

M E M O R A N D U M

DATE: January 22, 2015

TO: Dave Bullock, Town Manager

FROM: Alaina Ray, AICP, Director
Planning, Zoning and Building Department

SUBJECT: Proposed Ordinance 2015-02, Amending Town Comprehensive Plan
Future Land Use Element, Policy 1.1.5 and 1.1.6

As part of the revisions to the Comprehensive Plan (Plan) and Land Development Code (LDC), the Town Commission has directed Staff to address the redevelopment issues regarding nonconforming properties on Longboat Key. Currently, the Town's Comprehensive Plan contains strict limitations on redevelopment of nonconforming properties in the event of involuntary or voluntary destruction.

In 2008, a referendum was held to ask the voters the following question: For the properties that have more dwelling or tourism units than currently allowed, but which were legal at the time they were created, may the Town consider and grant approval to allow those properties to rebuild to their current dwelling or tourism unit levels in the event of involuntary or voluntary destruction? (Ord. 2007-48)

The referendum was approved by a majority of registered voters of the Town. Following the referendum, revisions were made to both the Plan and the LDC to include provisions for reconstruction of nonconforming properties with the intent to allow those properties to redevelop at their existing densities. However, strict adherence to the Plan and the LDC render redevelopment to existing densities virtually impossible, while also responding to current market demands for higher ceilings, larger units, more outdoor space, etc.

The Planning and Zoning Board and the Town Commission have recognized the impasse between the existing Plan/ LDC provisions and market/economic demands and directed Staff and consultants to propose methods to provide additional flexibility for redevelopment of nonconforming properties. Based on Staff/consultant analysis, the Planning and Zoning Board considered and ultimately recommended a revision to the Plan, which consolidates multiple policies into one policy and directs the standards for redevelopment of nonconforming properties to the LDC.

The Planning and Zoning Board considered Ordinance 2015-02 at their December 16, 2014 meeting and recommended approval. The Ordinance proposes to eliminate the current language contained in the Plan's Future Land Use Element Policies 1.1.5 and 1.1.6 and replace with one consolidated policy. This ordinance is the first proposed ordinance that addresses nonconforming properties and it will be followed by additional

proposed revisions to both the Plan and the LDC, which will address proposed new tourism land use designations and provisions for fully legitimizing existing densities within the legal parameters of the 2008 referendum.

Staff presented Ordinance 2015-02 to the Town Commission at their January 20, 2015 Regular Workshop Meeting and it was forwarded to their February 2, 2015 Regular Meeting for first reading and public hearing. Should the Town Commission wish to forward Ordinance 2015-02 for second reading and public hearing, the Town Commission would need to authorize Staff to transmit the Ordinance to the Florida Department of Economic Opportunity for review and comment prior to conducting the second reading and Public Hearing.

Attachments: Ordinance 2015-02
PowerPoint Presentation

MEMORANDUM

DATE: January 12, 2015

TO: Honorable Mayor and Town Commission

THROUGH: Dave Bullock, Town Manager

FROM: Allen Hixon, Chair
Planning and Zoning Board

SUBJECT: Proposed Ordinance 2015-02, Amending Town Comprehensive
Plan Future Land Use Element, Policy 1.1.5 and 1.1.6

During the public hearing held on December 16, 2014, the Planning and Zoning Board recommended APPROVAL of Ordinance 2015-02, amending policies within the Future Land Use Element of the Comprehensive Plan. The specific motion from the December 16, 2014, meeting of the P&Z Board is as follows:

MR. SCHNEIER MOVED THE P&Z BOARD RECOMMEND APPROVAL OF ORDINANCE 2015-02 SUBJECT TO THE ADOPTION OF THE REVISED LANGUAGE FOR POLICY 1.1.5, WITH THE ADDITION OF THE WORD 'CERTAIN' BETWEEN THE WORDS 'CONFORM' AND 'PROPERTY', AND APPROVE DELETION OF THE EXISTING LANGUAGE. MR. WILD SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: AITKEN, AYE; DALY, AYE; GARNER, NO; HACKETT, AYE; HIXON, AYE; SCHNEIER, AYE; SYMANSKI, AYE; WILD, AYE.

