



AGENDA MEMORANDUM

Planning Department

City Council
Meeting Date: May 6, 2025
Item 13.b.

To: City Council
From: Paula McMichael, AICP, Planning Director
Date: April 23, 2025

SUBJECT: Discussion and direction regarding the December 15, 2025 “buildback” deadline

OVERVIEW OF “BUILD BACK” PROVISIONS FOR NONCONFORMING USES AND STRUCTURES

Nonconforming *uses* are those that were lawful when established but are no longer permitted within the zone in which they are located. (example: a commercial use in a residentially zoned area).

Nonconforming *structures* are those that were lawful when constructed but no longer comply with required development standards (such as the required setbacks or maximum impermeable coverage).

A nonconforming use may be located in a nonconforming structure.

It is the stated intent of the code “to permit these nonconformities to continue until they are eventually removed, but ... not to require them to be removed as a result of a disaster ...” (Sec. 126-131).

The code currently allows nonconforming uses and structures to be re-established (“built back”) if destroyed by a natural disaster and provides a deadline of three (3) years if the state of local emergency exceeds six (6) months.

The current deadline is December 15, 2025.

A complete building permit application to re-establish the use or structure must be submitted by the deadline. A building permit expires six (6) months after issuance if there has been no activity or inspections.

Prior to Hurricane Ian, the code allowed 24 months for the re-establishment of a nonconforming structure and 12 months for the re-establishment of a nonconforming use. The deadline for a nonconforming use was extended to 24 months via Ordinance 23-020 adopted September 11, 2023, and the deadlines for both were extended to 36 months if the state of local emergency exceeds six (6) months via Ordinance 24-016 adopted September 9, 2024.

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SPECIFIC ISSUE

In February of 2025, two residents of Gulf Beach Condominium (527 East Gulf Drive) wrote emails to City Council, one in support of further extending the deadline to re-establish a nonconforming use, and one in opposition.

Gulf Beach Condominium is a nonconforming use – a multifamily building in a district where that use is prohibited. Gulf Beach Condo is located in the D-2 Upland Wetlands Ecological Zone, which only allows multifamily buildings subject to the following (Sec. 126-391(4)):

only in areas within (sic) 400 feet of Periwinkle Way between Tarpon Bay Road and Causeway Road on lots or parcels abutting Periwinkle Way, but see also chapter 86, article III, division 3. Multifamily developments for Below Market Rate Housing units are permitted on any parcel when the units are located within 600 feet of Periwinkle Way between Tarpon Bay Road and Causeway Road and the parcel abuts an arterial or collector road.

Multifamily development was originally prohibited entirely from the D-2 Upland Wetlands zone. The Comprehensive Land Use Plan (CLUP) adopted in 1976 shows only two permitted residential uses: 1 - Single family detached dwellings and 2 - Duplexes.

The allowance “only in areas within (sic) 400 feet of Periwinkle Way between Tarpon Bay Road and Causeway Road on lots or parcels abutting Periwinkle Way “ was added in 1986 to permit development of a triplex on 2143 Periwinkle Way. The allowance “Multifamily developments for Below Market Rate Housing units are permitted on any parcel when the units are located within 600 feet of Periwinkle Way between Tarpon Bay Road and Causeway Road and the parcel abuts an arterial or collector road” was added to the code in 2002 to permit a below market rate housing development in the D-2 Upland Wetlands zone – Woodhaven at 800 Casa Ybel Road.

Gulf Beach Condo (14 units in one building) received a building permit in approx. September of 1977, subsequent to the adoption of the CLUP that prohibited the use within the D-2 Upland Wetlands Zone. Staff has been unable to locate any documentation that would explain how the use was permitted, for instance, by specific amendment to the CLUP.

Staff has found one other instance where a multifamily building was approved within the D-2 Upland Wetlands Zone without any documentation to explain the approval of the otherwise prohibited use – Sandpiper Beach Condo at 1919 Olde Middle Gulf Drive (27 units in five buildings) constructed in 1979. Four of the buildings are within the D2 Upland Wetlands zone and one is within the E-2 Gulf Beach Ridge Zone. All of the buildings are multifamily buildings (three (3) or more dwelling units in a building).

Gulf Beach Condo was substantially damaged by Hurricane Ian and the building must be demolished. A demolition permit was issued on May 16, 2023; however, the building has not been demolished. The property is currently for sale.

As a nonconforming use in a nonconforming structure, the option to “build back” Gulf Beach Condo in one multifamily building with 14 units will expire on December 15, 2025. The density is conforming and the property is entitled to and could be redeveloped with the same number of units; however, the code requires the units be built as either single-family homes or duplexes. A cluster development of duplex and/or single-family residences could be approved up to 14 dwelling units (similar examples include Victoria Way, Colony Beach Estates or Ferry Landing). A traditional single-family residential subdivision requires minimum lot sizes of

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20,000 square feet. The subject property contains approx. 124,320 square feet (2.85 acres), allowing potentially up to six (6) single-family lots.

OTHER PROPERTIES DEVELOPED WITH NONCONFORMING USES

Properties developed or previously developed as nonconforming uses are fairly limited and easy to identify – it is harder to identify all nonconforming structures on the island (for instance, all those lawfully noncompliant to required setbacks).

Staff has identified 52 properties with nonconforming uses and/or structures, mostly those developed as commercial or resort housing; of these, approx. 65 percent have received permits and have been repaired or redeveloped. Of those without permits, approx. 40 percent are identified as dangerous or distressed properties.

Of nonconforming uses, staff has identified six (6) properties where the buildings have been demolished but no permits have been applied for.

