



AGENDA MEMORANDUM

Planning Department

Planning Commission Meeting Date: July 23, 2024

To: Planning Commission
From: Paula McMichael, AICP, Planning Director
Date: July 17, 2024

SUBJECT: Nonconforming use and structures – extension of deadline to reestablish

Consideration of a recommendation to City Council for an ordinance amending the Code of Ordinances to extend the deadline from 24 months to 36 months for reestablishing a nonconforming use or nonconforming structure following a natural disaster, amending Subpart B Land Development Code, Chapter 82 – Administration, Article II. – City Council, Division 2. – Nonconforming Uses and Structures, Section 82-57. Discontinuance, vacation, or abandonment of use, and Chapter 126 – Zoning, Article V. – Nonconformances, Division 5. – Standards for Building-back (Reconstruction) of Structures Substantially Damaged by a Natural Disaster, Sec. 126-212. Nonconforming structures, and Sec. 126-218. Re-establishment of discontinued or abandoned use prohibited, for the purpose of land development code regulations.

BACKGROUND: On June 11, 2024, City Council and the Planning Commission convened a joint workshop to discuss possible amendments to the Sanibel Code to assist redevelopment post disaster. One of the discussion items was whether the deadline for nonconforming uses should be further extended.

Prior to Hurricane Ian, the deadline for re-establishing a nonconforming use post-disaster was 12 months from the date of the disaster. Ordinance 23-020, adopted September 11, 2023, extended the deadline to 24 months where a state of local emergency exists beyond 6 months. The proposed change would extend the deadline to 36 months.

While not discussed, staff considered that the deadline to re-establish a nonconforming structure, currently limited to 24 months, should likewise be extended to 36 months. Staff is also proposing a clean up to a missed reference in Chapter 82 for consistency.

Post Hurricane Ian, staff has calculated the deadline from the time the permit moratorium was lifted on December 15, 2022, rather than the date of the disaster, so the proposed change would extend the deadline from December 15, 2024, to December 15, 2025.

Sanibel is and shall remain a barrier island sanctuary

A nonconforming use is defined as “a lawfully-established use located in a zone district restricted against such use.” Examples of nonconforming uses that are subject to the deadline are:

- VIP Cottage (formerly) - 2000 Periwinkle Way (commercial use not in a commercial district)
- John Gee Realty - 2807 West Gulf Drive (commercial use not in a commercial district)
- Sandbar Restaurant - 2761 West Gulf Drive (commercial use not in a commercial district)
- The Mad Hatter Restaurant – 6467 Sanibel Captiva Road (commercial use not in a commercial district – development in the Gulf Beach preservation district)

A nonconforming structure “means a lawfully-constructed building or structure which does not conform to the minimum or maximum requirements for such structure in the zone district in which it is located, including any structure located within a required setback or on a lot or parcel which is developed in excess of permitted impermeable surface coverage, developed area, residential density, or commercial floor area.” Many commercial buildings constructed prior to incorporation of the city are nonconforming structures. Examples of nonconforming structures:

- Chevron Station – 1067 Bailey Road
- Lazy Flamingo (east end) – 1036 Periwinkle Way
- Lazy Flamingo/Sunset Grille – 6520 Pine Avenue
- Duplexes not in conformance with density – various locations

FUNDING SOURCE: N/A

RECOMMENDED ACTION: Adopt the resolution that recommends approval of an ordinance amending the Land Development Code for consideration by City Council, to amend the deadline to re-establish both nonconforming uses and structures.

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