

Palm Beach family wants overlay on town's plan to increase street's density

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Photo by Melanie Bell



Susan Markin
Photo by Melanie Bell

A fight over a key Palm Beach thoroughfare is dividing residents into two groups: islanders who want the option of development, and islanders who see development threatening the ritzy enclave's historic character.

The Testa family, whose ancestors came to town in 1921 with Henry Flagler's railroad, ignited the battle. The family wants the town council to allow larger buildings on an entire block along Royal Poinciana Way, one of the main commercial roads that serves the 8,348 residents.

The Testas are one of the biggest property owners on the 5.1-acre block filled with mom-and-pop shops, some with residential units above them. The targeted block is across the street from the manicured golf course and grounds of The Breakers Palm Beach hotel.

The family owns the popular Testa's Restaurant on Royal Poinciana, plus a defunct gas station next door and some retail space. The block is near the

Flagler Memorial Bridge and a causeway that connects the town to West Palm Beach.

The Testa family is proposing an overlay of the existing zoning law that would allow — for that block only — 24 units per acre, up from the six units allowed there now. The overlay would also increase building height from 2 to 4 stories.

The family's redevelopment plans call for building two levels of underground parking to serve restaurant patrons and future residents of new units above the retail space. The town council seems willing to consider an overlay proposal, but on a smaller scale. The town's planning and zoning commission is proposing no more than 15 units per acre and the possibility of a third floor to be approved under a special exemption.

The town will hold a public workshop to discuss the Testa application at 2 p.m. Wednesday.

But vocal opponents want nothing to do with altering the look of one of the town's oldest roads.

Those residents argue bigger buildings and more density would destroy the historic character of the street dominated by one- and two-story buildings dating from the 1920s.

They fear owners would let their buildings deteriorate while waiting for a developer to buy their properties and assemble enough land to build a large, financially attractive project.

"It is a true example of doing something that benefits developers and goes truly against the culture of the town, the physical infrastructure of the town, and against what the residents want to see," said resident Susan Markin.

She is co-chair of the Neighborhood Association of Palm Beach, which represents more than 300 homeowners on the barrier island and has mounted a campaign to defeat the Testas' proposal.

Backers of the proposed change claim the opponents are spreading misinformation about the size of any future project on the block to gain supporters.

"The group that is fighting against us has been disingenuous at best, spreading half-truths," said resident Leslie R. Evans, who owns property on the block. "These are the same people who are against any changes whatsoever."

A MATTER OF Survival?

The buildings on Royal Poinciana were constructed without parking and the current zoning code requires that new buildings have enclosed garages. Yet buildings can't be higher than two stories, which means parking would leave little space to generate income.

"If I tore my building down, I couldn't rebuild almost anything," said Evans, a Palm Beach attorney who owns a small parcel with seven rental units on Royal Poinciana. "The new parking requirement makes it virtually impossible to rebuild."

Evans said building underground parking would be too expensive for just retail. "You need the condominiums to generate additional revenue."

Repairing the aging buildings no longer makes economic sense, so many retailers have stopped revamping their stores, Evans said.

"It doesn't pay to repair the buildings, which outlived their useful life by many years," he said. "It's like putting a Band-Aid on a cancer."

Frank Lynch, the Testa family's attorney, said the proposal to increase density is about helping longstanding businesses stay open.

"It's about the mom-and-pops that want to be able to survive," he said. "This is not a get-rich-quick scheme or take-the-money-and-run scheme. This is about a business that has served this town now for four generations wanting to remain viable in the Town of Palm Beach for the foreseeable future."

If the town allows 15 units per acre, the Testa family's 1.3-acre site could hold about 20 residential units.

Lynch said any new residential traffic would be less than the traffic that was generated by the family's gas station when it was open. "Even if the entire block is ever assembled by one developer, the maximum number of units that person could build is 77 units."

The block already has 57 residential units, according to Lynch.

