

**CITY OF SANIBEL
ORDINANCE NO. 13-002**

AN ORDINANCE REPEALING, SUPERCEDING AND REPLACING SPECIFIC AMENDMENT ORDINANCE NO. 82-26 BY ALLOWING THE EXISTING NONCONFORMING COMMERCIAL USE OF A PROPERTY, LOCATED AT 1177 CAUSEWAY BOULEVARD, TO CONTINUE AS AN OFFICE SUBJECT TO THE NONCONFORMANCE AND BUILD-BACK PROVISIONS OF THE LAND DEVELOPMENT CODE; PROVIDING FOR CONFLICT AND SEVERANCE; AND PROVIDING AN EFFECTIVE DATE.

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 contained in the Land Development Code in a manner consistent with the *Sanibel Plan*; and

WHEREAS, 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 and the Planning Commission has found such revisions and this Ordinance to be consistent with the *Sanibel Plan*;

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

SECTION 1. Specific Amendment Ordinance No. 82-26 is hereby repealed, superceded and replaced with this Ordinance.

SECTION 2. With respect to the parcel of property described as 1177 Causeway Boulevard, Lee County Property Appraiser Strap No. 20-46-23-T1-00002.2010, Section 20, Township 46 South, Range 23 East, Sanibel, Florida, the use of such property may continue as a nonconforming office use subject to the following conditions:

- 1) There may be a change of tenant, ownership, or management of the nonconforming office use on the subject property, provided there is no change in the nature, character, size, or intensity of such nonconforming use.

- 2) The nonconforming office use 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.
- 3) The nonconforming office use 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 the Sanibel Code for building back (reconstruction) of nonconforming uses and structures. Otherwise, the nonconforming use shall be abated, eliminated and removed.
- 4) The existing structure devoted to a nonconforming office use (a use not permitted in the district in which it is located) shall not be improved, 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:
 - (a) Repairs or rehabilitations to the structure which, in conjunction with prior repairs, do not amount to a material structural alteration or a substantial improvement, as defined in chapter 94 of the Sanibel Code.
 - (b) Alterations within the existing perimeter, i.e., three-dimensional outline, of the structure, which, in conjunction with prior repairs, rehabilitations or alterations do not amount to a substantial improvement, as defined in chapter 94 of the Sanibel Code.
 - (c) The reestablishment of the nonconforming use of a building that is built-back following substantial damage to the building by a natural disaster.

SECTION 3. 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 4. 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 5. Effective date.

This ordinance shall take effect immediately upon adoption.

DULY PASSED AND ENACTED by the Council of the City of Sanibel, Florida, this ___ day of _____, 2013.

AUTHENTICATION:

Kevin Ruane, Mayor

Pamela Smith, City Clerk

APPROVED AS TO FORM:

Kenneth B. Cuyler
Kenneth B. Cuyler, City Attorney

5/22/13
Date

Publication and Hearing Dates

Date of First Reading _____, 2013
Ordinance Publication Date _____, 2013
Date of Second Reading and Public Hearing _____, 2013

Vote of Council Members:

Ruane _____
Congress _____
Denham _____
Harrity _____
Jennings _____

Date filed with the City Clerk: _____

RESOLUTION NO. 13-07

**CITY OF SANIBEL
PLANNING COMMISSION**

A RESOLUTION FORWARDING TO CITY COUNCIL A RECOMMENDATION TO REPEAL AND REPLACE SPECIFIC AMENDMENT ORDINANCE NO. 82-26, AND ENACT A NEW ORDINANCE TO ALLOW THE EXISTING NONCONFORMING USE OF A PROPERTY LOCATED AT 1177 CAUSEWAY BOULEVARD TO CONTINUE AS AN OFFICE SUBJECT TO THE NONCONFORMANCE PROVISIONS OF THE LAND DEVELOPMENT CODE; PROVIDING FOR CONFLICT AND SEVERANCE; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, public hearings were legally and properly advertised and held on May 14, 2013 and May 28, 2013; and

