has been no calculation of the final diminution of value that could occur as a result of the Applicants' structure, it is expected to be significant if two oceanfront rooms cannot retain their ocean view. The beachfront units are also likely to be less appealing in the anticipated conditions. While occupancy may not decrease dramatically, a drop in room rates is expected. Mr. Duke concluded that it was his opinion a full study would show significant negative impact on the Seaward Villas property in rental rates, business operations, and market value.

Mr. Schenck provided a brief review of the Applicants' responses, which included compatibility of introducing a single-family home on the site, which will be less intensive than multi-family or hotel uses with regard to nuisances, traffic generation, and alteration of light and air. He asserted that these are not the standards for compatibility that are required by Town Code: instead, Code asks that the Commission look at the impact of the Application on immediate neighboring facilities as well as on the overall

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area. He felt it has been substantially demonstrated that there would be significant adverse impacts with no real mitigative efforts made to address these impacts.

James Siletti, member of the Siletti Family Limited Partnership, stated that the proposed structure would severely affect his business. He read a statement into the record which questioned how the Application could be found as compliant with Town Code under the conditional use criteria. He cited information provided through shade studies, noting that alterations of air, light, and shadows must be considered as determining factors for compatibility.

Mr. Siletti continued that the Applicants were aware their proposed structure would have a significant impact on the adjacent boutique hotel and must be compatible with that property. He felt the Application ignores this Code requirement, and that a smaller design would have a less significant impact on the hotel.

Tony Siletti, member of the Siletti Family Limited Partnership, stated that it was not his team's intent to prevent the Applicants from leaving a legacy for their children; however, the size of the proposed structure on a small lot would have a significant negative impact on the Seaward Villas. He reiterated that they are asking the Applicant to reduce the size and impacts of their plans.

Commissioner Strauss asked if the alternative concept proposed by the Silettis' team is still viable as a proposed mitigation. Mr. J. Siletti replied that this option was offered as a proposed starting point to show there are ways to mitigate the impact of the Application. He indicated willingness to discuss this option further.

Commissioner Strauss commented that the Partnership's presentation appears to show that height is less of an issue to the Seaward Villas than setbacks. Mr. J. Siletti agreed that this is accurate. Commissioner Strauss also asked if the Partnership is opposed to the property being a single-family home rather than a multi-family or hotel use. Mr. J. Siletti advised that his primary concern was for the impact any building built on the subject lot would have on his property.

Commissioner Strauss also addressed the shade study, asking if any scenarios were run to show the effect of the neighboring property if it was limited to the height restrictions that are in place to the south of the Applicants' property. Mr. Schenck replied that no study of this nature was performed.

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Commissioner Strauss noted that the proposed mitigative architectural design appears to minimize the shadow effect on the Seaward Villas. Mr. Schenck replied that there would still be shadows after 12 p.m., but these would be reduced by half under the proposed design.

Commissioner Malkoon observed that while the proposed mitigative rendering includes the same square footage as the Applicants' design, it does not propose the same height. He noted that this proposal may offer a better alignment that does not build to the maximum allowable height; however, because the Partnership's team has referred to this alternate design as "a start," the Applicants may have concerns that the proposed changes would not be enough. He encouraged the two parties to work with one another and come to a compromise.

Ian Demello, attorney for the Applicants, stated that his clients' issue with the proposal is based on this concern: while the Applicants first agreed to consider flipping the location of the pool, the result was that the Partnership then asked for more changes. He reiterated that the only change the Applicants were currently willing to consider was the original flipping of the pool. He confirmed that if the Commission approved this specific change and the Application did not have to go before the Planning and Zoning Board again, the Applicants may be willing to make that change.

Mr. J. Siletti declared that there has been outreach from the Seaward Villas to the Applicants since the beginning and that his team has made several attempts to have further discussions. The architectural renderings proposed by his team were brought forward to show how the Applicants could mitigate their property without reducing its size. He stated that his team would be happy to have additional conversations with the Applicants, although he added that he was "not in a position to say yes" as to whether his team's architectural proposal would work.

Commissioner Malkoon commented that a lesser setback in front of the proposed structure and a larger setback in its rear could protect both parties from some shadows. He felt this was a more sensible alignment of the proposed structure.

