

ORDINANCE NO. 21-07

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES, BY AMENDING SECTION 4.4.13, "CENTRAL BUSINESS (CBD) DISTRICT", SUBSECTION 4.4.13(H)(1), TO PROVIDE AN EXEMPTION TO THE PROHIBITION OF OFFICE USES ON THE GROUND FLOOR OF BUILDINGS ON ATLANTIC AVENUE, EXTENDING FROM SWINTON AVENUE TO OCEAN BOULEVARD, UNDER CERTAIN CIRCUMSTANCES; PROVIDING A SAVINGS CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, pursuant to LDR Section 1.1.6, the Planning and Zoning Board reviewed the proposed text amendment at a public hearing held on May 21, 2007 and voted 6 to 0 to recommend that the changes be approved; and

WHEREAS, pursuant to Florida Statute 163.3174(4)(c), the Planning and Zoning Board, sitting as the Local Planning Agency, has determined that the change is consistent with and furthers the goals, objectives and policies of the Comprehensive Plan; and

WHEREAS, the City Commission of the City of Delray Beach adopted the findings in the Planning and Zoning Staff Report; and,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. That the recitations set forth above are incorporated herein.

Section 2. That Section 4.4.13, "Central Business (CBD) District", Subsection 4.4.13(H), "Special Regulations," of the Land Development Regulations of the Code of Ordinances of the City of Delray Beach, Florida, be and the same is hereby amended by amending Subsection 4.4.13(H)(1) to read as follows:

(1) Office uses including financial institutions (e.g. banks, savings and loans, credit unions, and mortgage offices) shall not be allowed on the ground floor within businesses which have an entry from and/or windows along and/or frontage on Atlantic Avenue in the Central Core Area or the Beach Area. Office uses shall be allowed up to 50% of the ground floor as a permitted use within businesses which have an entry from and/or windows along and/or frontage on Atlantic Avenue in the West Atlantic Area and as a Conditional Use if greater than 50%. Office uses are

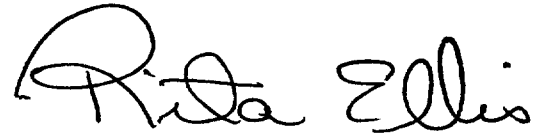
allowed on floors other than the ground floor along Atlantic Avenue and on all floors elsewhere in the CBD district. This regulation shall not apply to existing buildings in the Central Core Area or the Beach Area that have 80% or more of their frontage at a setback of 25 feet or greater.

Section 3. That should any section or provision of this ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

Section 4. That all ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.


Section 5. That this ordinance shall become effective immediately upon its passage on second and final reading.

PASSED AND ADOPTED in regular session on second and final reading on this 19th day of June, 2007.



MAYOR

ATTEST:


CITY CLERK

First Reading 6/4/07

Second Reading 6/19/07

MEMORANDUM

TO: MAYOR AND CITY COMMISSIONERS

FROM: CITY MANAGER *gm*

SUBJECT: AGENDA ITEM # 10.A - REGULAR MEETING OF JUNE 19, 2007
ORDINANCE NO. 21-07 (SECOND READING/SECOND PUBLIC
HEARING)

DATE: JUNE 15, 2007

ITEM BEFORE COMMISSION

This ordinance is before Commission for second reading and second public hearing for Community Redevelopment Agency (CRA) initiated amendment to the Land Development Regulations (LDR), amending Section 4.4.13, "Central Business District (CBD)," Subsection 4.4.13(H)(1), to provide an exemption to the prohibition of office uses on the ground floor of buildings on East Atlantic Avenue.

BACKGROUND

At the first reading on June 4, 2007, the Commission passed Ordinance No. 21-07.

FUNDING SOURCE

N/A

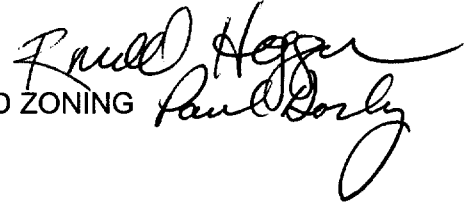
RECOMMENDATION

Recommend approval of Ordinance No. 21-07 on second and final reading.

MEMORANDUM

TO: MAYOR AND CITY COMMISSIONERS

FROM: RONALD HOGGARD, AICP, PRINCIPAL PLANNER
PAUL DORLING, AICP, DIRECTOR PLANNING AND ZONING



THROUGH: CITY MANAGER



DATE: MAY 29, 2007

SUBJECT: AGENDA ITEM # 10.A - JUNE 4, 2007
CONSIDERATION OF A CRA-INITIATED AMENDMENT TO THE LAND DEVELOPMENT REGULATIONS (LDR), AMENDING SECTION 4.4.13 "CENTRAL BUSINESS (CBD) DISTRICT," SUBSECTION 4.4.13(H)(1), TO PROVIDE AN EXEMPTION TO THE PROHIBITION OF OFFICE USES ON THE GROUND FLOOR OF BUILDINGS ON EAST ATLANTIC AVENUE.

ITEM BEFORE COMMISSION

The item before the Board is that of approval of an amendment to the Land Development Regulations to permit office uses on the ground floor of existing buildings on East Atlantic Avenue when at least 80% of the building's frontage is setback twenty-five (25) feet or greater. Pursuant to Section 1.1.6, an amendment to the text of the Land Development Regulations may not be made until a recommendation is obtained from the Planning and Zoning Board.

