

ARTICLE V. NONCONFORMANCES

DIVISION 1. GENERALLY

Sec. 126-131. Intent.

- (a) 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 them to be built back (their reconstruction) after a disaster, subject to reasonable restrictions. It is the intent of the Land Development Code that property owners not suffer the loss of a dwelling unit or a reduction in unit size as the result of a natural disaster and that nonconforming uses can be reestablished if the building they occupy is built back after a natural disaster.
- (b) 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.
- (c) It is the intent of this Land Development Code to prohibit the number of lawfully existing dwelling units or the existing floor area of a substantially damaged building to be increased, unless the reconstruction and new development fully comply with the requirements of this Land Development Code, including the maximum density permitted in accordance with the Development Intensity map of the Sanibel Plan.
- (d) 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.

(Ord. No. 85-26, § 1(I.J.1(a)), 11-27-1985; Ord. No. 91-31, § 1, 7-2-1991; Ord. No. 05-017, § 4, 1-3-2006)

Sec. 126-132. Application.

The provisions of this article shall also apply to structures, land, or uses which hereafter become nonconforming due to any reclassification of zones or any subsequent changes in regulations contained in this Land Development Code or in the Sanibel Plan.

(Ord. No. 85-26, § 1(I.J.1(b)), 11-27-1985)

Sec. 126-133. Land without principal building.

Any use of land without a principal building which does not conform to the requirements of this Land Development Code shall be made to comply with this Land Development Code.

(Ord. No. 85-26, § 1(I.J.2)), 11-27-1985; Ord. No. 03-014, § 3, 9-16-2003)

Secs. 126-134—126-150. Reserved.

DIVISION 2. USES

Sec. 126-151. Generally.

A lawfully existing nonconforming use of a structure, or of a structure and land in combination, which would not be allowed in the district in which it is located under the terms of this Land Development Code, may be continued and re-established if the building occupied by the nonconforming use is built-back following substantial damage to the building by a natural disaster, subject to the conditions and limitations contained in this division and those contained in division 5 of this article. Otherwise, they shall be abated, eliminated and removed.

(Ord. No. 91-31, § 2, 7-2-1991; Ord. No. 05-017, § 5, 1-3-2006)

DIVISION 3. STRUCTURES

Sec. 126-171. Generally.

Any nonconforming structure shall be made to comply with this Land Development Code, except as otherwise provided in this section and in division 5 of this article.

(Ord. No. 85-26, § 1(I.J.4(a)), 11-27-1985; Ord. No. 86-26, § 4, 6-17-1986; Ord. No. 91-31, § 4, 7-2-1991)

Sec. 126-172. (Nonconforming structures) improvement, reconstruction or relocation prohibited; exceptions.

- (a) Except as otherwise provided in this article and in article XII Resort Housing District in this chapter, 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. Nonconforming seawalls outside of the areas where seawalls are a permitted use [subsection 126-101(1)] are nonconforming uses and must meet section 126-152 standards. The following shall, however, be permitted:
- (1) Repairs or rehabilitations 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 setbacks~~ requirements, as long as such requirements are not further violated and as long as the expansion, considered by itself, would not violate such requirements;
 - (3) A structure that is nonconforming due to setback requirements and/or height limitations may be elevated up to ten (10) feet above predevelopment grade, even if such elevation increases the degree of nonconformity with applicable height standards, provided the structure complies with the minimum elevation and design requirements of the Floodplain Management Ordinance, applicable federal flood regulations, and the Florida Building Code.

~~(3)~~(4) 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;

~~(4)~~(5) Repairs or reconstruction of existing nonconforming seawalls where seawalls are a permitted use [subsection 126-101(1)] in human made waterbodies in accordance with the requirements found in subsections 126-101(2) through (20);

~~(5)~~(6) In the interest of safety, or to meet federal or state requirements for that use, consistent with section 78-3, development and construction to provide building access for persons with disabilities provided the development cannot practicably be accomplished within the existing perimeter, i.e., three-dimensional outline, of the structure and is the minimum necessary to provide such access, regardless of whether said development and construction increases or creates nonconformities pertaining to height, percentage of land coverage, commercial floor area, percentage of vegetation removal and developed area or setbacks and regardless of whether the structure is located within the Bay Beach Zone or Gulf Beach Zone; ~~and~~

~~(6)~~(7) In the Resort Housing District, reconstruction of existing nonconforming swimming pools and other accessory structures, including all related support components and equipment, which in conjunction with prior repairs or rehabilitation amount to a substantial improvement.