Commissioner Sokolow stated that the Partnership has enjoyed the benefits of the adjacent empty lot for several decades. He pointed out that while the Applicants have attempted to mitigate the effects of their proposed structure, it is ultimately their property, and the Town's Development Services Department has confirmed that their plans are acceptable. He concluded that these were the effects of living in an

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environment that is always becoming more crowded, and hoped to bring this ongoing issue to an end at tonight's meeting.

Mayor Vincent commented that his decision would be based on the testimony presented, as well as on the Town Code that was amended in 2012. He again noted that Staff has not addressed any of the Application's prospective impacts on the neighboring property, and asked if this meant Staff believed it would have no negative effects on the Seaward Villas. He also asked why Staff had only addressed the Applicants' analysis of the Application and not any of the findings brought forward by the neighbors' team.

Mayor Vincent continued that there was also no discussion of the 2012 Ordinance that removed single-family homes from the RM-25 zoning district as a permitted use, nor an explanation of the purpose of its conditional use status, which he stated was intended to provide additional consideration to prevent a potential onslaught of single-family homes on El Mar Drive. There have been no such applications in the RM-25 district before the current one.

Mayor Vincent advised that the Town should have taken steps to protect itself from the type of situation that is now before the Commission, such as the recent adoption of an Ordinance that prohibits the development of any more single-family homes in the RM-25 district. He felt the Application should be sent back to the Planning and Zoning Board, adding that the purpose of the 2012 Ordinance had been grossly misrepresented at the previous Planning and Zoning Board meeting at which this Application was discussed.

Mayor Vincent continued that the only mitigative changes proposed by the Applicants were modifications to the materials requested by the architect rather than to the design of the structure itself. He also noted that while the Town Architect's decision is final because it was not appealed before the Commission, this did not constitute a final decision for the entire process. In addition, the Town Architect did not offer an opinion on impacts, as that would have been outside his purview.

Mayor Vincent again recommended that the Application be sent back to the Planning and Zoning Board "with the information that we all have now."

Mr. Demello stated that the Applicant is neither challenging the Partnership's right to stand as an affected party under Town Code, nor are the Applicants conceding that the Partnership has demonstrated legal standing. He reiterated that single-family residences were sanctioned by the Town as a conditional use and are presumed to be

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compatible in the general welfare. If the Applicants meet the criteria for conditional use, the burden then shifts to either the zoning authority or the Town Commission to demonstrate that the Application does not in fact meet this standard and that the request is adverse to the public interest.

Mr. Demello continued that the Staff Report includes substantial evidence of mitigative techniques and that the Application complies with Code, conditional use criteria, and the Town's Comprehensive Plan.

Town Attorney Trevarthen clarified that it would not be appropriate at this time for the Applicant's counsel to offer a rebuttal or closing argument, as public comment on the Application has not yet been heard. If there are no more direct questions from the Commission at this time, she recommended that public comment be heard, including a reading of written comments submitted in advance of tonight's meeting.

Assistant to the Town Manager Neysa Herrera read the following written comments:

- Barbara Cole, resident, addressed the Town's Strategic Plan from 2012, noting that it has resulted in revisions to Code and the Comprehensive Plan which address the Town's character in terms of the uses permitted in various areas. The Strategic Plan recommends like uses beside like uses in order to prevent conflict. She concluded that the Commission should do what it can to preserve the RM-25 district.
- Ann Marchetti, resident, stated her opposition to the Application, pointing out that the project's size would have adverse impacts on the neighboring property and therefore does not meet conditional use criteria. She did not feel a single applicant should be able to change the landscape of El Mar Drive.
- Roseann Minnet, resident, asked the Commission to reconsider whether or not the Application is cohesive with the rest of El Mar Drive. She felt the proposed structure would not fit into that roadway's community environment, and the Commission has the authority to request a more appropriate structure that maintains sight lines to the ocean.
- Wayne Dillistin, resident, advised that he had voted against the Application as a member of the Planning and Zoning Board. He cautioned that the Application does not meet conditional use criteria, as it is not compatible with adjacent land uses and is not consistent with the future development of El Mar Drive. He concluded that the Application should go back to the Planning and Zoning Board for review once it has met the requirements of having no negative impacts.

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At this time Mayor Vincent opened public comment. Town Attorney Trevarthen noted that the weight of individuals' testimony is greater if they are sworn in.

