

**CITY OF SANIBEL**

**ORDINANCE 15 - 006**

**AN ORDINANCE AMENDING THE SANIBEL CODE OF ORDINANCES, SUBPART B LAND DEVELOPMENT CODE, CHAPTER 82 “ADMINISTRATION”, ARTICLE III, “PLANNING COMMISSION”, DIVISION 3, “SPECIFIC AUTHORITY”, AND ARTICLE IV “DEVELOPMENT PERMITS”, DIVISION 2, “PROCEDURE”, SUBDIVISION III, “LONG FORM”, AND CHAPTER 90 “FEES”, ARTICLE IV “PUBLIC HEARINGS”, DIVISION 8 “VARIANCES”;**

**AMENDING SECTION 82-116. “VARIANCES, TEMPORARY USES, CONDITIONAL USES” – ADDING LANGUAGE RELATING TO WAIVERS;**

**AMENDING SECTION 82-117. “AUTHORIZATION” – ADDING THE TERM WAIVERS;**

**RENUMBERING SECTIONS 82-342—82-360. “RESERVED” AS 82-342—82-350;**

**ADDING A NEW SUBDIVISION XIII (SECTION 82-351), “WAIVERS TO LAWFULLY EXISTING NONCONFORMING STRUCTURES AND PROPERTIES LOCATED IN THE GENERAL, TOWN CENTER GENERAL AND TOWN CENTER LIMITED COMMERCIAL DISTRICTS” – ESTABLISHING A PUBLIC NOTICE AND HEARING PROCESS FOR THE PLANNING COMMISSION TO CONSIDER SPECIFIC WAIVER REQUESTS TO ALLOW IMPROVEMENTS TO LAWFULLY EXISTING NONCONFORMING PARCELS, BUILDINGS AND STRUCTURES LOCATED WITHIN THE GENERAL, TOWN CENTER GENERAL AND TOWN CENTER LIMITED COMMERCIAL DISTRICTS;**

**ADDING A NEW SECTION 82-352—82-360. “RESERVED”;**

**AMENDING SECTION 82-421. “APPLICATION” – ADDING THE TERM WAIVER;**

**ADDING A NEW SECTION 90-489, “APPLICATIONS FOR WAIVERS TO CERTAIN REQUIRED CONDITIONS FOR THE GENERAL, TOWN CENTER GENERAL AND TOWN CENTER LIMITED COMMERCIAL DISTRICTS INVOLVING NONCONFORMING BUILDINGS AND STRUCTURES” – SETTING AN APPLICATION FEE;**

**RENUMBERING SECTIONS 90-489—90-500. “RESERVED” AS 90-490—90-500;**

**PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS,** supporting local, island-serving businesses is an important goal of the City of Sanibel and the Sanibel Plan; and

**WHEREAS**, commercial properties exist in the City which are lawfully existing, and nonconforming; and

**WHEREAS**, City Council has approved a Mission Statement for Commercial Redevelopment – “To establish and maintain a vibrant and healthy commercial district, consistent with the Sanibel Plan, that provides for the needs and services of Sanibel’s residents & visitors”; and

**WHEREAS**, City Council has identified the strengths and challenges of the local economy; and

**WHEREAS**, the City recognizes the importance of encouraging reinvestment into nonconforming commercial properties as a means to reinvigorate the Commercial Districts; and

**WHEREAS**, the City understands the challenge of improving nonconforming properties which often are constrained by unique conditions and limitations that exist on the property; and

**WHEREAS**, addressing nonconforming buildings and properties through a waiver process represents one of the final major components of the Commercial Redevelopment Study approved and directed by City Council; and

**WHEREAS**, the City Council deems it necessary to establish a public notice and hearing process where the Planning Commission can consider individual requests filed for a set of waivers to specific zoning requirements of the Land Development Code; and

**WHEREAS**, all required public notices and public hearings for this amendment have been properly given and held.

**NOW, THEREFORE BE IT ORDAINED** by the City Council of the City of Sanibel, Florida:

**SECTION 1.** The Sanibel Code of Ordinances Chapter 82, “Administration”, Article III, “Planning Commission”, Division 3, “Specific Authority”, Subdivision 1, “In General”, Section

82-116 “Variances, Temporary Uses, Conditional Uses”, is hereby amended with additions indicated by underlining, and deletions indicated by ~~strikethroughs~~, to read as follows:

*Subdivision I. - In General*

**Sec. 82-116. - Variances, temporary uses, conditional uses, waivers.**

Approvals of variances, temporary uses, ~~and~~ conditional uses and waivers shall expire if any necessary development permit to implement such approval is not obtained with a period of 12 months after approval, or, if a development permit is obtained within 12 months, upon expiration of the development permit.

