

CITY OF SANIBEL

ORDINANCE NO. 04-

AN ORDINANCE RELATING TO RECONSTRUCTION OF NONCONFORMING STRUCTURES AND STRUCTURES DEVOTED TO NONCONFORMING USES; AMENDING THE SANIBEL CODE, CHAPTER 126, ARTICLE V., NONCONFORMANCES, DIVISION 1, GENERALLY., SECTION 126-131., INTENT; AMENDING DIVISION 2. USES. OF SAID ARTICLE, SECTION 126-151. GENERALLY, AMENDING REFERENCES; AMENDING SECTION 126-152. EXCEPTIONS AND PROHIBITIONS. TO PREVENT LOSS OF DENSITY AND DEVELOPMENT INTENSITY AND PROVIDING FOR TOLLING OF CERTAIN TIME PERIODS; AMENDING DIVISION 3. STRUCTURES. OF SAID ARTICLE, AMENDING SECTION 126-171.GENERALLY. BY AMENDING REFERENCES; AMENDING SECTION 126-172. IMPROVEMENT, RECONSTRUCTION OR RELOCATION PROHIBITED; EXCEPTIONS. TO ADD A REFERENCE; AMENDING DIVISION 5. RECONSTRUCTION STANDARDS. OF SAID ARTICLE, SECTION TO PREVENT LOSS OF DENSITY AND DEVELOPMENT INTENSITY; AMENDING SECTION 126-212. NONCONFORMING STRUCTURES. TO CLARIFY DISASTER AND PROVIDE FOR DEVIATIONS; AMENDING SECTION 126-213. REESTABLISHMENT OF NONCONFORMING USE OR STRUCTURE. TO CLARIFY RESIDENTIAL DENSITY AND INTENSITY; AMENDING SECTION 126-215. RECONSTRUCTION OF STRUCTURES IN VIOLATION OF STANDARDS PROHIBITED. TO ALLOW RELIEF FROM DEVELOPMENT REGULATIONS TO PREVENT LOSS OF DENSITY AND INTENSITY WHERE NO OTHER ALTERNATIVE IS AVAILABLE; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT AND SEVERANCE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, it is necessary, for the peace of mind of those citizens who have built or bought property containing structures which were lawful when built, but are now nonconforming due to amendments to City regulations, to have a build back regulation which gives reasonable assurance, insofar as City regulations are concerned, that the owner can build back a nonconforming structure or structure devoted to a nonconforming use after a calamity in most instances; and

WHEREAS, it is in the public interest to establish regulations which reduce the practical hardship to the owner, and administrative burden upon the City, in seeking and processing variances or exceptions, especially after a storm, hurricane, flood, fire or other natural disaster; and

WHEREAS, there are many structures located in the City that are non-conforming due to intervening federal, state and local regulations, and which could not be reconstructed or replaced without loss of residential density; loss of development intensity, such as unit size; or without distortion or loss of aesthetic qualities; and

WHEREAS, many unit owners currently are suffering diminishment in investment-backed expectations due to uncertainties as to whether their structures or dwelling units in their structures can be reconstructed or replaced in the event of a disaster; and

WHEREAS, the City has adopted a Land Development Code to implement the goals, objectives, and limitations of the Sanibel Plan; and

WHEREAS, a procedure has been established to revise and amend regulations in the Land Development Code in a manner consistent with the Sanibel Plan; and

WHEREAS, the City Council deems it necessary to make such revisions, as contained in this ordinance; and

WHEREAS, all required public notices and public hearings for such revisions have been properly given and held; and

WHEREAS, such revisions have been referred to the Planning Commission for a recommendation as to the consistency of such revisions with the Sanibel Plan;

NOW, THEREFORE, be it ordained by the Council of the City of Sanibel, Lee County, Florida:

Section 1. Chapter 126, Article V., Division 1, Section 126-131. Intent. of the Sanibel Code is hereby amended to read as follows:

Section 126-131. Generally.

Intent. Within the City of Sanibel there exist lots, structures, and uses of land or land and structures which were lawful when established, but which have become prohibited or restricted under the terms of the Sanibel Plan or this land development code, or amendments to them. It is the intent of this land development code to permit these nonconformities to continue until they are eventually removed, but except as to most nonconforming uses, not to require them to be removed as the result of a disaster, and to allow their reconstruction after a disaster, subject to reasonable restrictions. It is the further intent of this land development code that a nonconformity shall not be

enlarged upon, expanded, intensified, or extended, nor be used as a basis for adding other structures or uses prohibited within the district. It is the intent of this land development code that a disaster or calamity, whether island-wide or to an individual structure, not be used as a means to reduce or eliminate residential density or development intensity nor to increase residential density or development intensity. It is the further intent that, in the event of a major and general natural disaster, the city manager be enabled and encouraged to make the determinations necessary for implementation of this part as expeditiously as practicable with as little cost or delay to the property owner as possible, consistent with this land development code.