Sherri Staudacher, Applicant, addressed an earlier comment that stated the Applicants had not responded to outreach from the Partnership. She explained that it had been necessary for her and her husband to change attorneys, as their attorney at that time had worked with Mr. J. Siletti on a previous matter.

Dave Staudacher, Applicant, advised that his team had no issue with modifying the setbacks and flipping the pool to the opposite side of the building; however, he pointed out that the Partnership was unwilling to commit to making no further requests. He concluded that they would be willing to make concessions "as long as we were protected on both sides."

Ms. Staudacher clarified that this referred to the possibility that a property on either side of the Applicants' parcel could make changes that affected their home.

Barbara Cole, resident, stated that at the September 13, 2021 Commission meeting, the property at 4112 El Mar Drive was grandfathered in for consideration of conditional use. She recalled that at the March 21, 2012 Planning and Zoning Board meeting, the Town Planner had indicated that conditional use for a single-family home in the RM-25 district "was the Commission's number-two priority."

Ms. Cole continued that in 2012, during consideration of the Strategic Plan's mission and vision statements, the Town Attorney had noted many communities did not realize they "wanted to say no" until it was too late for this action. She also noted that it was not always a use that was objectionable to a community, but the scale and presentation of the use as well.

Town Attorney Trevarthen stated that at this point, Town Staff had the opportunity to rebut any information offered at tonight's meeting, followed by the same opportunity for rebuttal by the Applicant and by the neighboring party.

Development Services Director Campbell addressed the balconies of the proposed site, noting that Town Code prohibits these structures from encroaching more than 5 ft. into the front setback.

With respect to the Application's compatibility with the Town's Comprehensive Plan, Development Services Director Campbell explained that policy must be considered in

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the context of established goals and objectives. She noted that Policy 1.2.1 perpetuates the existing pattern of segregating single-family areas from higher-density multi-family and tourist-oriented land uses, pointing out that this policy refers to areas rather than to specific lots.

Goal 1.0, which corresponds to Policy 1.2.1, seeks to maintain a coastal resort-oriented residential community characterized by a land use mix which reflects a balance of year-round, seasonal, and tourist populations and discouragement of urban sprawl. Development Services Director Campbell advised that the RM-25 zoning district provides for a mix of uses. Objective 1.2 also corresponds with this policy by maintaining the Town's year-round residential character, with particular emphasis on preservation of single-family areas. It was noted again that this reference is to areas rather than individual lots.

Mr. Demello asked if Staff had reviewed all evidence and made an independent determination as to whether or not the Applicants' proposed mitigative techniques satisfied the Code criteria. Development Services Director Campbell confirmed that this was done.

Mr. Demello also asked if the quasi-judicial proceedings outlined in Code Section 30-140 permitted an opposing party to offer rebuttal to the Application. Attorney Trevarthen stated that the Town planned to provide the Partnership with an opportunity for rebuttal. Mr. Demello explained that he felt it would be more appropriate to allow the Partnership to make their rebuttal at this time in order to ensure that the Applicants' rebuttal was the last heard before the discussion returns to the Commission. Attorney Trevarthen replied that she had no objection to this, as procedures are not specific regarding the timing of a third-party rebuttal.

Mr. Schenck addressed the Commission once more, stating that the Partnership's proposed mitigative plan was sent to the Applicants' team in December 2021. Following a second email, Mr. Schenck received confirmation that the Applicants' team had received the plan and forwarded it on to the Applicants themselves as of December 29, 2021. He concluded his rebuttal at this time.

Mr. Demello submitted the Applicants' record binder for the record at this time. He advised that the Applicants maintain the arguments from the Partnership do not provide competent substantial evidence to carry their burden, as Staff has demonstrated that the Application complies with Code.

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Ms. Ward briefly addressed comments made during previous presentations, pointing out that the impact of shadows is not a criterion for conditional use review. Applicable provisions speak to the alteration of light and air, which is reviewed in relation to setbacks, the view from El Mar Drive, and adherence to provisions of RM-25 zoning.

Ms. Ward continued that value of the property is also not a criterion for conditional use review. She advised that it was her professional opinion that the testimonies related to these two items are not in compliance with discussion of the Application.