WHEREAS, the Planning Commission has heard and considered comments and recommendations from the Planning Department staff and public; and

WHEREAS, the repeal of Ordinance No. SA-82-26 has been referred to the Planning Commission for consistency with the *Sanibel Plan*; and

WHEREAS, all required public notices and public hearings for consideration of this action has been properly given and held; and

WHEREAS, the Planning Commission has directed the Planning Department staff to prepare a resolution recommending that City Council repeal and replace Specific Amendment Ordinance No. 82-26 with a new ordinance to allow the existing nonconforming use of a property located outside of the Commercial District to continue to operate as a commercial real estate sales and rental office; and

WHEREAS, if City Council deems it appropriate to approve the repeal of Ordinance SA 82-26, the Planning Commission recommends approval of the attached ordinance with specific conditions as a replacement, which the Planning Commission finds consistent with the Sanibel Plan.

NOW THEREFORE, BE IT RESOLVED, that the Planning Commission hereby recommends that the City Council adopt proposed Ordinance 13 -____, which the Planning Commission finds to be consistent with the Sanibel Plan.

The foregoing Resolution was adopted by the Planning Commission upon a motion by ^{CHAIR} Valiquette and seconded by ^{Comm.} Krekel and the vote was as follows:

Chris Heidrick	<u>YES</u>	John Tallmadge	<u>YES</u>
Chuck Ketteman	<u>YES</u>	Holly Smith	<u>YES</u>
Tom Krekel	<u>YES</u>	Michael Valiquette	<u>YES</u>
Phillip Marks	<u>YES</u>		

DULY PASSED AND ADOPTED this 28th day of May, 2013.

SANIBEL PLANNING COMMISSION

Signed: 
Michael Valiquette, Planning Commission Chairman

5/28/2013
Date Signed

Approved As To Form:

Signed: 
Kenneth B. Cuyler, City Attorney

5/22/13
Date Signed

Date Filed With City Manager: 5/28/2013



City of Sanibel

Planning Department

STAFF REPORT

Planning Commission Meeting:
Planning Commission Agenda Item:
Application Number:
Applicant Name:

May 14, 2013
No. 7a.
13-7316 LDC
Attorney Richard Collman
for property owner
Charles O. Howey

RE: Consideration of an application to amend certain conditions of Specific Amendment Ordinance No. 82-26, by allowing for the continued nonconforming use of a building as an office and reconstruction of the building if it is substantially destroyed or damaged. Both the nonconforming office use and building are located at 1177 Causeway Boulevard (tax strap no. 20-46-23-T1-00002.2010).

The application is submitted by Attorney Richard Collman (the applicant) on behalf of Charles O. Howey (the property owner). Application No. 13-7316 LDC.

ISSUE

Would allowing the continuation of the use of the subject property for an office use be consistent with the Sanibel Code standards for nonconformances?

BACKGROUND

A lawfully established commercial use was established in 1974 on the subject property. A location map showing the applicant's property is being provided with this report as **Attachment A**.

Subsequent to the development of the commercial use, commercial zoning established by Lee County was removed from this property with

the 1976 adoption of the City's Comprehensive Land Use Plan (CLUP.) During the City's Commercial Study that was prepared to update the commercial element of the CLUP, careful consideration was given to the Causeway Road area. However, because it was determined that this area is not well suited for commercial uses, no commercial districts were established by the City in this area.

In 1982, as part of a request to build a 600sf addition to the building, the property owner obtained a Specific Amendment to the CLUP that allowed the addition to be constructed subject to conditions that included "the existing use is required to revert, on or after July 6, 2007, to a permitted use in the zone in which it is located, if damaged in excess of 50% of the fair market value or replacement cost, whichever is lower, or if it remains vacant for 12 months or more." The Specific Amendment was approved by City Council Ordinance No. SA-82-26 on July 6, 1982. A copy of this ordinance is being provided with this report as **Attachment B**.

Since approval of Ordinance No. SA-82-26 only office uses have been permitted for real estate businesses on the subject property. No retail sales activities or other commercial uses have been permitted. Currently, there are no business licenses or business uses active onsite; however the City has a pending application for a business tax receipt for a branch real estate office on the property.

