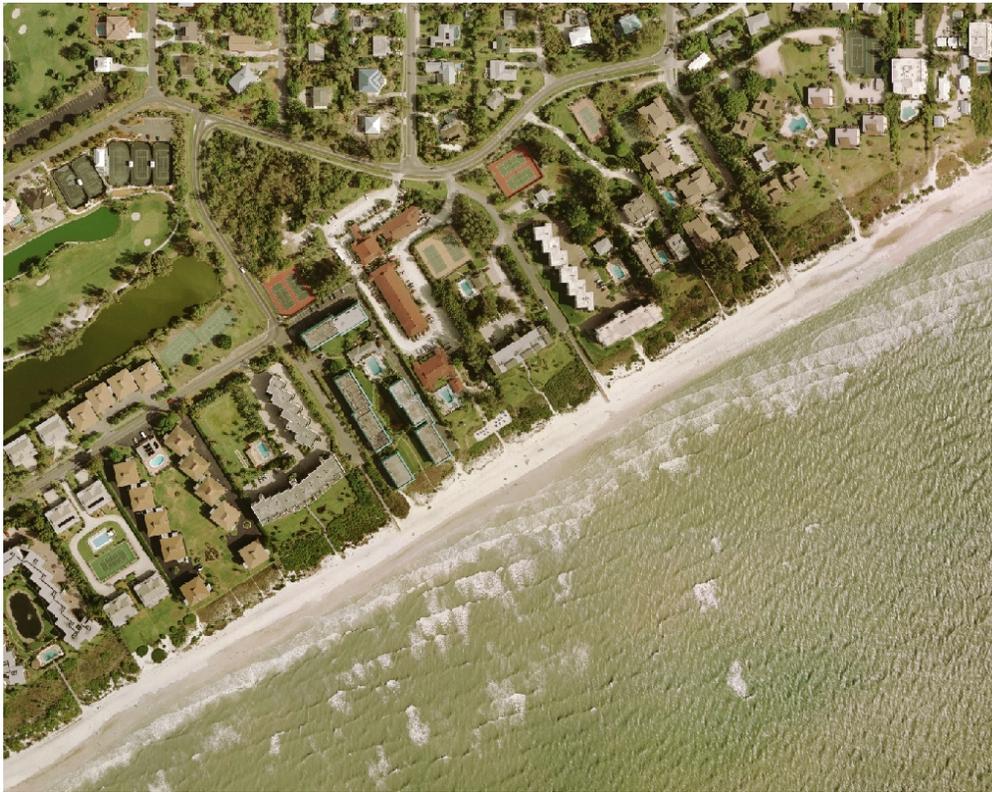




City of Sanibel

Planning Department

Home Owners and Property Owners Guide to the Build-Back Regulations



This guide is intended to help property owners understand the City's Buildback Regulations. Included in this guide are:

- **Definitions of terms frequently used in the City's Buildback Regulations;**
- **Answers to frequently asked questions about the City's Buildback Regulations; and**
- **Buildback Registration Form.**

May 2006



City of Sanibel

Planning Department

Home Owners and Property Owners Guide to the Build-Back Regulations

On January 4, 2006, the Sanibel City Council adopted an ordinance that is important to Sanibel homeowners and property owners. That ordinance, no. 05-017, clarifies and revises the City's Build-Back regulations.

These clarifications and revisions to the City's Buildback Regulations address when and how nonconforming structures and structures devoted to nonconforming uses, which are substantially damaged by a natural disaster, can be built back.

There are buildings and land uses, within the City of Sanibel, that were lawful when established, but which have become nonconforming under the terms of the *Sanibel Plan* or the Land Development Code. **It is the intent of the 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.**

The City has clarified and revised its build back regulations to ensure that property owners do not suffer the loss of a dwelling unit or a reduction in unit size as the result of a natural disaster. It is also the intent of buildback regulations that nonconforming uses can be reestablished if the building they occupy is built back after a natural disaster.

Definitions of Terms

Buildback means the construction that replaces or restores a building, which has been destroyed or substantially damaged by a natural disaster, in the 3-dimensional outline of the lawfully existing habitable area of the pre-disaster building and in the "footprint" of the pre-disaster building.

Natural Disaster means a storm, hurricane, tsunami, flood, fire or other cataclysmic event resulting in damage to property. For the purpose of **applying buildback** regulations, human-caused cataclysmic events, such as bombing or arson, are considered natural disasters. However, arson perpetrated by the property owner or an agent for the property owner is not considered a natural disaster.

Substantial damage means damage of any origin sustained by a structure, including damage by demolition in connection with any reconstruction, rehabilitation, addition or other improvement of the structure, whereby the cost of restoring the structure to its before damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Habitable Area means the floor area and overall volume of a building that is on or above the lowest floor of the building, as defined in LDC Section 94-1. For the purposes of the City's "Buildback Policy", *habitable area* includes all appurtenances to the building, such as decks, stairs, elevators and chimneys that are located above the lowest floor.

