

What density should be allowed in resort redevelopment?

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Last week we reported that the City was addressing the problem of aging resort structures -- condominiums, hotels, and motels that would require major upgrading or replacement, without which they would face issues of safety, functionality, or gradual deterioration.

We had pointed out that the problem with redeveloping or replacing these structures is that many of them are non-conforming. They were legally built and entitled to continue until they are eventually removed, but may not be redeveloped at their current density. So owners may be reluctant to redevelop them if they face reduced density.

To address this problem, City Council recently sent a guidance document to the Planning Commission. This document sets the parameters for the Commission's deliberations on redevelopment in the Resort Housing District, the only district on Sanibel where short-term rentals (28 days or fewer) are permitted.

We think this approach makes sense. It should help ensure that Council and the Commission are “on the same page” and will increase the likelihood that Council will find the Commission's eventual proposals acceptable. Council's guidance document covers six elements;

- o Density
- o Lot coverage and impermeable surfaces
- o Setbacks
- o Height limits
- o Green technologies
- o Relocation of the footprints of existing structures in redevelopment.

Determining density

Our comments today will focus on the element of density, which, in this context, means the number of dwelling units that may be built on a given parcel of land. Under the Sanibel Plan, that is determined on a parcel-by-parcel basis, based on the ecological zone in which the parcel is located (with more density being permitted in zones that are less ecologically sensitive).

Many of the structures in the Resort Housing District were built before the adoption of the Sanibel Plan and contain more units than would now be permitted for new construction. Thus they are classified as non-conforming. City Council has determined that it is in the interest of residents and businesses to:

- Maintain a block of daily and weekly short-term rental units on Sanibel

-- Encourage property owners/investors to maintain their hotel/motel use.

Sanibel's economy is tourist driven, and short-term rentals are a vital contributor to that economy. As much as we might like to see fewer cars on the road and fewer beachfront structures, we believe it is reasonable today to focus on limiting further density increases, rather than attempting to turn back the clock by reducing density. This is especially the case when to do so would come at the price of substantially burdening the economic health of our community.

Council has devised an approach, which we think has merit, regarding the redevelopment of hotels, motels and resort condominiums that exceed today's density limits. It would permit these structures to be redeveloped at their current density with the following restrictions:

-- Redevelopment could not exceed existing square-footage of habitable area, so that a small motel, for example, could not be replaced by a much larger one.

-- Short-term occupancy (rentals for 28 days or less) would have to be maintained. Conversion to other forms of occupancy, such as residential, while permissible, would have to be at today's density limits.

Short-term rentals incentivized

This approach incentivizes the owners of such structures to keep their short-term rental status by allowing them to redevelop without losing their present density; they would lose that density protection if they converted the structures to residences that permitted only long-term rentals, or no rentals at all.

Even given such incentives, it's difficult to predict how many short-term rental units would be retained if this plan were adopted. But we think Council made the right choice. No one would benefit if Sanibel's resort structures became substandard. And the outright prohibition of conversion to traditional residential use would not appear to be a realistic option.

Actually, if the City attempted to prevent conversion to residential use, resort owners might then have legal claims against the city under the Bert Harris Private Property Rights Protection Act. That's the state law which subjects local governments to claims for damages for "inordinately" burdening an existing use of real property.

"Existing use" is defined to include "reasonably foreseeable" as well current uses. Since owners of properties in the Resort Housing District are not now restricted from converting to residential use, imposing such a restriction might be considered grounds for damages in a lawsuit.

Referendum not required

There is one final point. Some hold that the City Charter would require a referendum to permit non-conforming structures to be replaced at their current density. But a referendum is not required for reasons of density alone. Council is specifically granted that authority under City Charter Section 3.10.2.

Your input on this subject is important to the City. There is ample time for you to become informed and make your feelings known to those in city government. There is an opportunity for public comment before important decisions are made at both City Council and the Planning Commission. Meeting times are posted on the internet and in the newspapers -- usually Tuesday mornings at 9 A.M.

The Committee of the Islands also invites your comments and ideas on this important subject. You can email us at coti@cot.org and/or check our website at coti.org.

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