Ms. Ward noted that conditional use review is not intended to consider permitted uses within the Land Use category. Land use compatibility provisions, which are part of the conditional use review criteria, state that the Town Manager makes a determination of compatibility in accordance with Code. The provisions of conditional use criteria state that adverse impacts are measured including the permitted uses within the land use category.

With respect to mitigative techniques, Ms. Ward stated that these are intended to be applied as needed to prevent adverse impacts to adjacent land uses. This includes the area typically within a 300 ft. radius and is not limited to abutting properties. One mitigative technique is to apply the maximum setback from El Mar Drive in order to maintain pedestrian views to the ocean.

Ms. Ward continued that adverse impacts are defined in Code as “unduly negatively impacted, directly or indirectly, by another use or condition.” She asserted that neither shadows nor value are to be considered as an adverse impact for this reason.

With no other individuals wishing to speak at this time, Mayor Vincent closed the public hearing and brought the discussion back to the Commission.

Commissioner Strauss commented that he had reviewed the documentation submitted by both parties in this case, as well as documents from the Planning and Zoning Board and from previous Town Commission meetings. He characterized the Town’s Charter and Code as law within the Town, and recalled that at the time the Application was submitted, the RM-25 zoning district allowed single-family homes; however, Code provided standards for this conditional use.

Commissioner Strauss continued that the Commission is asked to strictly apply these terms and to determine whether or not an applicant has complied with conditional use standards. The conditional use standards state that an application shall be denied if the

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Commission determines the proposed use does not meet the criteria or is adverse to the public interest. This means the Commission has the ultimate decision in this case. The Commission may also impose conditions and safeguards on an application.

Commissioner Strauss observed that the Applicants knew that single-family residential development was a conditional use when they purchased the subject property. He pointed out that even if the alternative plan presented by the neighbors was agreeable to the Applicants, this did not necessarily mean the Application complies with conditional use criteria. He concluded that he felt the Application should go back before the Planning and Zoning Board and that the two parties should work together toward alternatives that are more satisfactory to both of them as well as to the Commission.

Vice Mayor Oldaker stated that the Applicants' acceptance, earlier in the meeting, of a proposed alternative provided some hope for a resolution. He also believed the two parties should meet to discuss this option further and move forward from that point.

Commissioner Malkoon asked if Staff would need to review the alternative mentioned by the Vice Mayor, and if this would further delay a decision on the Application to determine if the two parties could come to an agreement. Mayor Vincent commented that any substantial change, particularly for conditional use, would have to go back before the Planning and Zoning Board.

Town Attorney Trevarthen advised that the quasi-judicial procedures state any testimony, documentary evidence, or information presented at the hearing justifies providing additional time for more research or review. The Commission may continue the case until a designated time to permit this additional research or review. Once a decision has been made to continue, the date to which the proceedings will be continued shall be announced.

Town Attorney Trevarthen emphasized, however, that a continuance would be for the purpose of gaining additional testimony, documenting evidence, or gathering more information. It would not be proper for the Town to refuse to make a decision and order the parties to decide instead: the Commission must ultimately make the decision.

Commissioner Malkoon asked for clarification of the next steps if the Application were approved at tonight's meeting. Town Attorney Trevarthen replied that in this case, a final order would be issued, along with any conditions of approval the Commission may wish to place on the project. The project would then move forward through the development

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process, including building permitting and final zoning, before construction may proceed.

Commissioner Malkoon asked if the Application would then come back to the Commission for final approval of its Site Plan. Town Attorney Trevarthen stated that if the Application is approved tonight, the Commission's decision is considered to be final and the matter moves on. Should the Commission not make a decision, they have the right under Code to continue or defer the item.

Town Attorney Trevarthen also addressed the proposal that during continuance, the Application could go back to the Planning and Zoning Board. She pointed out that quasi-judicial procedures do not address this possibility, but that a decision may be postponed while more information is gathered.

Commissioner Strauss stated that his recommendation on mitigation would be for the alternative plan to go before the Planning and Zoning Board for consideration. He asked if this would be permissible. Town Attorney Trevarthen advised that this can be proposed to determine whether or not there is Commission consensus. She added that the Commission may also hear input from the two parties as well as Staff on this procedural question.