Section 2. Chapter 126, Article V., Division 2., Section 126-151. Generally. of the Sanibel Code is hereby amended to read as follows:

Section 126-151. Generally.

A nonconforming use of a structure, or of a structure and land in combination, existing at the effective date of ~~the~~ this ordinance ~~from which this land development code is derived~~, which would not be allowed in the district in which it is located under the terms of this land development code, may be continued, subject to the conditions and limitations contained in this Article ~~and those contained in division 5 of this article~~. Otherwise, they shall be abated, eliminated and removed.

Section 3. Chapter 126, Article V. Division 2, Section 126-152. Exceptions and prohibitions. of the Sanibel Code is hereby amended to read as follows:

Section 126-152. Exceptions and prohibitions.

(a) No existing structure devoted to a use not permitted in the district in which it is located shall be enlarged, extended, moved, or structurally altered, except in changing the use of the structure to a use permitted in the district in which it is located, subject to the following exceptions:

....

(9) Where necessary in order to prevent loss of residential density or development intensity, and in conformance with the provisions contained in this article.

(b) If the use of a structure, or a part of a structure, devoted to a use not permitted in the district in which it is located, is changed, the use must be changed to one permitted in such district, unless a change of use is authorized pursuant to this article or section 82-262.

....

(d) When a nonconforming use of a structure, or structure and land in combination, is discontinued, vacant, abandoned, or not used for twelve (12) consecutive months, the structure, or structure and premises in combination, shall not thereafter be used except in conformance with the regulations of the district in which it is located. (See section 82-61, Re-establishment of Abandoned Nonconforming Uses.) This period is tolled for any period during which an application for a permit for reconstruction has been filed and is pending and during which a permit has been issued and has not expired.

....

(e) The nonconforming use of any dwelling unit as resort housing, outside of the Resort Housing District, may not be continued or maintained within the city, except for the following:

....

(7) Where necessary in order to prevent loss of residential density or development intensity, and in conformance with the provisions contained in this article.

Section 4. Chapter 126, Article V., Division Division 3., Section 126-171. Generally. of the Sanibel Code is hereby amended to read as follows:

Section 126-171. Generally.

Any nonconforming structure shall be made to comply with this land development code, except as otherwise provided in ~~this section and division 5~~ of this article.

Section 5. Chapter 126, Article V., Division 3., Section 126-172. Improvement, reconstruction or relocation prohibited; exceptions. of the Sanibel Code is hereby amended to

read as follows: Section 126-172. Improvement, reconstruction or relocation prohibited; exceptions.

(a) Except as otherwise provided in this article, no nonconforming structure may be reconstructed, moved, removed, relocated, or structurally altered, except in such fashion as to eliminate the nonconformance or as to reduce the degree of nonconformance as much as possible. The following shall, however, be permitted:

- (1) Repairs to a nonconforming structure which, in conjunction with prior repairs, do not amount to a material structural alteration or a substantial improvement as defined in chapter 94;
- (2) The expansion of a structure which is nonconforming because of height, percentage of land coverage, residential density, commercial floor area, vegetation removal, or area or yard requirements, as long as such requirements are not further violated and as long as the expansion, considered by itself, would not violate such requirements; ~~and~~
- (3) Minor, cosmetic, nonstructural alterations to the side or front of a structure which encroaches on a required side or front yard setback, such as awnings or decorative architectural features, provided that such alterations do not extend further into the setback than that part of the structure closest to the property line; provided that no usable floor area is added; and provided that no other regulation contained in this land development code, and to which the structure does not conform, is further violated; and
- (4) Reconstruction under circumstances set forth in Division 5 of this article.

Section 6. Chapter 126, Article V., Division 5., Section 126-211. Structures devoted to nonconforming uses. is hereby amended to read as follows:

Section 126-211. Structures devoted to nonconforming uses.

When a structure, which is devoted to a use not permitted in the district in which it is located; that is, a nonconforming use, is destroyed or substantially damaged by

accidental fire or other natural and disastrous force, including without limitation, storm, flood or wind, the use to which such structure is devoted may not be re-established, except where the use is a non-resort residential use in the Gulf Beach Zone or the Bay Beach Zone or where reestablishment of such use is the only feasible means of preventing reduction or elimination of residential density or development intensity.

Section 7. Chapter 126, Article V., Division 5., Section 126-212. Nonconforming structures. of the Sanibel Code is hereby amended to read as follows:

Section 126-212. Nonconforming structures.