**SECTION 2.** The Sanibel Code of Ordinances Chapter 82, “Administration”, Article III, “Planning Commission”, Division 3, “Specific Authority”, Subdivision 1, “In General”, Section 82-117 “Authorization”, is hereby amended with additions indicated by underlining, to read as follows:

**Sec. 82-117. - Authorization.**

The Planning Commission, in addition to hearing requests for development permits, conditional uses, temporary uses, variances, waivers, interpretation of zone boundaries, and interpretation of the language of the Sanibel Plan and this Land Development Code, shall hear requests for the re-establishment of nonconforming uses that have been abandoned. The Planning Commission shall also review applications for amendments to the Sanibel Plan, amendments to zone district boundaries, and amendments to the regulations contained in this Land Development Code, and shall, after hearing, make a recommendation, for council action, in accordance with the standards set forth in this division. In addition, the Planning Commission shall conduct an annual review of the capital improvements element of the Sanibel Plan. The Planning Commission shall also review, annually, the future land use element, the permitting process and the effectiveness of below market rate housing provisions.

**SECTION 3.** *The Sanibel Code of Ordinances Chapter 82, “Administration”, Article III, “Planning Commission”, Division 3, “Specific Authority”, Subdivision XII, “Land Development Code Review”, Sections 82-342—82-360. “Reserved” – is hereby renumbered as 82-342—82-350.*

**Secs. 82-342—82-3560. Reserved.**

**SECTION 4.** The Sanibel Code of Ordinances Chapter 82, “Administration”, Article III, “Planning Commission”, Division 3, “Specific Authority”, Subdivision XIII, “Waivers to Lawfully Existing Nonconforming Structures and Properties Located in the General, Town Center General and Town Center Limited Commercial Districts”, is hereby created with additions indicated by underlining, as follows:

*Subdivision XIII. Waivers to Lawfully Existing Nonconforming Structures and Properties Located in the General, Town Center General and Town Center Limited Commercial Districts*

**Sec. 82-351. Authorization.**

(a) Generally. The Planning Commission, after hearing, may grant waivers from a set of specific requirements of certain applicable provisions of this Land Development Code’s required conditions but only for those lawfully existing nonconforming structures and properties located within the General, Town Center General and Town Limited Commercial Districts, in accordance with the standards set forth in this division, except that the Planning Commission shall not grant any waiver which will, directly or indirectly, increase the maximum floor area or height allowed for commercially zoned parcels, or that will increase or further the extent of any lawfully existing nonconformity on a commercially zoned property developed prior to the adoption and effective date of this Land Development Code.

Waivers may be granted by the Planning Commission for the following set of applicable requirements and provisions associated with Chapter 126 Zoning of the Land Development Code:

- (1) The design specifications for off-street parking spaces and loading areas;
- (2) The installation, location, numbers, types, size and variety specified for commercial vegetation buffers and landscaping;
- (3) Modifications and improvements to lawfully existing nonconforming parcels of land, buildings or structures, (including the roof or other architectural features of such buildings or structures), that are situated within the minimum front, side or rear yard setbacks for the commercial districts;
- (4) The maximum allowed land area to be either covered with impermeable surfaces or developed for a specific use or cleared of vegetation for nonconforming properties located within the commercial districts; and

- (5) Increase in the number of ingress/egress driveways access to any of the commercially zoned properties that will enhance safety and traffic circulation.

(b) Conditions. In approving any requested waiver, the Planning Commission may attach to the approval such conditions and limitations as are necessary to ensure that any development deviating from the requirements of this Land Development Code pursuant to such waiver approval is in compliance with the standards specified in subsection (e) of this section and is not detrimental to the public health, welfare, or safety, or to the quiet and peaceful use and enjoyment of adjoining lands and uses. Any development which deviates from the standards of this Land Development Code, pursuant to an approved waiver, but which is not in compliance with the conditions attached to the approved waiver, shall be a violation of this Land Development Code.

(c) Application and hearing. Application for a waiver shall be made on such form as is provided by the city and shall include such information, as identified in section 82-382, as the city manager determines to be necessary to a complete determination of the issue. The hearing on the application shall be conducted by the Planning Commission as for the consideration of an application for long-form development permit as provided in sections 82-97, 82-422 and 82-423.

(d) Action upon application. The Planning Commission, immediately or within 60 days after closing the hearing, shall, by resolution, take action upon the application. A copy of the resolution shall be forwarded to the owner and the applicant within ten days following the adoption of the resolution.

(e) Standards – generally. The Planning Commission may grant a waiver upon a positive finding of the following:

- (1) The applicant's request must be able to identify the specific hardship or practical reason for not being able to meet the regulation as a result of the particular shape, size, location or topography of a lot or parcel, or of a structure thereon, which would cause practical difficulties that would deprive the owner of reasonable use and enjoyment of such lot or parcel in the same manner as other properties similarly situated;
- (2) The applicant's request must be able to identify any special conditions related to unusual constraints peculiar to the specific lot or parcel or relate to special conditions of the structure involved, and that are not generally applicable to other lands or structures similarly situated;
- (3) The applicant's request cannot be based upon the cost of redeveloping in compliance with the Land Development Code and must serve the public interest by way of not increasing any negative impacts upon surrounding properties and land uses nearby;

- (4) The proposed waiver shall not diminish property values in, nor alter the essential character of, the area surrounding the site and shall not otherwise interfere with or negatively impact the customary use and enjoyment of adjacent property owners and their lands;
- (5) The proposed waiver shall not be not be adverse to the developed neighborhood scheme and will not adversely affect the plan and scheme set forth in this Land Development Code, and will not cause the proposed development to be inconsistent with the Sanibel Plan nor adverse to the health, safety and general welfare of the community; and
- (6) The waiver granted must be the minimum necessary to mitigate the hardship demonstrated.

