

# City of Neptune Beach

Community Development Department

116 First Street • Neptune Beach, Florida 32266-6140



## REPORT OF THE COMMUNITY DEVELOPMENT DEPARTMENT

### APPLICATION FOR ZONING VARIANCE V-22-01

*(Real Estate Parcel Number: Plat Book 54 Page 93, Book 11273 pages 2448-2453, Book 14263 pages 2438-2441)*

**January 12, 2022**

#### **Background**

V22-01 Application for variance as outlined in Chapter 27, Article III Division 8 of the Unified Land Development Code of Neptune Beach for Board of Directors of the Sunset Point HOA for the property commonly known as: Tara Court.

The request is to vary from section 27-519, Stormwater Requirements, (b), (c), (d), (e), (l).

#### **General Information**

The applicant seeks a variance request to construct a stormwater system as required by the Saint Johns River Water Management District (SJRWMD). The proposed construction has been approved by SJRWMD under permit 70456-7. The proposed construction does not meet many of the requirements of the Code for the City of Neptune Beach under §27-519, Stormwater Requirements.

More specifically, the requested variance is from the following subsections of Section 27-519, Stormwater Requirements:

*(b) Conveyance system design:*

- (1) The rational method utilizing FDOT storm tabulation method shall be used unless otherwise approved by the city manager or designee.
- (2) A minimum time of concentration of ten (10) minutes shall be used.
- (3) For minor collection systems, driveway culverts, side drains and subdivision storm sewers the five-year frequency storm shall be used.

water to a suitable drainage system. Banks shall be sloped no greater than one (1) unit vertical to five (5) units horizontal, unless privately owned and permanently fenced, in which case the slope may be increased to one (1) vertical per three (3) horizontal units. Steeper slopes shall be bulkheaded with nondeteriorating materials of sufficient strength to support the active and passive earth pressures retained. Pumps used for stormwater shall not be allowed for facilities intended for dedication except as approved by the city manager or designee. Stormwater pumps, forcemains and appurtenances shall be maintained and owned by the property owner or home owners' association, and shall not be intended for dedication to the city. Underground stormwater management facilities such as vault or chamber-type systems shall have suitable provisions for inspection, maintenance, and cleaning. Underground stormwater management facilities shall be maintained and owned by the property owner or homeowners' association, and shall not be intended for dedication to the city.

- (d) *Streets and road drainage:* Curbs and gutters shall be constructed along the edges of all street pavements for all new development and redevelopment. The distance between curb inlets shall not exceed five hundred (500) feet. The capacity of standard curb inlets shall be no more than 3.5 cubic feet per second (cfs) per throat unless otherwise approved by the city manager or designee. The minimum gutter slope shall be at least 0.005 ft/ft. The city manager or designee may allow, with prior approval, the use of ribbon curb to accommodate road side swales when used as part of a low impact developments (LID) project that incorporate reduction in flow and volume of stormwater, increase in natural hydrology, and adherence to the principles of the Florida Yards and Neighborhoods Program in new landscaping. The maximum side slope for these swales shall be 3:1, the maximum allowable velocity shall be two (2) fps unless soil conditions indicate a lower velocity or structural erosion control protection is provided, and a minimum shoulder width of six (6) linear feet is provided. Rights-of-way with streets and roads without curb and gutter shall be private and will not be dedicated to the city.
  
- (e) *Attenuation:* All new developments and redevelopments shall be required to attenuation both peak discharge rate and volume to the historical pre-development flow rates and volume of discharge for the mean annual storm event, five-year frequency twenty-four-hour duration storm event and the twenty-five-year frequency twenty-four hour duration storm event.
  
- (l) *Storm sewers and culver[t]s:* For all storm sewers, driveway culverts, cross drains and side drains within rights-of-way and intended for dedication to the city shall use reinforced concrete pipe (RCP) class III, IV, or V, precast box culverts, or built-in-place concrete box culverts, terminating with headwalls, mitered end sections, or flared end sections or as approved by the city manager or designee, and shall have a minimum pipe size of fifteen

2020. However, a letter by the former City Attorney, Patrick Krechowski, dated August 24, 2018 (**Staff Attachment A**) accepts the ownership and responsibility of the roadway for Tara Court on behalf of the City. The acceptance was predicated on a review of the Sunset Point Plat, *A Part of the Castro Y Ferrer Grant, Section 38, Township 2 South, Range 29 East, Duval County, Florida* (Plat Book 54 Page 93 & 93A).

