



# NONCONFORMITY

## Petition Application

**Pre-Application Meeting Date:** February 21, 2024

**Petitioner:** 450 Palm Circle West Realty Trust

Address: 450 Palm Circle W, Naples, FL 34102

Phone: 617-513-3382 Email: bmk013@gmail.com

**Agent for Petitioner:** None

Address: Not Applicable

Phone: Not Applicable Email: Not Applicable

**Property Owner:** 450 Palm Circle West Realty Trust

Address: 450 Palm Circle W, Naples, FL 34102

Phone: 617-513-3382 Email: bmk013@gmail.com

**Address of Subject Property:** 450 Palm Circle W, Naples, FL 34102

Full Legal Description: Lot 12, Block A, Ridgeview Lakes, according to the Plat thereof, as recorded in Plat Book 1, Page 103, of the public records of Collier County, Florida

Size of Parcel: 19,000 square feet

Existing Zoning: R1-10 Single Family Residential

Current Use of Land: Residential

Applicable Section(s) of the Land Development Code: 46-35 (Expansion of Non-Conformity)

Petition Request and Summary of Facts:

This is a petition to expand a non-conforming structure in the R1-10 Zoning District to allow the existing guest house to be elevated to minimize future flooding issues by insubstantially raising the slab surface by 18 inches (or the level of main home). There would be no change to the existing building footprint other than adding two steps to access the unit.

The property is located in the R1-10 Single Family Zoning District, fronting Palm Circle West to the west and South Lake to the east. See dimensioned survey depicting existing location of the guest unit attached as Exhibit "A". The original home was constructed in January 1955 and the subject guest house was constructed in August 1955. The guesthouse is a one-story structure. The guest house remains in its original location in the rear yard at the northeast corner of the property fronting South Lake. In 1958, the main home garage was enclosed and a screened porch was added to the east side of the guest house.

The zoning code applicable to construction of the original guest house permitted a guest house as a matter of right as an accessory use. The guest house is located 9.31 feet from the side property line and 33.64 feet from the rear property line, in compliance with today's requirements of 7.5 feet and 25 feet, respectively.

Accordingly, the guest house was lawful in all respects when constructed in 1955 because (i) the guest house was a use permitted, and (ii) the guest house location was code compliant.

Thereafter, the City of Naples amended its ordinances. The City took action to change a guest house from a use permitted to a conditional use.

Under Section 46-35 of the Land Development Code, the City of Naples defines a nonconformity as:

"A lot, structure or use of land, or any combination thereof, which was lawful before government action but no longer meets the regulations contained in this Land Development Code because of said government action."

It is clear from the permitting and legislative history that the guest house is a legal nonconformity. The City recognizes that a "non-conformity may be continued" and that "repairs, maintenance, and improvements to non-conformities may be carried out" provided that improvements which expand the non-conformity follow the approval procedure under Section 46-35(b) of the Land Development Code. An expansion of the cross-section of the guest house to raise it above prior flooding levels (and corresponding minor horizontal expansion to add two steps) qualifies as an expansion of non-conformity, which is the purpose of this petition.

The Kanter family desires to preserve the historic guest house in the same footprint and same location as originally constructed, with horizontal expansion of two steps to reach the door. The steps will face the lot interior; they will not be on a side facing a property boundary.

The actual height of the guest house as measured from the top of current slab to the peak of the roof is 12 feet 1 inch. The height of the guest house as measured from the top of slab to the peak of the roof through this approval will be still 12 feet 1 inch. The height from ground level to peak of the roof will be increased by 18 inches (the additional height added to the slab). See existing and proposed elevations enclosed as Exhibit "B". It is also important to note that the proposed height of the guest house remains considerably less than the maximum zoned height allowed in the underlying zoning district. Whereas the maximum R1-10 zoned height is 30 feet from finished floor, the proposed guest house height is 12 feet 1 inch from finished floor.

The Kanter Family requires the guest house to be elevated to continue to enjoy the use of the guest house, avoid future flooding as was experienced during Hurricane Ian, and because doing so qualifies as an expansion of nonconformity, respectfully requests approval of this petition.