**SECTION 5.** The Sanibel Code of Ordinances Chapter 82, “Administration”, Article III, “Planning Commission”, Division 3, “Specific Authority”, Subdivision XIII, “Waivers to Lawfully Existing Nonconforming Structures and Properties Located in the General, Town Center General and Town Center Limited Commercial Districts”, Sections 82-352—82-360 “Reserved”, is hereby created with additions indicated by underlining, as follows:

**Secs. 82-352—82-360. Reserved.**

**SECTION 6.** The Sanibel Code of Ordinances Chapter 82, “Administration”, Article IV, “Development Permits”, Division 2, “Procedure”, Subdivision III, “Long Form”, Section 82-421 “Application” – is hereby amended with additions indicated by underlining, as follows:

**Sec. 82-421. - Application.**

A long-form application shall be required for the following types of development:

- (1) All applications for development that do not qualify for short-form application.
- (2) Application for development which the city manager determines to be inconsistent with the plan or raise issues as to interpretation of the Sanibel Plan or this Land Development Code.
- (3) All applications for development which require a variance or waiver.
- (4) All applications for development requiring conditional use permits.

- (5) All applications which require interpretation of zone line.
- (6) Any application in which the developer seeks an interpretation of the language of the Sanibel Plan or this Land Development Code inconsistent with that of the city manager.
- (7) Any application for placement of a structure on the historic register, in accordance with the procedures set forth in chapter 98.
- (8) Any application which raises questions as to compliance with section 86-43.
- (9) Building back either a nonconforming structure or a nonconforming use within a nonconforming structure which has been destroyed or substantially damaged by a natural disaster within the three-dimensional outline of the lawfully existing habitable area of the pre-disaster building, but the footprint of the lawfully existing pre-disaster building is moved in a manner that reduces the pre-disaster building's encroachment into the Gulf Beach Zone.
- (10) All applications for a principal structure that includes an accessory structure, integrally attached to the principal structure, which requires a long-form application.

**SECTION 7.** The Sanibel Code of Ordinances Chapter 90, “Fees”, Article IV, “Public Hearings”, Division 8, “Variances”, Section 90-489 “Applications for Waivers to Certain Required Conditions for the General, Town Center General and Town Center Limited Commercial Districts Involving Nonconforming Buildings and Structures” – is hereby created with additions indicated by underlining, as follows:

**Sec. 90-489. Applications for Waivers to Certain Required Conditions for the General, Town Center General and Town Center Limited Commercial Districts Involving Nonconforming Buildings and Structures**

For an application filed pursuant to section 82-421, requesting as a long-form permit a waiver from certain requirements set forth in the applicable provisions of this Land Development Code, the fee shall be \$1,000.00.

**SECTION 8.** The Sanibel Code of Ordinances Chapter 90, “Fees”, Article IV, “Public Hearings”, Division 8, “Variances”, Sections 90-489—90-500. “Reserved” – is hereby renumbered as 90-490—90-500.

**Secs. 90-490—90-500. Reserved.**

**SECTION 9.** Codification. In Division 3, Article III of Chapter 82, Sections 82-116 and 82-117 are hereby amended, Sections 82-342—82-360 is renumbered 82-342—82-350, and new Sections 82-351 and 82-352—82-360 are added. In Division 2, Article IV of Chapter 82, Section 82-421 is amended. In Division 8, Article IV of Chapter 90, a new Section 90-489 is created, and Sections 90-489—90-500 is renumbered 90-490—90-500. This ordinance shall be deemed an amendment to the Sanibel Code of Ordinances and shall be codified in the Sanibel Code of Ordinances as such an amendment.

**SECTION 10.** Conflict. All ordinances and parts of ordinances in conflict herewith shall be and the same 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 11.** 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 any 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 12.** Effective Date. This ordinance shall be effective immediately upon adoption.

**DULY PASSED AND ENACTED** by the Council of the City of Sanibel, Florida, this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**AUTHENTICATION:**

\_\_\_\_\_, Mayor

\_\_\_\_\_  
Pamela Smith, City Clerk

**APPROVED AS TO FORM:** Kenneth B. Cuyler 2/23/15  
Kenneth B. Cuyler, City Attorney Date

Vote of Council Members:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



First Reading \_\_\_\_\_

Publication Date \_\_\_\_\_

Second Reading \_\_\_\_\_

Date Filed with City Clerk: \_\_\_\_\_