The Plat included the following adoption and dedication language, *“This plat being made in accordance with said survey is hereby adopted as a true and correct plat of those lands and that the court, drainage easement, lift station easement, and drainage, access and utility easements are hereby irrevocably and without reservation dedicated to the City of Neptune Beach, its successors and/or assigns.”* The plat was signed and approved by the City of Neptune beach on February 4, 2002.

Staff contended in 2020 that, “the court” meant the homes within the subdivision and not the roadway itself, but later recanted when presented with the 2018 letter from the former City Attorney.

As to the applicants’ statement, “for the most part, current city codes were not in effect then [2002],” the City clarifies that Ordinance Number 91-1-5, effective May 6, 1991, included provisions for Stormwater Management under §27-519 of the 1991 ordinance.

More Specifically, the following provisions were in effect in 1991 that are relevant to the applicants’ statement:

Ord. No. 91-1-5 §27-519

- (b) For all new developments, drainage collection systems and pipes shall be designed and constructed for a three-year frequency, one-hour duration storm event.
- (c) Culverts shall extend eight (8) feet on each side of beyond the edge of pavement of the road. Culverts shall be fully coated metal or concrete pipe or built-in-place concrete box culverts, terminating with headwalls.
- (d) Capacity of detention/retention ponds. For all new developments all detention and retention ponds shall be designed and constructed for a twenty-five-year frequency, twenty-four-hour duration storm event.
- (f) Curbs and gutters. Curbs and gutters shall be constructed along the edges of all street pavement. The distance between curb inlets shall not exceed one hundred (100) feet for each foot per thousand of gutter slope.

The Ord. No. 91-1-15 §27-519 is attached as **Staff Attachment B**.

The Developer for Sunset Point HOA was to install drainage at both the front and rear of the parcels within the subdivision. The original plat (Plat Book: 54, Page: 93A) shows a 10’ drainage easement to the rear of lots 11, 10, 9, and 8; shows 20’ drainage, access and utility easement along the front of lots 1 – 6, 10, 11; a 15’ drainage, access and utility easement along the front of lots 7-9 and the Western edge of 10; and a 15’ drainage

## **Section 27-147: Required Findings Needed to Issue a Variance**

Staff recommend deferring the hearing and required findings pending resolution of the lawsuit, as such a detailed analysis of the applicants' findings of fact has been delayed until the pending litigation has been resolved.

1. How does the property have unique and peculiar circumstances, which create an exceptional and unique hardship? Unique hardship shall be unique to the parcel and not shared by other property owners. The hardship cannot be created by or be the result of the property owner's own action.
  
2. How is the proposed variance the minimum necessary to allow reasonable use of the property?
  
3. Indicate how the proposed variance will not adversely affect adjacent or nearby properties or the public in general.
  
4. Indicate how the proposed variance will not diminish property values nor alter the character of the area.
  
5. Explain how the proposed variance is in harmony with the general intent of the Unified Land Development Code.
  
6. Explain how the need for the proposed variance has not been created by the applicant or the developer.
  
7. Indicate how granting of the proposed variance will not confer upon you any special privileges that is denied by the code to other lands, buildings, or structures in the same zoning district.

### **Staff Recommendation**

Staff recommends deferring V-22-01 Sunset Point HOA pending the outcome of ongoing litigation, RE: *Godwin et. al. v. Sunset Point Homeowners Assn.*, 2021-CA-001248 (Fla. 4th Jud. Cir.).

INTRODUCED BY:

BILL NO. 542

MAYOR JOHN C. KOWKABANY

ORDINANCE NO. 91-1-5

A BILL TO BE ENTITLED

AN ORDINANCE ESTABLISHING LAND DEVELOPMENT REGULATION CODE FOR NEPTUNE BEACH PURSUANT TO REQUIREMENTS OF FLORIDA LAWS AS OUTLINED IN SECTION 163.32202, FLORIDA STATUTES; REPEALING CHAPTER 3, "ADVERTISING"; REPEALING CHAPTER 27, "ZONING"; REPEALING ARTICLE VIII OF CHAPTER 8, "FLOODPLAINS"; REPEALING CHAPTER 19, "SUBDIVISION REGULATION"; REPEALING ARTICLE II OF CHAPTER 24, "PROTECTION OF TREES"; AND INCORPORATE APPROPRIATE SECTIONS RELATING TO REPEALED PROVISIONS OF CODE OF ORDINANCES; PROVIDING AN EFFECTIVE DATE.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF NEPTUNE BEACH, FLORIDA:

SECTION 1. The City does hereby repeal Chapter 3, "Advertising"; Chapter 27, "Zoning"; Article VIII of Chapter 8, "Floodplains"; Chapter 19, "Subdivision Regulation"; and Article II of Chapter 24, "Protection of Trees".