Enclosed, for your review and consideration, please find the following support documentation:

1. Ordinance 2015-02;
2. PowerPoint presentation; and
3. Draft minutes from the 12-16-14 regular P&Z Board meeting on this issue.

If you should have any questions, or desire any additional information, please do not hesitate to contact me.

AH/dmc

AGENDA ITEM 4
ORDINANCE 2015-02, COMPREHENSIVE PLAN AMENDMENT
NONCONFORMING PROPERTIES

Pursuant to published notice, the public hearing was opened.

Mr. Symanski voiced concern with the second 'Whereas' clause and the increases in allowable density. Jerry Murphy, Town's Planning Consultant, commented that the ordinance provided an opportunity to relax the current restrictions in the Comprehensive Plan; the Charter provision would still apply until, and unless, the Charter was amended.

Ms. Bishop left the meeting at this time.

Alaina Ray, Planning, Zoning & Building Director, noted that some properties might need a little bit of density in order to fit them into whatever categories might end up being created. The 'Whereas' clause was looking forward and stating there might be opportunities to explore, if able to amend the Charter, and staff was revising language to accommodate those things. She noted that any increases in density would still go through a referendum process.

Mr. Symanski reiterated his concern with using only the words "increase in allowable densities," and suggested inclusion of "if otherwise allowed." He was trying to determine whether the first part of Policy 1.1.5 was existing law. Mr. Murphy explained the revised policy directs the regulatory aspect from the Comprehensive Plan to the Land Development Regulations (LDRs). Ms. Ray pointed out the Comprehensive Plan limited the building to the existing cubic content. Staff was suggesting removing the requirement from the Comprehensive Plan so if the Town decided, they could relax the LDR for that restriction.

Mr. Symanski questioned the last sentence, '*and may establish.*' He voiced concern that if they established standards, it might create a problem as it could be interpreted to apply to every property to make it conform. Mr. Murphy responded they could do certain standards or certain properties, and he would suggest certain standards. Mr. Garner suggested the language could read, "The existing land development code will specify standards." Mr. Murphy commented the language would be similar to the provision in the Charter that limited the Town to the 1984 densities.

Discussion ensued on:

- The way the ordinance was written, it could be argued if the Commission established standards to conform property with lawfully existing non-conforming density, that it would have to cover every property; would like to see language that stated "standards so that certain properties conform"
- Currently, under involuntary destruction, the effected facilities would be able to rebuild with the same density; however, what would happen, with respect to maintaining density, if the language was removed and there was involuntary

destruction; under the current provisions of the LDRs, they would be able to maintain density, but could not be enlarged

- the language was only being removed from the Comprehensive Plan, and not eliminating the standards, because they exist within the LDRs
- Why the Comprehensive Plan should not mandate establishment of standards to conform; the language throughout the Comprehensive Plan, within the Future Land Use Element, consistently uses the word 'will' when directing the Town, and theoretically, the Town should have "greater power than the plan"
- When the Town approved the additional 250 tourism units, the mindset was different than today
- The issue seemed to be that the LDRs would become the guideline for land development and redevelopment

Following discussion, Mr. Schneier saw no problem with including the word 'certain,' as he believed with that addition, it addressed the board's concern and provided more flexibility. He believed the issue was the existing language, which was being stricken, did not give flexibility to the Town as to how to redevelop property, however it went away.

No one else wished to be heard, and the hearing was closed.

MR. SCHNEIER MOVED THE P&Z BOARD RECOMMEND APPROVAL OF ORDINANCE 2015-02 SUBJECT TO THE ADOPTION OF THE REVISED LANGUAGE FOR POLICY 1.1.5, WITH THE ADDITION OF THE WORD 'CERTAIN' BETWEEN THE WORDS 'CONFORM' AND 'PROPERTY', AND APPROVE DELETION OF THE EXISTING LANGUAGE. MR. WILD SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: AITKEN, AYE; DALY, AYE; GARNER, NO; HACKETT, AYE; HIXON, AYE; SCHNEIER, AYE; SYMANSKI, AYE; WILD, AYE.