~~(7)~~(8) The fencing in or screening of the structure for purposes of security, safety, or reduced liability, as long as such fencing or screening is the minimum reasonably necessary for such purpose, both as to height and location, and as long as any such fencing complies with the requirements of subsections 126-1057(2)—(4) and section 126-1059;

~~(8)~~(9) In the interest of safety, security, and reduced liability, the addition of safety railings on roof decks, provided such railings do not extend beyond the footprint of the existing structure;

- a. In the interest of general public safety, the reconstruction of existing nonconforming walkways in the same configuration as the existing failed structure and up to a width of 44 inches when part of a required means of egress;

~~(9)~~(10) Building back (reconstruction) of a structure substantially damaged by a natural disaster in accordance with division 5 of this article.

(Ord. No. 85-26, § 1(I.J.4(b)), 11-27-1985; Ord. No. 86-50, § 1, 12-16-1986; Ord. No. 87-11, § 1, 5-19-1987; Ord. No. 87-32, § 1, 9-15-1987; Ord. No. 88-18, § 2, 6-21-1988; Ord. No. 91-31, § 4, 7-2-1991; Ord. No. 95-18, § 3, 12-19-1995; Ord. No. 02-21, § 2, 9-17-2002; Ord. No. 05-017, § 7, 1-3-2006; Ord. No. 11-003, § 12, 6-7-2011; Ord. No. 22-001, § 2, 4-5-2022)

Sec. 126-173. Combination of lots or parcels.

Whenever a structure is nonconforming because the lot or parcel on which it is located is developed in excess of maximum permitted residential density, commercial floor area, developed area, or coverage with impermeable surfaces, such lot or parcel shall be combined with any other contiguous lot or parcel under common ownership so as to reduce the degree of nonconformance as much as possible without leaving any remainder as a nonconforming lot or with a nonconforming structure or as a parcel on which any reasonable development is not possible.

(Ord. No. 85-26, § 1(I.J.4(c)), 11-27-1985; Ord. No. 91-31, § 4, 7-2-1991)

Secs. 126-174—126-190. Reserved.

DIVISION 4. LOTS

Sec. 126-191. Combination of contiguous nonconforming lots.

Whenever a nonconforming lot is contiguous to another lot or parcel of land under common ownership, such lot shall be combined with the contiguous lot or parcel so as to create one or more conforming lots or so as to reduce the extent of nonconformity, but in either case, no remainder parcel shall be left as a nonconforming lot or with a nonconforming structure or as a parcel on which any reasonable development is not possible.

(Ord. No. 85-26, § 1(I.J.5), 11-27-1985)

Secs. 126-192—126-210. Reserved.

*DIVISION 5. STANDARDS FOR BUILDING-BACK (RECONSTRUCTION) OF
STRUCTURES SUBSTANTIALLY DAMAGED BY A NATURAL DISASTER¹*

Sec. 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, the use to which such structure is devoted may be re-established.

- Where the use is a non-resort or resort residential use in the Gulf Beach Zone or the Bay Beach Zone the use may be re-established.
- Where the use is a non-resort duplex or a non-resort multifamily building in a residential area that is limited to single-family dwellings the use may be re-established.
- Specifically, a resort housing unit not located in the Resort Housing District or a commercial unit not located in the Commercial District the use may be re-established.

(Ord. No. 85-26, § 1(I.J.6(a)), 11-27-1985; Ord. No. 91-31, § 5, 7-2-1991; Ord. No. 05-017, § 9, 1-3-2006)

Sec. 126-212. Nonconforming structures.

- (a) When a nonconforming structure is destroyed or substantially damaged by accidental fire or other natural and disastrous force, such structure may be built back (reconstructed):
- (1) Within its pre-disaster footprint;
 - (2) Within the three-dimensional outline of the lawfully existing habitable area of the pre-disaster building;

¹Editor's note(s)—Ord. No. 05-017, § 8, adopted Jan. 3, 2006, retitled div. 5 to read as herein set out. Formerly, said division was entitled reconstruction standards.