PROPOSAL

The applicant is requesting that the nonconforming use (commercial office use only) of the subject property be allowed to continue beyond the July 6, 2007 date set forth in Ordinance No. SA-82-26. The applicant is seeking removal of condition 1 of Ordinance No. SA-82-26.

ANALYSIS

Sanibel Code Section 78-1 defines a nonconforming use as "a lawfully-established use located in a zone district restricted against such use."

Sanibel Code Section 126-131 provides the following statement in regard to the intent of the City's requirements for nonconformances:

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.*

Sanibel Code Sections 126-151 and 126-152 include the following standards and limitations for lawfully established nonconforming 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.

Sec. 126-152. - (Nonconforming uses) exceptions and prohibitions.

- (a) No existing structure devoted to a use not permitted in the district in which it is located shall be improved, 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:*

- (1) *Repairs or rehabilitations to the 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) *Alterations within the existing perimeter, i.e., three-dimensional outline, of the structure, which, in conjunction with prior repairs, rehabilitations or alterations do not amount to a substantial improvement, as defined in chapter 94*
 - .
 - .
 - .
 - (11) *The reestablishment of a nonconforming use of a building that is been built-back following substantial damage to the building by a natural disaster, 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 section 82-262*
 - (c) *There may be a change of tenant, ownership, or management of a nonconforming use, provided there is no change in the nature, character, size, or intensity of such nonconforming use.*
 - (d) *When a nonconforming use of a structure, or structure and land in combination, is discontinued, vacant, abandoned, or not used for 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, reestablishment of abandoned nonconforming uses.) This period is tolled for any period during which an application for a permit to build back a building substantially damaged in a natural disaster has been filed and is pending and during which a permit to build back a substantially damaged building has been issued and has not expired and for six months following the issuance of a certificate of occupancy for that building.*

The Sanibel Code allows for the building back (reconstruction) of structures devoted to a nonconforming use that are substantially damaged by a natural disaster, subject to the following standards:

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 nonresort duplex or a nonresort 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.*

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):

- *Within its pre-disaster footprint;*
- *Within the three-dimensional outline of the lawfully existing habitable area of the pre-disaster building;*
- *Up to its pre-disaster gross square footage; and*
- *Up to its lawfully existing number of dwelling units, but 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 damage building is built back (reconstructed).*

(b) Applications to buildback a nonconforming structure that was destroyed or substantially damaged by accidental fire or other natural and disastrous force must be filed within 24 months of the date of the destruction or substantial damage to the building that is to be built back.

(c) 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.

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.

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.

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.*

Sec. 126-216. - Re-establishment of use or structure not existing at time of damage.

Notwithstanding any provision to the contrary, nothing in this section shall authorize the re-establishment of a use, or reconstruction of a structure which was not lawfully existing at the time of the damage.

Sec. 126-217. - Special conditions.

Where special conditions exist which would otherwise prevent the issuance of a short-form permit under this section, an application for relief may be filed with the city council under the terms and conditions set forth in chapter 82, article II, division 2.

Sec. 126-218. - Re-establishment of discontinued or abandoned use prohibited.

This division shall not permit re-establishment of a use which has been discontinued, vacant, abandoned or not used, within the meaning of division 2 of this article and this division shall not be used to permit reconstruction of a nonconforming structure, unless application for reconstruction has been made within one year after the disaster.