ORDINANCE 2015-02

AN ORDINANCE OF THE TOWN OF LONGBOAT KEY, FLORIDA, APPROVING FOR ADOPTION AMENDMENTS TO THE TOWN'S COMPREHENSIVE PLAN AS REQUIRED BY SECTION 163.3184(3), FLORIDA STATUTES; AMENDING POLICIES 1.1.5(A), 1.1.5(B), AND 1.1.6 OF THE FUTURE LAND USE ELEMENT RELATED TO REDEVELOPING NONCONFORMING PROPERTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Goal of the Town's Comprehensive Plan Future Land Use element is to preserve and enhance the character of the Town of Longboat Key by ensuring that land uses are responsive to the social and economic needs of the community and are consistent with the support capabilities of the natural and manmade systems, and to maintain an environment that is conducive to the health, safety, welfare, and property values of the Town; and

WHEREAS, the Town Commission seeks to amend the Town's Comprehensive Plan to allow certain nonconforming properties reasonable economic redevelopment opportunities including, but not limited to, possible increases in allowable density, and

WHEREAS, Article II, Section 22 of the Town Charter requires referendum approval of the Town's electors to increase density in excess of the density limits established by the 1984 Comprehensive Plan; and

WHEREAS, the Town Commission in accordance with the Town Charter, Article II, Section 22, adopted Ordinance 2007-48 directing to referendum of the electors of the Town the following question:

For the properties that have more dwelling or tourism units than currently allowed, but which were legal at the time they were created, may the Town consider and grant approval to allow those properties to rebuild to their current dwelling or tourism unit levels in the event of involuntary or voluntary destruction?

; and

WHEREAS, a majority of the Town electors affirmatively approved the referendum question provided for in Ordinance 2007-48; and

WHEREAS, the Town Commission seeks to amend both the Comprehensive Plan and the Town of Longboat Key's land development regulations to effectuate the will of the electors; and

WHEREAS, the Town wishes to clarify its policy for the redevelopment of nonconforming properties in the Town's Comprehensive Plan and land development regulations; and

WHEREAS, the Community Planning Act (Sections 163.3161 through 163.32466, Florida Statutes), authorizes and requires the Town of Longboat Key to adopt and amend a Comprehensive Plan in accordance with the Act; and

WHEREAS, Section 163.3184, Florida Statutes, requires that the Town transmit the proposed Comprehensive Plan amendments to the state land planning agency, as well as other specified agencies and parties; and

WHEREAS, pursuant to the Community Planning Act, the Town of Longboat Key Code of Ordinances, Chapter 33, designates the Town of Longboat Key Planning and Zoning Board as the local planning agency, responsible for the preparation of the local Comprehensive Plan and amendments thereto; and

WHEREAS, the Town provided due public notice of the Planning and Zoning Board public hearing that was conducted in a manner affording public participation to the fullest extent possible for the review of the proposed Comprehensive Plan amendments; and

WHEREAS, the Town's Planning and Zoning Board, as the local planning agency, held a public hearing on December 16, 2014, to consider the proposed Comprehensive Plan amendments and provided recommendations to the Town Commission as the local governing body; and

WHEREAS, after due public notice, the Town Commission held a workshop on January 20, 2015, and considered the recommendations of the Town's Planning and Zoning Board; and

WHEREAS, on February 2, 2015, the Town Commission conducted a duly noticed initial public hearing on the proposed Comprehensive Plan amendments and upon a majority vote of the Town Commission approved the forwarding of the Comprehensive Plan amendments to the applicable reviewing agencies as provided for in section 163.3184, Florida Statutes; and

WHEREAS, on _____, 2015, the Town received notification that the reviewing agencies did/did not have any comments regarding the Town's Comprehensive Plan Amendments; and

WHEREAS, on _____, 2015, the Town Commission conducted a duly noticed second public hearing on the proposed Comprehensive Plan amendments and the Town Commission approved the adoption of the amended Future Land Use Element

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF LONGBOAT KEY, FLORIDA, THAT:

SECTION 1. The Recitals above are ratified and confirmed as true and correct.