SECTION 2. The City does hereby adopt Chapter 27, "Unified Land Development Regulations", to read as follows:

## UNIFIED LAND DEVELOPMENT REGULATIONS

horizontal, unless permanently fenced, in which case the slope may be increased to one (1) vertical per three (3) horizontal units. Steeper slopes shall be bulkheaded with nondeteriorating materials of sufficient strength to support the passive earth pressure retained. Fencing may be accomplished in conjunction with building construction.

(f) Curbs and gutters. Curbs and gutters shall be constructed along the edges of all street pavement. The distance between curb inlets shall not exceed one hundred (100) feet for each foot per thousand of gutter slope.

### Sec. 27-520. Erosion and sediment control.

(a) Where the natural cover or topography of the site has been altered or otherwise disturbed, all necessary erosion and sediment control measures shall be used to retain sediment on-site and to prevent violations of water quality standards as specified in Chapters 17-301, 17-302, and 17-4 Florida Administrative Code. The developer is encouraged to use appropriate best management practices for erosion and sediment control as described in "Florida Land Development Manual: A Guide to Sound Land and Water Management" (Department of Environmental Regulation, 1988).

(b) Within fourteen (14) days after final grading, a permanent protective vegetative and/or artificial cover shall be constructed and maintained on all land surfaces exposed or otherwise disturbed by any allowable development.

Secs. 27-521 - 27-530. Reserved.

To: Stefen Wynn, City Manager  
From: Zachary Roth, City Attorney  
Date: January 5, 2022  
Re: V22-01

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## **Summary**

Applications for party intervenor status on behalf of four owners on Tara Court with regard to the above variance application were filed, which have been approved. In the application, such attorneys request a deferral of hearing of the variance. For the reasons stated below, it is my opinion that a deferral is the most prudent course of action.

## **Description**

Variance 22-01 is an application by Sunset Point Homeowners Association of Neptune Beach, Inc. to perform certain stormwater improvements within the City-owned Tara Court right-of-way and for variance from certain stormwater requirements of the City's code of ordinances. The variance is scheduled to be heard by the Community Development Board ("CDB") on January 12, 2022.

On January 4, 2022, Darren C. Jones and Matthew T. Jackson of the law firm Brennan Manna Diamond filed an application for party intervenor status on behalf of their clients, Andy and Meg Godwin and Lori Roberts, regarding such variance. Two other clients of such firm, Kim Porter and Phillip May, previously filed applications independently. Counsel advised they intend to represent the interest of all four parties at the hearing. Each of the party intervenors are owners of property located on Tara Court and have an interest in the variance greater than that of the general public. Accordingly, I approved the applications in compliance with the CDB's adopted procedures.

In the application, such party intervenors request that the CDB defer hearing of the variance. The basis for such request is an ongoing lawsuit between the party intervenors and the applicant homeowners' association. To my knowledge, disclosure by the party intervenors is the first disclosure of the ongoing lawsuit to the City.

The party intervenor application filed by counsel included a copy of the Complaint in such lawsuit as an exhibit. According to the clerk's filing stamp, the lawsuit was filed on March 2, 2021. I have reviewed the online docket to confirm that date and that the lawsuit is ongoing. In such Complaint, the party intervenors seek a court order declaring that the intended stormwater improvements described in the variance violate the governing documents of the homeowners' association and violate Florida law. If the party intervenors were to prevail, the variance would be moot and the association would be required, at least, to modify the application. Counsel for the party intervenors also advised that they are likely to seek injunctive relief to prevent the construction from moving forward if the variance is granted.

RECEIVED JAN 03 7:00 PM  
CITY CLERK'S OFFICE

APPLICATION FOR PARTY INTERVENOR STATUS

Date: 02/30/21

Regarding Application No./Name: V22-01 Tara Court

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**FILER INFORMATION**

Name of Person Filing Application: Phillip May

Is filer an attorney at law acting in a representative capacity?  
( ) YES ( ) NO

If no, skip to Party Information section below

If yes, please provide the following information:

Florida Bar No.: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Email Address: \_\_\_\_\_

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**PARTY INFORMATION**

Name and Address of each person seeking Party Intervenor Status:

Phillip May 1940 Tara Court NB, Flz 32266

904-591-5730

Pjmay@CKMCLLC.COM

Describe how the party seeking Party Intervenor status has an interest in the above-identified application different than that of the public at large (attach additional sheets if necessary):

I am a home owner on Tara Court since 2004

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phillip May  
Signature of Filer

Note: Applications for Party Intervenor Status must be submitted in accordance with the terms of the Rules of Procedure, Community Development Board, City of Neptune Beach, in order for a party to be entitled to be recognized as a Party Intervenor. Copies of such procedures are on file with the City Clerk.