FINDINGS & RECOMMENDATION

The Planning Department finds the applicant's request is consistent with the provisions of the Sanibel Code for nonconforming uses and for building back (reconstruction) of structures devoted to a nonconforming

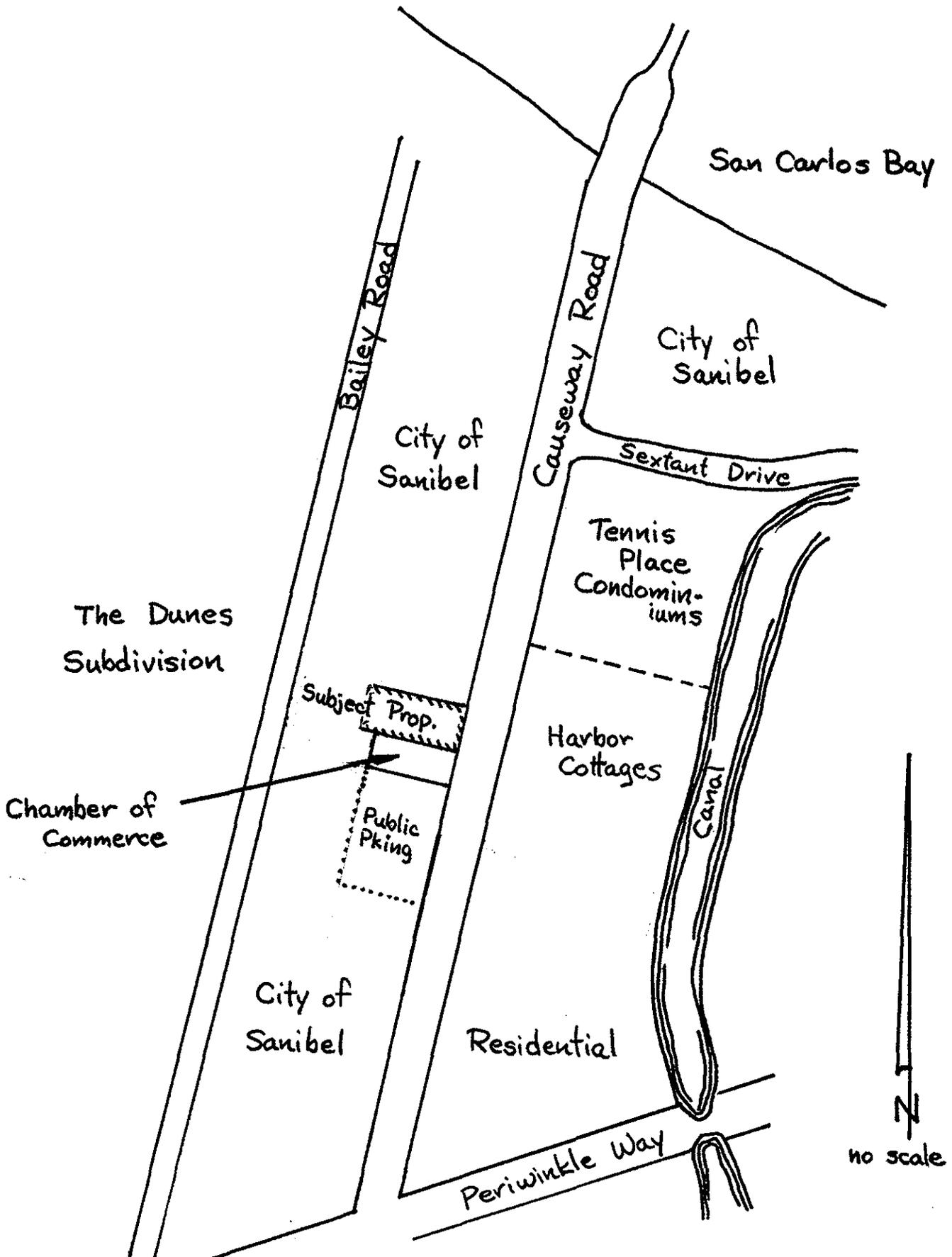
use should they be substantially damaged or destroyed by a natural disaster. Planning staff also finds that the subject application is consistent with the goals, objectives and policies of the Sanibel Plan.