SECTION 2. The Comprehensive Plan amendments attached hereto and incorporated herein as Exhibit "A" are hereby adopted by the Town of Longboat Key.

SECTION 3. If any section, subsection, sentence, clause, or provision of this Ordinance is held invalid, the remainder of the Ordinance is valid.

SECTION 4.

This Ordinance becomes effective when adopted in accordance with Florida law and the Charter of the Town of Longboat Key.

Passed on the first reading and initial public hearing the _____ day of _____, 2015.

Adopted on the second reading and public hearing the _____ day of _____, 2015.

James L. Brown, Mayor

ATTEST:

Trish Granger, Town Clerk

Exhibits:

“A”: Amended Comprehensive Plan Future Land Use Element: Policies 1.1.5 and 1.1.6

Exhibit “A”

Policy 1.1.5 (A)

~~It is the intent of the Town that, in the event of involuntary destruction due to natural events, noncompliant structures may be allowed to rebuild to the same density and building cubic volume, and allowed to increase height to correspond with the increase of height required by flood regulations, so long as the non-conformities are reduced or eliminated, to the greatest extent possible, as determined by the Town and consistent with the Town Code.~~

The Land Development Code will specify standards for redeveloping lawfully existing property that does not currently conform to the future land use density and building volume limits provided elsewhere in this Plan—and may establish standards to conform certain property with lawfully existing nonconforming density.

Policy 1.1.5 (B)

~~It is the intent of the Town that, for the purposes of voluntary reconstruction, noncompliant structures may be allowed to rebuild to the same density and building cubic volume, allowed to increase height to correspond with the increase of height required by flood regulations, and allowed additional standards to encourage redevelopment while reducing or eliminating non-conformities to the greatest extent possible, as determined by the Town and consistent with the Town Code.~~

Policy 1.1.6 **[RESERVED]**

~~Buildings, lots, structures, or uses which were lawful at the effective date of the applicable zoning regulation, but were prohibited, regulated, or restricted under the terms of zoning regulations promulgated thereafter, shall be permitted to continue until they are voluntarily removed, determined to be unsafe, or abandoned. The non-conformities shall not be enlarged, expanded, intensified or extended except in conformance with the goals, objectives and policies of this comprehensive plan and a strict application of the Town's land development regulations.~~



**ORDINANCE 2015-02:
NONCONFORMING PROPERTIES
COMPREHENSIVE PLAN POLICY 1.1.5**

**TOWN COMMISSION
REGULAR MEETING
FEBRUARY 2, 2015**

**TOWN OF LONGBOAT KEY
AND
UNIVERSITY OF FLORIDA
RESILIENT COMMUNITIES INITIATIVE (FRCI)**

POLICY CONSIDERATIONS

2008 Referendum (Ord 2007-48) – Asked:

For the properties that **have more dwelling or tourism units than currently allowed**, but which were **legal at the time they were created**, may the Town consider and grant approval to **allow those properties to rebuild to their current dwelling or tourism unit levels** in the event of **involuntary or voluntary destruction?**

Nonconforming Properties: INVOLUNTARY Destruction, e.g., Hurricane; Flood; Tornado

- **Policy 1.1.5(A)**: It is the intent of the Town that, in the event of involuntary destruction due to natural events, noncompliant structures may be allowed to rebuild to the same density and building cubic volume, and allowed to increase height to correspond with the increase of height required by flood regulations, so long as the non-conformities are reduced or eliminated, to the greatest extent possible, as determined by the Town and consistent with the Town Code.
- Problematic provisions underlined:
 1. Limitation on buildings' cubic volume, i.e., “the box” may only be elevated—not enlarged.
 2. Requirement that non-conformities be “reduced or eliminated” to “the greatest extent possible” implies little, if any, flexibility for “the box” or for density

Nonconforming Properties: VOLUNTARY Redevelopment, e.g., Pre-disaster Rebuilding

- **Policy 1.1.5(B)**: It is the intent of the Town that, in the event of voluntary reconstruction, noncompliant structures may be allowed to rebuild to the same density and building cubic volume, allowed to increase height to correspond with the increase of height required by flood regulations, and allowed additional standards to encourage redevelopment while reducing or eliminating non-conformities to the greatest extent possible, as determined by the Town and consistent with the Town Code.