In signing below I acknowledge and attest that I am the owner of the property described above and/or the duly appointed representative of the owner(s) of the property described above; that I understand the nature and ramifications of this petition relative to the property; that I hereby authorize the petitioner and their agent to represent the property during any deliberations regarding this petition; that I allow access to the property by City staff and City elected and appointed officials for the purpose of inspecting the premises relative to this petition; that all information contained in this petition and associated materials is correct; that any incorrect information may render the final decision and recommendations on this petition void; and that I have read Section 10 Special Procedures for Quasi-Judicial Proceedings and Administrative Appeals adopted by City Council under Resolution 2023-15019.

Brian Kanter  
Printed Name of Property Owner

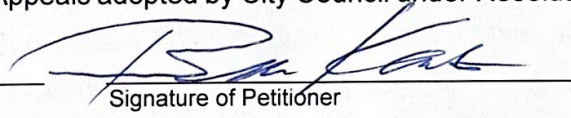
  
Signature of Property Owner

2/21/24  
Date

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In signing below I acknowledge that I am the authorized petitioner for this petition and I attest to the accuracy of all information contained in this petition and associated materials; that I understand that any incorrect information may render the final decision and recommendations on this petition void; and that I have read Section 10 Special Procedures for Quasi-Judicial Proceedings and Administrative Appeals adopted by City Council under Resolution 2023-15019.

Brian Kanter  
Printed Name of Petitioner

  
Signature of Petitioner

2/23/24  
Date

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In signing below I acknowledge that I am the authorized petitioner's agent for this petition and I attest to the accuracy of all information contained in this petition and associated materials; that I understand that any incorrect information may render the final decision and recommendations on this petition void; and that I have read Section 10 Special Procedures for Quasi-Judicial Proceedings and Administrative Appeals adopted by City Council under Resolution 2023-15019.

NA  
Printed Name of Petitioner's Agent

NA  
Signature of Petitioner 's Agent

NA  
Date

### Comprehensive Plan

At the quasi-judicial hearing and as part of the following application, the petitioner has the burden of proving by competent, substantial evidence that the petition request is consistent with the City of Naples Comprehensive Plan and the relevant Goals, Objectives and Policies of all elements contained therein.

Future Land Use Designation of the Subject Property: Low Density Residential

Identify the applicable Goals, Objectives, and Policies and describe how the petition request is compatible with each:

The following policies and objectives are relevant to this petition:

Policy 1-3: Preserve and protect stable residential neighborhoods through development practices that promote compatibility and consistent character

This expansion of non-conformity preserves a historic guest house while ensuring its use is safe and functional for the Kanter family. The proposed renovations elevate the guest house to the level of the main home, which was FEMA compliant, with no expansion in the building footprint.

Policy 5-1: Land uses shall be consistent with the permitted activities as detail in Objective 1 and the Designation Description section of this element.

Residential uses at a density of up to 6 dwelling units per acre is permitted in the Low Density Residential Designation. A guest house is a residential use accessory to the principal residence. The request will comply with the permitted density and activities in the Designation Description

Objective 5: Develop strategies to protect historic resources while not inhibiting private property rights

The City Policy to effectuate this objective goes on to state the City shall "incentivize remodeling and renovation by amending the criteria and standards for variances and the expansion of non-conformities and inform property owners of existing incentives". This petition to expand a non-conformity is intended to protect a historic guest house while enabling the guest house to meet the needs of the Kanter family. The renovation does not result in a condition which detracts from natural resources or interferes with the health, safety and welfare of the community. Indeed, the renovation will shore up a guest house damaged by Hurricane Ian and, in furtherance of Policy 6-1 of the Conservation and Coastal Management Element, bring the guest house into compliance with the same flood plain regulations met by the main home.

Land Development Code

Section 46-35(c) of the City of Naples Land Development Code provides the criteria considered for an expansion or change of a Nonconformity. At the quasi-judicial hearing and as part of the following application, the petitioner has the burden of proving by competent, substantial evidence that the following criteria have been met. Since the size and nature of the expansion of a nonconformity may vary widely, a site plan and preliminary building plans indicating the proposed expansion or change shall be presented with each request for such expansion or change. If such insurances are not possible, the requested expansion, enlargement or change shall be denied. Prior to granting an expansion or change of nonconformity, the Planning Advisory Board and City Council shall ensure that:

- 1) The expansion, enlargement or change of the nonconformity will not damage the character or quality of the neighborhood in which it is located, or hinder the proper future development of the surrounding properties.