**APPLICATION FOR PARTY INTERVENOR STATUS**

RECEIVED JAN 04 2022

Date: 01/04/2022

Regarding Application No./Name: V22-01

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***FILER INFORMATION***

Name of Person Filing Application: Kim Porter

Is filer an attorney at law acting in a representative capacity?  
( ) YES (X) NO

If no, skip to Party Information section below

If yes, please provide the following information:

Florida Bar No.: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Address: \_\_\_\_\_

Email Address: \_\_\_\_\_

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***PARTY INFORMATION***

Name and Address of each person seeking Party Intervenor Status:  
Kim Porter - 1950 Tara Ct., Neptune Beach, FL 32266  
\_\_\_\_\_  
\_\_\_\_\_

Describe how the party seeking Party Intervenor status has an interest in the above-identified application different than that of the public at large (attach additional sheets if necessary):

I own property at 1950 Tara Ct. - see attachments.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

  
\_\_\_\_\_  
Signature of Filer

**Note: Applications for Party Intervenor Status must be submitted in accordance with the terms of the Rules of Procedure, Community Development Board, City of Neptune Beach, in order for a party to be entitled to be recognized as a Party Intervenor. Copies of such procedures are on file with the City Clerk.**

The Sunset Point community has a permitted storm water system, SJRWMD Permit 70456-1 engineered for thirteen (13) lots, partially completed. The storm water system permitted as SJRWMD Permit 70456-1 is engineered to the City of Neptune Beach municipal codes in place at the time the community was developed. The partially constructed storm water system is designed to be fully contained within the platted drainage easement, as required by the Declaration of Covenants and Restrictions for Sunset Point, "Section 11.2 Drainage Flow. Drainage flow ***shall not be obstructed or diverted*** from drainage easements....". The Sunset Point plat which documents the platted drainage easement, is recorded in the Official Records of Duval County, Plat Book 54 Page 93 (there are 11 lots contained on the original plat). Two (2) Supplemental Declarations were filed in the Official Records of Duval County, Book 14263 Page 2438 and Book 11273 Page 2448 subjecting additional properties to The Declaration of Covenants and Restrictions, those additional properties are known as Lot(s) 12 and 13 in the original stormwater permit. The Declaration of Covenants and Restrictions for Sunset Point are recorded in the Official Records of Duval County Book 10433 Page 1876.

In 2017 the SJRWMD issued the Sunset Point Homeowners Association a letter of non-compliance with SJRWMD Permit 70456-1. Instead of holding the property owners of Tara Ct accountable for the swales and culverts designed to be placed on individual lots within the platted drainage easement, as stated in the Declaration of Covenants and Restrictions, the HOA BOD sought a modification to the original permit. The modified permit, SJRWMD Permit 70456-7, sought to construct a system that does not conform to the City of Neptune Beach municipal code currently in place nor the municipal code that was in place at the time the community was developed and largely removed the storm water system from the drainage easement in to the Tara Ct. right-of-way (ROW) hence the request for a variance.

The City of Neptune Beach attorney issued a letter on August 24, 2018, stating that Tara Ct. was non-conforming and non-compliant and when Tara Ct. requires paving the standards would need to be addressed which will likely result in the use of additional right-of-way to ensure full compliance with the City's street standards and codes. If V22-01 is approved and a ROW permit is issued the stormwater system will occupy the portion of the ROW required to bring Tara Ct. into compliance with municipal code. When Tara Ct. is brought into compliance the stormwater system will have to be relocated which will result in the Tara Ct. property owners constructing another 100K system.