Problematic provisions underlined:

1. Limitation on buildings' cubic volume, i.e., “the box” may only be elevated for FEMA compliance—not enlarged to meet market demands for ceiling height, etc.
2. Additional standards to encourage redevelopment, but
3. Requirement that non-conformities be “reduced or eliminated” to “the greatest extent possible” implies little, if any, flexibility for “the box” or for density.

Nonconforming Properties: Other Restrictions

- **Policy 1.1.6:** Buildings, lots, structures, or uses which were lawful at the effective date of the applicable zoning regulation, but were prohibited, regulated, or restricted under the terms of zoning regulations promulgated thereafter, shall be permitted to continue until they are voluntarily removed, determined to be unsafe, or abandoned. The non-conformities shall not be enlarged, expanded, intensified or extended except in conformance with the goals, objectives and policies of this comprehensive plan and a strict application of the Town's land development regulations.
 - Problematic provisions underlined:
 1. Limitation on buildings' cubic volume, i.e., "the box" may only be elevated—not enlarged.
 2. Requirement that non-conformities be "reduced or eliminated" to "the greatest extent possible" implies little, if any, flexibility for "the box"
 3. Contradictory of current policy direction and therefore problematic

P&Z BOARD RECOMMENDATION:
NEW POLICY (SINGLE POLICY):

Exhibit “A”

Policy 1.1.5 (A)

~~It is the intent of the Town that, in the event of involuntary destruction due to natural events, noncompliant structures may be allowed to rebuild to the same density and building cubic volume, and allowed to increase height to correspond with the increase of height required by flood regulations, so long as the non-conformities are reduced or eliminated, to the greatest extent possible, as determined by the Town and consistent with the Town Code.~~

The Land Development Code will specify standards for redeveloping lawfully existing property that does not currently conform to the future land use density and building volume limits provided elsewhere in this Plan—and may establish standards to conform certain property with lawfully existing nonconforming density.

Policy 1.1.5 (B)

~~It is the intent of the Town that, for the purposes of voluntary reconstruction, noncompliant structures may be allowed to rebuild to the same density and building cubic volume, allowed to increase height to correspond with the increase of height required by flood regulations, and allowed additional standards to encourage redevelopment while reducing or eliminating non-conformities to the greatest extent possible, as determined by the Town and consistent with the Town Code.~~

Policy 1.1.6 [RESERVED]

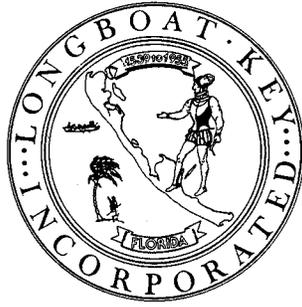
~~Buildings, lots, structures, or uses which were lawful at the effective date of the applicable zoning regulation, but were prohibited, regulated, or restricted under the terms of zoning regulations promulgated thereafter, shall be permitted to continue until they are voluntarily removed, determined to be unsafe, or abandoned. The non-conformities shall not be enlarged, expanded, intensified or extended except in conformance with the goals, objectives and policies of this comprehensive plan and a strict application of the Town’s land development regulations.~~

UF|FRCI RECOMMENDED POTENTIAL NEW POLICY (SINGLE POLICY):

Policy 1.1.5.

The Land Development Code will specify standards for redeveloping lawfully existing property that does not currently conform to the future land use density and building volume limits provided elsewhere in this Plan—and may establish standards to conform certain property with lawfully existing nonconforming density.

Policy 1.1.6 [RESERVED]



End of Agenda Item