But for adding two steps to enter the raised guest house, there is no expansion in the building footprint and only an 18" increase in height bring the unit to 12' 1" high, well below the height of other homes in the area. The unit already complies with the current property set-back requirements. The expansion of a non-conformity will be consistent with the single-family nature of the neighborhood and will promote the preservation of a historic building by providing an incentive to elevate the structure to the same flood plain requirements met by the main home.

- 2) Any nuisance feature involved is not increased.

There are no nuisance features associated with the guest house. The proposed guest house elevation is far less than the height of other structures allowed as of right in a similar location.

- 3) Excessive vehicular traffic is not generated on residential streets.

The intensity of the use of the property is unaffected by this renovation, and, accordingly, there will be no impact to traffic.

- 4) An automobile parking or traffic problem is not created.

No changes to parking are required.

- 5) Appropriate drives, walks and buffers are installed.

Since the footprint is not changing and the guest house meets current setback requirements, additional buffering is unnecessary.

- 6) Historic or natural resources are protected.

The guest house was constructed in 1955 and is considered a legal non-conformity. There are several policies in the Comprehensive Plan related to the preservation of historic structures, including Policy 6-2 (encourage private preservation and renovation of historically significant structures), Policy 6-3 (encourage owners of historic sites, places or structures which are being considered for destruction to consider renovation through the approval of necessary variances to development standards), and Policy 6-10 (amend the Code of Ordinances criteria for issuance of a variance or expansion of nonconformity to allow for the renovation, rehabilitation and compatible additions to historic or architecturally significant structures). In relation to such policies, the proposed renovations will maintain the use and character of the guest house, while seeking to elevate the guest house rather than demolishing and redeveloping the property. The City has favorably considered other expansion of non-conformities for historic structures.

Residential Impact Criteria

Pursuant to Section 46-43(d), petitions which result in the establishment, expansion or intensification of a commercial activity on property containing residential units, within 300 feet of a property containing residential units, or within 300 feet of a property zoned for residential use, shall also comply with the following Residential Impact Criteria:

- (1) Illumination. Illumination levels shall not exceed 0.5 footcandle at the lot lines of the subject property. In addition, the standards for illumination set forth in Section 56-89 shall also be met.

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- (2) Noise. Physical barriers exist and operation plans are in place to insure that noise levels shall be consistent with those identified in Section 22-37. Businesses with external speakers such as outdoor live entertainment, drive-thru lanes and automotive dealerships, must take measures to ensure that speakers are pointed away from residences and sound is buffered.

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- (3) Parking and access. Parking must meet the minimum requirements and be adequate to avoid any overflow into the residential area. Parking areas shall be situated and buffered to avoid impacting the residential areas. Primary vehicular ingress and egress shall, where possible, be located to avoid conflict with traffic in the residential area. Pedestrian connections with public sidewalks and residential areas are encouraged.

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(4) Landscape buffer. Landscaping provides adequate screening between the commercial activity and the residential units including buffering noise and the glare from vehicular headlights. Based on the project design and surrounding development patterns, additional landscaping and screening may be required to provide adequate buffering as determined by the City Council. Where possible, existing landscaping buffers shall be upgraded to meet or exceed the requirements of Chapter 50, Article III, Landscaping and Tree Protection.

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(5) Mitigation of hazardous or adverse impacts. All hazardous or adverse impacts to adjacent residences in adjacent residential zoning shall be adequately addressed in a mitigation plan to minimize or eliminate such hazardous or adverse impacts. The City reserves the right to require additional mitigation when it finds the identified impacts are not adequately addressed.

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(6) Hours of operation. Where the proposed hours of operation extend to between 9:00 pm and 8:00 am, the security measures shall be taken to ensure monitoring of the premises including parking areas.

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