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 coverage, developed area, residential density, or commercial floor area, **including buildings that were built below the current base flood elevation established on the Flood Insurance Rate Map of the National Flood Insurance Program.**

Nonconforming use means a lawfully established use located in a zone district restricted against such use.

Base flood elevation means the elevation of the floodwater in a particular area during a base flood, as shown in the flood insurance study and accompanying Flood Insurance Rate Maps adopted as part of the City's Flood Regulations. Base flood also means that the flood has a 1 percent chance of being equaled or exceeded in any given year.

Coastal Construction Control Line (CCCL) means the line established by the State of Florida that defines that portion of the beach-dune system subject to severe fluctuations based on a 100-year storm surge, storm waves, or other predictable weather conditions. The current CCCL for the City of Sanibel was established in 1991 (replacing the 1974 CCCL).

It is important to note that construction seaward of the 1991 CCCL requires a coastal construction permit from the Florida Department of Environmental Protection. Furthermore, the Florida Building Code establishes a base flood elevation for buildings located seaward of the 1991 CCCL.

Gulf Beach Ecological Zone means land within the City of Sanibel located along the Gulf of Mexico, which is designated for passive recreation and conservation uses only. The state's 1974 Coastal Construction Control Line was used to establish this ecological zone. Land located seaward of the 1974 CCCL is designated the Gulf Beach Ecological Zone. For that reason, the 1974 CCCL was often referred to as the Coastal Construction Setback Line on Sanibel.

Answers to Frequently Asked Questions

1. Can a nonconforming structure be built back if it is substantially damaged by a natural disaster?

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 3-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 the 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).

2. Can a nonconforming use be reestablished if the building is substantially damaged in a natural disaster?

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 reestablished.

Where the use is a non-resort duplex or a non-resort multi-family building in a residential area that is limited to single-family dwellings the use may be reestablished.

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 reestablished.

3. If a lot or parcel has more dwelling units than the number currently permitted by the *Sanibel Plan*, can all the units that are substantially damaged by a natural disaster be built back?

Yes. It is the intent of the City's Build-back Regulations that property owners not suffer the loss of a dwelling unit or a reduction in unit size as the result of a natural disaster.

However, it is the intent of the City's Buildback Regulations 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 the city's land development code, including the maximum density permitted in accordance with the Development Intensity Map of the Sanibel Plan.

4. If an existing building, that has its lowest floor at-grade or below the current base flood elevation, is substantially damaged by a natural disaster, does that building have to be elevated when the building is built-back?

Yes. The City's Buildback Regulations require that the building back (reconstruction) of a nonconforming building that has been substantially damaged by a natural disaster must comply with requirements of

- Federal Flood Regulations,
- City Flood Regulations (Land Development Code Chapter 94), and
- The Florida Building Code;

5. Can a lawfully existing building that exceeds current height limits, such as a multi-family building with four (4) habitable floors that is substantially damaged by a natural disaster be built back?

Yes. The building can be builtback, in the 3-dimensional outline of the lawfully existing habitable area of the pre-disaster building and in the "footprint" of the pre-disaster building. However, the lowest habitable floor of the building that is built back has to be elevated to or above the base flood elevation.

6. Can a development permit be obtained to build back a building that has been substantially damaged by a natural disaster without first having a public hearing?

Yes. A short-form application is available for building back a nonconforming structure that has been substantially damaged by a natural disaster. However, the structure that is built back must be:

- within the 3-dimensional outline of the lawfully existing habitable area of the pre-disaster building; and
- within the footprint of the lawfully existing pre-disaster building.

Note that a long-form application (requiring Planning Commission review and approval at a public hearing) is required for building back a nonconforming structure that has been substantially damaged by a natural disaster within the 3-dimensional outline of the lawfully existing habitable area of the pre-disaster building, but where 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.

7. Are there any specific vegetation requirements for building back a building that was substantially damaged by a natural disaster?

As with any development, City regulations prohibit the unnecessary removal of native vegetation. In addition, the building back of buildings in the Gulf Beach, Gulf Beach Ridge and Blind Pass area Zones that are substantially damaged by a natural disaster requires the restoration of the dune and the dune vegetation to their pre-disaster condition in areas of the parcel located seaward of the 1974 Coastal Construction Control Line (in Gulf Beach Zone). Where practicable, the restoration shall enhance the dune and dune vegetation beyond pre-disaster conditions in the areas of the parcel located in the Gulf Beach Zone.

8. What is the time limit for making an application to build back a nonconforming structure after that structure has been substantially damaged by a natural disaster?

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 **twenty-four (24) months** of the date of the destruction or substantial damage to the building that is to be built back.

9. What is the time limit for reestablishing a nonconforming use in a building that is built back after that structure has been substantially damaged by a natural disaster?

When a nonconforming use of a structure, or structure and land in combination, is discontinued, vacant, abandoned, or not used for twelve (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. 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 (6) months following the issuance of a certificate of occupancy for that building.