A THIRD TRY BY THE TESTAS

This is the third time in six years the Testas have sought approval for an overlay. Their earlier applications were for 40 units per acre, then 30 units per acre, and both failed. The current application is down to 24, said John Page, director of town planning, zoning and building.

Lynch denied rumors the family wants to increase the street's density to inflate the value of their properties so they could sell out and pay off delinquent loans.

Palm Beach County property records show that Cypress Trust Co. obtained a final judgment of foreclosure against the family for \$7.7 million in August 2010.

"That has been taken care of," Lynch said. His client reached an agreement with the lender that avoided a sale at public auction, he said.

Public records also show the family last year paid off a \$1 million mortgage and a \$2 million mortgage backed by the Royal Poinciana Way properties.

other options

Island activist Markin said the town could come up with programs to make redevelopment or restoration of the existing properties an economically viable choice without increasing density. Some solutions include giving tax rebates to those who rehab their properties and building a public parking garage to serve the businesses along Royal Poinciana Way.

"The Testa family wants to build two levels of underground parking in order to justify that economic cost," said Frank Schnidman, the attorney representing the opponent neighbors. "They want huge increases in density beyond anything that the comprehensive plan considers appropriate for the character and charm of the Town of Palm Beach."

"Why is it the responsibility of the town to amend its constitution, basically, and change the vision of itself because of the situation of one landowner?" he asked.

A 2008 public charrette on the future of Royal Poinciana Way identified one option for dealing with the parking shortage: a public garage, said Schnidman. He is of counsel to the Florida Zoning Law Group in Fort Lauderdale.

The town could also provide other traditional incentives to help landlords and tenants improve their properties, he said.

For example, it could refund property owners the tax increase generated by improving their buildings. It could also rebate impact fees paid to get redevelopment permits and expedite the permitting process because, he noted, "time is money."

The town could even subsidize a valet-parking system rather than burdening owners with building their own garages, Schnidman said.

"Look at Atlantic Avenue in Delray Beach and Ocean Drive in South Beach," he said. He referred to two streets whose restored buildings and public garages helped turn them into successful dining and entertainment destinations.

"Those streets are great because care and consideration went into identifying what was unique and important," Schnidman added.

Creating A Precedent

The danger of the Testa application, resident William Cooley said, is the increased density would require an amendment to the town's comprehensive plan, which is the blueprint guiding future development.

The amendment could make it easier for developers to build larger projects in the 4.18-square-mile town. Currently, the comp plan discourages higher-than-existing density.

It will "open the town up for development," Cooley said. "By changing the comp plan, it will remove 'density' as a restriction on future development."

If the town council agrees to the amendment as the Testas desire, the change will set a bad precedent, Markin said.

"We have other areas where people who own properties have been wanting to go four-stories high to put condos on the waterfront where we currently have a historic theater," she said. "We are going to see a tremendous amount of residential units in an area that is already congested and with not enough parking."

The Breakers many years ago received town approvals to build about 250 units on the golf course across the street from the targeted block.

"Given the right economic market, The Breakers may build the project," she added, referring to the golf resort's dormant permit.

Paul Castro, the town's zoning director, said the comp plan calls for lowering density on the island but allows for flexibility in areas that need revitalization.

"If you are a person who does not want this to happen or does want it to happen, you can point to different sections of the comprehensive plan that says it shouldn't or it should happen," Castro said.

The town council plans to vote on the proposed overlay and comp plan amendment in June or July, Castro said. If approved, the amendment would go to Tallahassee for review and later return to the town council for a final vote.

Town Mayor Gail Coniglio also owns commercial property on the targeted block. She plans to recuse herself from any discussions regarding the overlay, she said.

The mayor doesn't vote on issues that go before the council but has veto power. Coniglio said she hasn't decided whether she would exercise her veto power on the Testa proposal.

"So the residents really don't have that last resort of protection from the mayor's veto," Markin said. "That's the problem."