Staff recommends that the Planning Commission support City Council's consideration to revise Ordinance No. SA- 82-26 (deleting condition 1), subject to the following conditions:

- 1) There may be a change of tenant, ownership, or management of the nonconforming office use on the subject property, provided there is no change in the nature, character, size, or intensity of such nonconforming use.
- 2) The nonconforming office use 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.
- 3) The nonconforming office use 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 the Sanibel Code for building back (reconstruction) of nonconforming uses and structures. Otherwise, the nonconforming use shall be abated, eliminated and removed.
- 4) The existing structure devoted to a nonconforming office use (a use not permitted in the district in which it is located) shall not be improved, 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:
 - (a) Repairs or rehabilitations to the structure which, in conjunction with prior repairs, do not amount to a material structural alteration or a substantial improvement, as defined in chapter 94 of the Sanibel Code.
 - (b) Alterations within the existing perimeter, i.e., three-dimensional outline, of the structure, which, in conjunction with prior repairs, rehabilitations or alterations do not amount to a substantial improvement, as defined in chapter 94 of the Sanibel Code.
 - (c) The reestablishment of the nonconforming use of a building that is built-back following substantial damage to the building by a natural disaster.

LOCATION MAP

ATTACHMENT A
PLANNING DEPARTMENT STAFF REPORT
1177 CAUSEWAY BLVD
APPLICATION NO. 13-7316 LDC



ATTACHMENT B
PLANNING DEPARTMENT STAFF REPORT

1177 CAUSEWAY BLVD
APPLICATION NO. 13-7316 LDC

CITY OF SANIBEL

ORDINANCE NO. SA - 82 - 26

AN ORDINANCE SPECIFICALLY AMENDING THE COMPREHENSIVE LAND USE PLAN, SECTION 3.3.15: LAWFULLY EXISTING COMMERCIAL USES TO PERMIT THE CONTINUANCE OF OFFICE USE REGARDLESS OF WHETHER OR NOT THE PRESENT BUILDING IS DAMAGED IN EXCESS OF 50% OR IS VACANT FOR 12 MONTHS OR MORE; AND TO PERMIT A 600 SQUARE FOOT ADDITION TO THE STRUCTURE. SUBJECT PROPERTY IS LOCATED IN SECTION 20, TOWNSHIP 46 SOUTH, RANGE 23 EAST, SITE OF PRISCILLA MURPHY REALTY, INC. LOCATED DIRECTLY NORTH OF THE CHAMBER OF COMMERCE BUILDING ON THE WEST SIDE OF CAUSEWAY ROAD, SUBMITTED BY GAYESTAN PROPERTIES, INC.; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERANCE; PROVIDING AN EFFECTIVE DATE.

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

Section 1. That a Specific Amendment to the Comprehensive Land Use Plan Section 3.3.15: Lawfully Existing Commercial Uses to permit the continuance of office use until July 6, 2007 regardless of whether or not the present building is damaged in excess of 50% or is vacant for 12 months or more; and to permit a 600 square foot addition to the structure. Subject property is located in Section 20, Township 46 South, Range 23 East, site of Priscilla Murphy Realty, Inc. located directly north of the Chamber of Commerce building on the west side of Causeway Road, as submitted by Gayestan Properties, Inc., is hereby approved conditioned upon the following:

1. The existing use is required to revert, on or after July 6, 2007, to a permitted use in the zone in which it is located, if damaged in excess of 50% of the fair market value or replacement cost, whichever is lower, or if it remains vacant for 12 months or more.
2. The existing use cannot change to any use other than the existing use or office use, not more intensive than the existing use.
3. The property subject to this amendment is that described on the attached survey plat which is incorporated herein by this reference in full.

Section 2. 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 the full force and effect and be liberally construed.

Section 3. 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 4. 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 6th day of July, 1982.

Fred Walker
Member of Council

Myron W. Klein
Member of Council

C. Dennis White
Member of Council

ATTEST:
Ronald J. Murphy
City Clerk

[Signature]
Mayor

[Signature]
Member of Council

June 1, 1982 First Reading

June 3, 1982 Publication Date

July 6, 1982 Second Reading

Filed in the Office of the City Clerk this 6th day of July, 1982.

APPROVED AS TO FORM:

7-8-82
Nal O Bowen
City Attorney

Ronald J. Murphy
City Clerk