10. Can a building that has been substantially damaged by a natural disaster be built back outside the pre-disaster footprint of the building?

Only if the building is located in the Gulf Beach Zone and only in a manner that reduces the pre-disaster building's encroachment into the Gulf Beach Zone.

11. What is Build-Back Registration?

Buildback Registration is the documentation, with the City, of the existing improvements on a lot or parcel.

Any person may file with the City Manager documentation of the condition of the parcel and structures upon it, as of the date of filing.

In the event that buildback registration has not been filed with the City prior to substantial damage to a building, the City Manager will use the best information available to determine the pre-disaster condition, including height, of the substantially damaged building

Copy of the Buildback Registration Form

A copy of the City's Buildback Registration Form is provided with this *Guide to Buildback Regulations*.

Contacts for additional Information

Contact the Planning Department at (239) 472-4136, or send e-mail to jimmy.jordan@mysanibel.com, if you have any questions about the City's Buildback Regulations or the attached Buildback Registration Form.



City of Sanibel
Planning Department

Buildback Registration
(Land Development Code Section 126-219)

Any person may file with the City Manager documentation, including, but not limited to, an as-built survey showing all improvements located on the site, base flood elevation and lowest floor elevation, dimensions, which include height, a floor plan showing interior walls, identifying the use of all rooms, and showing all window and door openings and points of ingress and egress, interior elevations with ceiling heights, calculations of living area, developed area, and area covered with impermeable surfaces, number of parking spaces, and any other information that may be relevant to buildback including date or dates of construction. The City Manager may accept a plot plan or a floor plan, accompanied by photographs, or any other documentation provided and certified by the owner, and may accept elevation certificates certified by a person authorized by law to certify such certificates, in lieu of requiring such information to be upon the as-built survey. Such documentation shall constitute prima facie evidence of the condition of the parcel and structures upon it, as of the date of filing. Such filing shall not constitute prima facie evidence of the lawfulness of such use or structure, unless an application to establish and determine the lawfulness of the use or structure has been filed and such determination has been made.

In the event that buildback registration has not been filed with the City prior to substantial damage to a building, the City Manager will use the best information available to determine the pre-disaster height of the substantially damaged building, including the pre-disaster ceilings height of the building. Without buildback registration or other evidence deemed competent by the City Manager, the determination of pre-disaster building height will assume ceiling heights of eight (8') feet.

Owners of nonconforming structures or structures devoted to a nonconforming use should be encouraged to file their buildback information with the City including a verification of existing ceiling heights. If there's no information, or insufficient plans filed with the City for buildback purposes, then a property owner may have to provide certified documentation of pre-disaster conditions prior to issuance of a permit for reconstruction.

CITY OF SANIBEL BUILDBACK REGISTRATION

- To be completed by staff -

REGISTRATION NO.: _____ FILING DATE: _____ ACCEPTED BY: _____

PART I. PARCEL IDENTIFICATION

TAX STRAP NUMBER: ___ - 46 - ___ - T ___ - ___ - ___ - ___ - ___ - ___ - ___

STREET ADDRESS OF PROPERTY: _____

PART II. OWNER/APPLICANT INFORMATION

NAME OF OWNER: _____

OWNER'S MAILING ADDRESS: _____

OWNER PHONE NO: Home _____ Business _____ Fax _____

NAME OF APPLICANT: _____

APPLICANT ADDRESS: _____

APPLICANT PHONE NO: Home _____ Business _____ Fax _____

APPLICANT'S INTEREST IN PROPERTY: _____

PART III. PROVIDE A BRIEF DESCRIPTION OF THE EXISTING DEVELOPMENT

as applicable, the number of lawfully existing dwelling units, the amount of floor area in each dwelling unit, the number of lawfully existing commercial units, the amount of commercial floor area in each unit)

PART IV. ATTACHMENTS CHECKLIST (List of Items in Buildback File)

The following attachments are requested, if available, as part of this buildback registration. For a further explanation, refer to the attached page entitled "Buildback Registration".

- _____ **MOST RECENT ELEVATION CERTIFICATE**
 - _____ SURVEY SHOWING IMPROVEMENTS
- _____ **LOCATION MAP**
- _____ **SITE DEVELOPMENT PLAN**
- _____ **VERIFICATION OF EXISTING DRAINAGE IMPROVEMENTS**
- _____ **FLOOR PLANS FOR EACH BUILDING** (for each unit in the building)
- _____ **TYPICAL WALL SECTION**
 - _____ **BUILDING ELEVATIONS FOR EACH BUILDING (Front, Back and Sides - Show Height & Setbacks)**
- _____ **FLOODPROOFING CERTIFICATION** (For Construction in the V-Zone Only)
- _____ **OTHER MATERIAL (Describe Below)**

******* CERTIFICATION *******

I hereby certify that the information contained in this registration and the attachments hereto are true and correct to the best of my knowledge and belief.

SIGNATURE (OWNER OR OWNER'S AUTHORIZED REPRESENTATIVE) DATE