NAME	Street No.	Address	Resort Housing outside of district	Commercial outside of district	Notes
Sandbar Restaurant	2761	West Gulf Drive	N	Y	
Madhatter Restaurant	6467	Sanibel Captiva Road	N	Y	Also non-conforming due to location seaward of the 1978 CCCL
Blind Pass Cottages	6486	Sanibel Captiva Road	Y	N	
Castaways Cottages	6460	Sanibel Captiva Road	Y	N	1 building not demolished
Hideaway Cottages	6491-92	Sanibel Captiva Road	Y	N	
Forty-Fifteen	4015	W. Gulf Drive	Y	N	Potential conversion to single-family lots based on discussions with new owner

Of properties identified as distressed or dangerous, staff has identified nine (9) that are also either nonconforming structures or uses.

NAME	Street No.	Address	Distressed?	Permit No.	Notes	Non-conforming
Islander Trading Post	1446	Periwinkle Way	Y	CODE-001433-2025	Abatement plan approved 3/10/25	Structure
7-Eleven (Tarpon Bay)	2460	Periwinkle Way	Y	CODE-001427-2025	Abatement plan approved 3/7/2025	Structure

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NAME	Street No.	Address	Distressed?	Permit No.	Notes	Non-conforming
Taqueria	2411	Periwinkle Way	Y	CODE-001452-2025	Abatement plan received 4/10/25 – under staff review	Structure
Dairy Queen	1048	Periwinkle Way	Dangerous	CODE-001485-2025	Revised building permits to be submitted	Structure & Use (Formula Restaurant)
Tipsy Turtle	1223	Periwinkle Way	Dangerous	CODE-001495-2025	Set to demo 4/2025	Structure
Tropical Winds Motel & Cottages	4819	Tradewinds Drive	Dangerous	CODE-0001435-2025	6 units - set to demo week of 4/21	Use
Tropical Winds Motel & Cottages	1344-50	Jamaica Dr	Dangerous	CODE-001457-2025	4 units - set to demo week of 4/21	Use
Courtyard Place	890	Beach Road	Y	CODE-001488-2025	4 units - Code hearing 4/21	Use
Castaways	6460	Sanibel Captiva	Dangerous	CODE-001535-2025	1 building not demolished – in 60-day compliance notification period	Use

OPTIONS

Staff has identified the following options in order to resolve the issue for Gulf Beach Condominium.

1. Extend the deadline for all nonconforming uses and structures for an additional 12 months.

Staff originally proposed a blanket extension of all nonconforming uses to 24 months, to be consistent with the timeline for nonconforming structures. At the two year mark, given difficulties in obtaining insurance settlements, staff proposed an additional 12 months, with language that the extension is only available if the local state of emergency following the disaster extends past 6 months. Staff is concerned about the unintended consequences of another blanket extension, given that the number of nonconforming structures is difficult to quantify and that the majority of identified nonconforming properties have submitted for permits. Such an extension might incentivize the owner of a distressed or dangerous property to delay implementing plans for recovery.

2. Extend the deadline for nonconforming uses only (not nonconforming structures) for an additional 12 months.

If City Council is concerned about removing development rights for nonconforming uses (such as the use of a multifamily building), staff could draft an amendment that would extend the deadline for buildback for nonconforming uses only. New structures to house the use would have to conform with development standards such as setbacks and impermeable coverage, unless authorized by approval of a variance.

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3. *Create an exception in the D-2 Upland Wetlands Ecological Zone to allow the use of “multifamily building” on the two existing nonconforming use properties (Gulf Beach Condo and Sandpiper Beach Condo).*

Gulf Beach Condo is the only property that has reached out to the city at this time regarding the extension of the December 15, 2025, deadline. Staff could draft an amendment specific to allowing a multifamily building on the two properties where buildings were permitted, but no authorization for the use appears to have been properly granted. This seems either to be the result of an error on the part of staff or an incomplete permit record from the early period after the city’s incorporation. Staff recommends this amendment take place, regardless of other amendments regarding nonconforming uses or structures, to recognize these uses as authorized by the Sanibel Plan. Such amendment is further supported by the fact other exceptions to allow multifamily in the D-2 Upland Wetlands Zone have already been granted by code amendment and the longstanding presence of these uses without detriment to adjacent properties.

4. *Amend Chapter 82 to allow a property owner to petition city council to extend the deadline for “build back” of a nonconforming use on a case-by-case basis.*

The code currently allows a property owner to directly petition city council to reinstate a nonconforming use; however, it also includes language that the process cannot be used to extend the deadlines otherwise established by code (i.e. to re-establish after December 15, 2025). The code could be amended to remove this prohibition. This approach would also limit unintended consequences and provide city council with the ability to decide whether a nonconforming use should be re-established, reviewing its overall compatibility with adjacent properties and consistency with the Sanibel Plan, but would require a property owner to make an application and the application to be considered at a public hearing. Under this option, staff would recommend creating a separate deadline for re-establishing a nonconforming use via this process; for instance, perhaps up to two years subsequent to the otherwise established deadline.

5. *No changes or extensions – allow post-disaster “build back” to expire December 15, 2025.*

Nonconforming uses and structures are by definition inconsistent with and contradictory to the Sanibel Plan and Code. City Council could find that sufficient opportunity has been provided to owners of nonconforming properties to re-establish post-storm within the current deadline.

RECOMMEND ACTION:

Provide direction to staff regarding the nonconforming use status of Gulf Beach Condo and the deadline to re-establish nonconforming uses and structures generally.

PUBLIC COMMENT: Two public comments were received and are attached to this item.

FISCAL IMPACT: None.

Attachments:

Email from William Talley dated February 22, 2025, “Dec 15, 2025 deadline”

Email from Dave Bunch dated February 26, 2025, “Re: Fwd: Dec 15, 2025 deadline”

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