(a) When a nonconforming structure is destroyed or substantially damaged by accidental fire or other natural and disastrous force, including without limitation, storm, flood or wind, such structure may be reconstructed within its pre-disaster footprint, up to its pre-disaster gross square footage, but conforming in all other respects to the land development code requirements, including height requirements, in effect at the time of reconstruction. In the case of a historic structure, as defined in chapter 94 or described in chapter 98, reconstruction is permitted as provided in this section, and in addition, in any manner which preserves the integrity of the structure as a historic structure.

(b) Where reconstruction in conformance with all other respects to the land development code or other local, state or federal regulations would result in the reduction or elimination of residential density or development intensity (for example, covered, cleared and developed area; unit size, or building height) or would result in a distorted configuration on the site, relief may be granted in accordance with the procedures and standards set forth in chapter 82, article II, division 2.

(c) The city manager may approve a deviation or other relief from such requirements of up to 10% in development intensity or setbacks and such height as minimally necessary to allow reconstruction in accordance with flood

regulations in existence at the time of the disaster by way of a short form permit, applying the standards set forth in chapter 82, article II, division 2.

(d) Any deviation or other relief given shall be the minimum that is necessary to avoid a reduction or elimination of the pre-disaster density and intensity, and to avoid a distorted configuration.

(e) Where application of this section would result in unavoidable diminishment of vegetation or environmental quality, the city may require reasonable on-site or off-site restoration or mitigation.

Section 8. Chapter 126, Article V., Division 5., Section 126-213. Reestablishment of nonconforming use or structure. is hereby amended to read as follows:

Section 126-213. Reestablishment of nonconforming use or structure.

The re-establishment of the pre-disaster nonconforming use, or the reconstruction of the nonconforming structure shall not result in an increase in residential density; or residential or commercial development intensity, including commercial floor area; or permitted impermeable surface coverage; or cleared or developed areas; from that which was either lawfully in effect, or lawfully existing, immediately prior to the disaster.

Section 9. Chapter 126, Article V., Division 5., Section 126-215. Reconstruction of Structures in violation of standards prohibited. is hereby amended to read as follows:

Section 126-215. Reconstruction of Structures in violation of standards prohibited.

(a) Notwithstanding any provision to the contrary, nothing contained in this section shall authorize the reconstruction of a structure in violation of, noncompliance with, or in excess of, as the case may be, any of the following:

- (1) Federal flood regulations or chapter 94 of this land development code;
- (2) Applicable building, health and safety codes;
- (3) State coastal construction control lines;
- (4) Other applicable federal, state or local regulations;
- (5) A height exceeding forty-five (45) feet above mean sea level, except to an additional height that is the minimum necessary to

prevent loss of residential density or development intensity, but in no case no greater than that which is necessary to comply with flood regulations.

- (6) Setbacks from open bodies of water, or the pre-disaster footprint, whichever is closer; but in no event, closer than ten (10) feet from an open body of water, except to areduced setback that is the minimum necessary to prevent loss of residential density or development intensity.

(b) Notwithstanding any provision to the contrary contained elsewhere in this code, where there is no alternative for preserving residential density or development intensity, including loss of dwelling unit size, such as by reconfiguring the proposed structure on the parcel or providing relief from coverage or setback requirements, the city council may grant relief from the height requirements contained in this code, but only to the extent of the minimum necessary to prevent loss of residential density or development intensity.

Section 10. Codification.

The city manager is hereby authorized and directed to cause the amendments approved herein to be incorporated into the adopted Land Development Code.

Section 11. Conflict.

All ordinances and parts of ordinances in conflict herewith shall be and the same are hereby repealed. If any part of this ordinance conflicts with any other part, it shall be severed and the remainder shall have full force and effect and be liberally construed.

Section 12. Severance.

If any section, subsection, sentence, clause, phrase, or portion of this ordinance, or application hereof, is, for any reason, held invalid or unconstitutional by an court of competent jurisdiction, such portion or application shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion or application hereof.

Section 13. Effective Date.

This ordinance shall take effect immediately upon adoption.

DULY PASSED AND ENACTED by the Council of the City of Sanibel, Lee County, Florida, this ____ day of _____, 2004.

ATTEST:

City Clerk

Mayor

First Reading

Publication Date

Second Reading

Filed in the Office of the City Clerk this _____ day of _____, 2004.

City Clerk

APPROVED AS TO FORM:

City Attorney

C:\Buildback Ord. 6-12-04, 6-13-04 Rev. 7-6-04 446140_2 Rev.7-12-04 446140_3 , Rev. 7-13-04 446703_1