Mr. Handler stated that the Partnership approves this procedural suggestion, as going back to the Planning and Zoning Board provides a structure by which information can be exchanged about an alternative design. He added that this may include incremental changes to the project's design that are consistent with the Partnership's presentation this evening.

Commissioner Sokolow asserted that he would prefer the Commission not to postpone their decision any further, and hoped that it would be possible to make slight changes and bring both parties to an agreement. He also noted that the Commission would not be required to accept the Planning and Zoning Board's recommendation.

Mr. Demello stated that the Applicants did not agree to having the Application deferred back to the Planning and Zoning Board, as it is their right under Code and under Florida Statutes to have a decision made at tonight's hearing. He proposed that the Commission could approve the Application with conditions, which could include clear standards, such as modification of the building's setback or flipping the existing Site Plan. These could be approved administratively by Staff as long as they are compliant with Code.

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Mayor Vincent asked if the Applicant's team felt they have met the conditional use requirements set forth in Code. Mr. Demello replied that there is competent substantial evidence in the record to support approval of the Application.

Mayor Vincent pointed out that the proposed structure remains essentially the same, with no significant changes to the design offered by the Applicant except architectural features and some materials. Ms. Crush stated that this is what is pending before the Commission, reiterating that after the Application went before the Planning and Zoning Board, the Applicants and Mr. J. Siletti met on-site to discuss flipping the property design. When the Applicants agreed to this proposal, however, it was determined that this change was no longer acceptable.

Ms. Crush continued that if the Commission wishes to condition their approval on this change, and if the Town Attorney and Staff agree that these conditions may be implemented by Staff, the Applicants are willing to agree to this change.

Mayor Vincent expressed concern that should the Commission agree to this condition, they would have approved a single-family use within the RM-25 district without acknowledging whether or not the property meets conditional use requirements. If the project is changed, the Commission would still have to review it to determine its impacts on the neighboring property.

Mr. Demello stated that the Application, with mitigative techniques, has already been approved by the Planning and Zoning Board. He reiterated that the Application already satisfies Code requirements for conditional use.

Mayor Vincent pointed out that the Commission retains the prerogative to disagree with Staff's testimony, based on the testimony provided at tonight's hearing. Town Attorney Trevarthen confirmed that the Commission makes the ultimate decision on which competent substantial evidence justifies their decision. She added that the Applicants' counsel is indicating that they would not object if the Commission makes a motion to approve the plans with the addition of "flipping the property and moving it to the west."

Commissioner Sokolow made a motion, seconded by Commissioner Malkoon, to make the determination that the Applicant has met the requirements for conditional use as a single-family [property], and approve the project, subject to the alternative plan of flipping it and moving it to some degree.

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Town Attorney Trevarthen recommended greater specificity in the **motion**, stating that “to some degree” is not sufficient. She advised that the **motion** should be to move the structure a specific distance, and should include the phrase “subject to Code Compliance.”

Commissioner Sokolow **amended** his **motion** to include the following: **to flip the design and move the building 10 ft. to the west, subject to Code Compliance**

Vice Mayor Oldaker requested clarification of how this change would affect the wraparound balconies proposed by the Partnership’s architect. Commissioner Sokolow indicated he was in agreement with this proposed **amendment** to include the wraparound balconies with the existing footprint of the interior. Commissioner Malkoon also indicated his agreement as second.

Commissioner Strauss requested that the full **motion** be restated for clarity. Town Attorney Trevarthen restated the **motion** as follows: **Commissioner Sokolow made a motion, seconded by Commissioner Malkoon, to approve the project as proposed and with the conditions made by Staff, with the following additional conditions:**

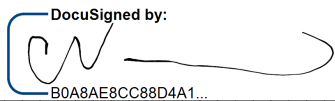
1. The building slides 10 ft. west.
2. The design flips, as has been referred to earlier this evening.
3. The balconies are now wraparound, as shown on the document presented by the neighboring property owner.

All of that is subject to final review at building permit to make sure Code Compliance is met.

Motion carried 4-1 (Mayor Vincent dissenting).

4. ADJOURNMENT

With no other business to come before the Commission at this time, the meeting was adjourned at 10:43 p.m.

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Mayor Chris Vincent

ATTEST:

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DocuSigned by:

Neyra Herrera Cuella

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2/22/22

Town Clerk

Date