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- (3) Up to its pre-disaster gross square footage;
 - (4) Up to its lawfully existing number of dwelling units, but;
 - (5) Elevated above the base flood elevations required by federal flood regulations, chapter 94 of this Land Development Code, and the Florida Building Code, and conforming in all other respects to the Land Development Code requirements in effect at the time the substantially damaged building is built back (reconstructed), except for height, under the following conditions:

a. A substantially damaged structure that is nonconforming due to setback requirements and/or height limitations may be elevated up to ten (10) feet above predevelopment grade, even if such elevation increases the degree of nonconformity with applicable height standards, provided the structure complies with the minimum elevation and design requirements of the Floodplain Management Ordinance, applicable federal flood regulations, and the Florida Building Code.

~~a. When reconstruction or elevation of a nonconforming structure to comply with minimum flood elevation requirements does not conform or increases the degree of nonconformity with applicable height standards; or~~

~~b. For the purpose of resiliency from potential future storm surge, the height of the lowest habitable floor of a nonconforming structure may be elevated up to ten feet above existing grade and exceed applicable height limitations proportionally, including any angle of light restrictions.~~

- (b) Applications to build back a nonconforming structure that was destroyed or substantially damaged by accidental fire or other natural and disastrous force must be filed within two years of the date of the destruction or substantial damage to the building that is to be built back. If the declared state of local emergency extends beyond six months, the deadline to make application shall be extended to three years. If the declared state of local emergency extends beyond one year, the deadline to make application shall be extended to four years.
- (c) Replacement of a nonconforming use seawall that was destroyed or substantially damaged by a natural disaster (defined in chapter 78) must follow the standards established for revetments (sections 126-911 and 126-912), or ~~alternative living~~ shoreline stabilization project (section 126-99), or section 126-152. An expedited permitting process, which waives the requirement for planning commission approval, may be authorized by the city manager or their designee once confirmation of the destruction or substantial damage is determined to be caused by a natural disaster.
- (d) 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 historical structure.

(Ord. No. 85-26, § 1(I.J.6(b)), 11-27-1985; Ord. No. 91-31, § 5, 7-2-1991; Ord. No. 05-017, § 10, 1-3-2006; Ord. No. 22-001, § 2, 4-5-2022; Ord. No. 24-016, § 2, 9-9-2024; Ord. No. 25-005, § 2, 5-6-2025; Ord. No. 25-015, § 2, 9-8-2025)

Sec. 126-213. Re-establishment of nonconforming use or structure.

The re-establishment of the pre-disaster nonconforming use, or the building back (reconstruction) of the nonconforming structure substantially damaged by a natural disaster shall not result in an increase in density; or 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.

(Ord. No. 85-26, § 1(I.J.6(c)), 11-27-1985; Ord. No. 91-31, § 5, 7-2-1991; Ord. No. 05-017, § 11, 1-3-2006)

Sec. 126-214. Substantial damage.

For purposes of this division, "substantial damage" means any damage whereby the cost of restoring the structure to its before-damaged condition would exceed 50 percent of the market value of the structure immediately before the damage occurred.

(Ord. No. 85-26, § 1(I.J.6(d)), 11-27-1985; Ord. No. 91-31, § 5, 7-2-1991)

Sec. 126-215. Building back (reconstruction) of structures in violation of standards prohibited.

(a) Notwithstanding any provision to the contrary, nothing contained in this section shall authorize the building back (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, chapter 94 of this Land Development Code or the Florida Building Code;
- (2) Applicable building, health and safety codes;
- (3) State coastal construction control lines;
- (4) Other applicable federal, state or local regulations;
- (5) Setbacks from open bodies of water, or the pre-disaster footprint, whichever is closer; but in no event, closer than ten feet from an open body of water.

(Ord. No. 85-26, § 1(I.J.6(e)), 11-27-1985; Ord. No. 91-31, § 5, 7-2-1991; Ord. No. 92-18, § 9, 10-6-1992; Ord. No. 05-017, § 12, 1-3-2006)