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WJH

**APPLICATION FOR PARTY INTERVENOR STATUS**

Date: 01/04/2022

Regarding Application No./Name: Variance Application V22-01

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***FILER INFORMATION***

Name of Person Filing Application: Darren C. Jones

Is filer an attorney at law acting in a representative capacity?  
(x) YES ( ) NO

If no, skip to Party Information section below

If yes, please provide the following information:

Florida Bar No.: 99478

Phone Number: 904-366-1500

Address: 800 W. Monroe St., Jacksonville, Florida 32202

Email Address: dcjones@bmdpl.com

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***PARTY INFORMATION***

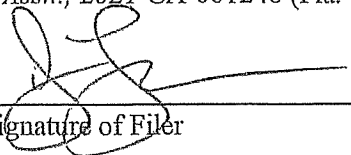
Name and Address of each person seeking Party Intervenor Status:

Andy Godwin and Meg Godwin, 1980 Tara Ct., Neptune Beach, Florida 32266

Lori Roberts, 2010 Tara Ct., Neputne Beach, Florida 32266

Describe how the party seeking Party Intervenor status has an interest in the above-identified application different than that of the public at large (attach additional sheets if necessary):

Mr. and Mrs. Godwin and Ms. Roberts reside on Tara Court which is the right-of-way subject to the above-identified variance application, as such they have an interest in this application different than that of the general public. Further, this application relates to a proposed storm-water management system plan that is currently the subject of ongoing litigation in Duval County between my clients and the Sunset Point Homeowners Association, Inc., that is directly related to the proposed variance application. See Godwin et. at. v. Sunset Point Homeowners Assn., 2021-CA-001248 (Fla. 4th Jud. Cir.).

  
\_\_\_\_\_  
Signature of Filer

Note: Applications for Party Intervenor Status must be submitted in accordance with the terms of the Rules of Procedure, Community Development Board, City of Neptune Beach, in order for a party to be entitled to be recognized as a Party Intervenor. Copies of such procedures are on file with the City Clerk.

Filing # 122362300 E-Filed 03/02/2021 05:03:35 PM

IN THE CIRCUIT COURT, FOURTH  
JUDICIAL CIRCUIT, IN AND FOR  
DUVAL COUNTY, FLORIDA

CASE NO:  
DIVISION:

ANDY GODWIN and MEG GODWIN, a )  
married couple, KIMBERLY PORTER, an )  
individual, LORI ROBERTS, an individual, )  
and PHILLIP MAY, as Trustee of the Phillip J. )  
May Family Trust, )

Plaintiffs, )

v. )

SUNSET POINT HOMEOWNERS )  
ASSOCIATION OF NEPTUNE BEACH, )  
INC., a Florida Not For Profit Corporation, )

Defendant. )  
\_\_\_\_\_ )

**COMPLAINT**

Plaintiffs, ANDY GODWIN, MEG GODWIN, KIMBERLY PORTER, LORI ROBERTS, and PHILLIP MAY, as Trustee of the Phillip J. May Family Trust (collectively “Plaintiffs”), by and through their undersigned counsel, hereby sue Defendant, SUNSET POINT HOMEOWNERS ASSOCIATION OF NEPTUNE BEACH, INC., a Florida Not For Profit Corporation (the “Association”) and allege as follows:

**JURISDICTION, VENUE AND PARTIES**

1. This is an action for declaratory relief pursuant to Section 86.011, *et seq.*, of the Florida Statutes, to declare the parties’ respective rights, status, powers, or privileges with respect to the parties’ contractual obligations to one another, and for injunctive relief.

2. This Court exercises subject matter jurisdiction pursuant to Section 86.011 and

City of  
**Neptune Beach**



**Patrick W. Krechowski**  
City Attorney

August 24, 2018

Charles W. Brown, Jr.  
Crabtree Law Group, P.A.  
8777 San Jose Boulevard  
Building A, Suite 200  
Jacksonville, FL 32207

Dear Mr. Brown:

Thank you for your letter dated March 16, 2018, and the other information you provided regarding the status of Tara Court. After review of the recorded plat for the Sunset Point neighborhood, the City agrees that Tara Court was dedicated to the City as a public right-of-way. Therefore, the City hereby accepts ownership and responsibility for Tara Court as a right-of-way and will place the street on its priority paving schedule.

Please keep in mind and relay to your client, the Sunset Point Homeowners Association, that the City considers Tara Court a non-conforming and non-compliant road. As we previously discussed, Tara Court does not meet the City's street standards for both the size of the cul-de-sac and for the inclusion of pavers in the street. Additionally, the sub-base and pavement thickness of Tara Court also do not satisfy City standards. When Tara Court requires paving, each of these standards will need to be addressed which likely will result in the use of additional right-of-way to ensure full compliance with the City's street standards and codes.

I appreciate your cooperation and assistance in this matter and if there are any questions or if you require any additional information, please do not hesitate to call me.

Sincerely,

Patrick W. Krechowski, Esq.  
City Attorney