BACKGROUND

On October 3, 2006, the City Commission approved an amendment to the Land Development Regulations (LDRs) relating to office uses on the ground floor of buildings on Atlantic Avenue, extending from I-95 to Ocean Boulevard. Under these regulations, new offices are prohibited from locating on the ground floor on East Atlantic Avenue. The purpose of the proposed amendment is to provide an exemption for existing buildings in the Central Core and Beach Areas of the Central Business District that have the majority of their building frontage set back 25' or greater. Additional background and analysis is provided in the attached Planning & Zoning Board Staff Report.

REVIEW BY OTHERS

The text amendment was considered by the Planning and Zoning Board on May 21, 2007. No one from the public spoke on the issue. The Board recommended approval on a 6 to 0 vote (Glickstein absent), by adopting the findings of fact and law contained in the staff report and finding that the amendment is consistent with the Comprehensive Plan and meets criteria set forth in Section 2.4.5(M) of the Land Development Regulations.

RECOMMENDATION

By motion, approve on first reading Ordinance No. 21-07, amending Land Development Regulations (LDR) Section 4.4.13 "Central Business District," Subsection 4.4.13(H)(1), to provide an exemption to the prohibition of office uses on the ground floor of buildings on East Atlantic Avenue, by adopting the findings of fact and law contained in the staff report and finding that the request is consistent with the Comprehensive Plan and meets criteria set forth in Section 2.4.5(M) of the Land Development Regulations, with second reading to occur on June 18, 2007.

Attachments: Ordinance No. 21-07
Planning & Zoning Staff Report of May 21, 2007

ORDINANCE NO. 21-07

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES, BY AMENDING SECTION 4.4.13, "CENTRAL BUSINESS (CBD) DISTRICT", SUBSECTION 4.4.13(H)(1), TO PROVIDE AN EXEMPTION TO THE PROHIBITION OF OFFICE USES ON THE GROUND FLOOR OF BUILDINGS ON ATLANTIC AVENUE, EXTENDING FROM SWINTON AVENUE TO OCEAN BOULEVARD, UNDER CERTAIN CIRCUMSTANCES; PROVIDING A SAVINGS CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, pursuant to LDR Section 1.1.6, the Planning and Zoning Board reviewed the proposed text amendment at a public hearing held on May 21, 2007 and voted 6 to 0 to recommend that the changes be approved; and

WHEREAS, pursuant to Florida Statute 163.3174(4)(c), the Planning and Zoning Board, sitting as the Local Planning Agency, has determined that the change is consistent with and furthers the goals, objectives and policies of the Comprehensive Plan; and

WHEREAS, the City Commission of the City of Delray Beach adopted the findings in the Planning and Zoning Staff Report; and,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. That the recitations set forth above are incorporated herein.

Section 2. That Section 4.4.13, "Central Business (CBD) District", Subsection 4.4.13(H), "Special Regulations," of the Land Development Regulations of the Code of Ordinances of the City of Delray Beach, Florida, be and the same is hereby amended by amending Subsection 4.4.13(H)(1) to read as follows:

(1) Office uses including financial institutions (e.g. banks, savings and loans, credit unions, and mortgage offices) shall not be allowed on the ground floor within businesses which have an entry from and/or windows along and/or frontage on Atlantic Avenue in the Central Core Area or the Beach Area. Office uses shall be allowed up to 50% of the ground floor as a permitted use within businesses which have an entry from and/or windows along and/or frontage on Atlantic Avenue in the West Atlantic Area and as a Conditional Use if greater than 50%. Office uses are

allowed on floors other than the ground floor along Atlantic Avenue and on all floors elsewhere in the CBD district. This regulation shall not apply to existing buildings in the Central Core Area or the Beach Area that have 80% or more of their frontage at a setback of 25 feet or greater.

Section 3. That should any section or provision of this ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

Section 4. That all ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.

Section 5. That this ordinance shall become effective immediately upon its passage on second and final reading.

PASSED AND ADOPTED in regular session on second and final reading on this _____ day of _____, 2007.

MAYOR

ATTEST:

CITY CLERK

First Reading _____

Second Reading _____

PLANNING AND ZONING BOARD MEMORANDUM STAFF REPORT

MEETING DATE: MAY 21, 2007

AGENDA NO.: IV.A.

AGENDA ITEM: CONSIDERATION OF AN AMENDMENT TO LAND DEVELOPMENT REGULATIONS (LDR) SECTION 4.4.13 "CENTRAL BUSINESS (CBD) DISTRICT," SUBSECTION 4.4.13(H)(1), TO PROVIDE AN EXEMPTION TO THE PROHIBITION OF OFFICE USES ON THE GROUND FLOOR OF BUILDINGS ON EAST ATLANTIC AVENUE.

ITEM BEFORE THE BOARD

The item before the Board is that of making a recommendation to the City Commission regarding a CRA-initiated amendment to the Land Development Regulations to permit office uses on the ground floor of existing buildings on East Atlantic Avenue when at least 80% of the building's frontage is setback twenty-five (25) feet or greater.

Pursuant to Section 1.1.6, an amendment to the text of the Land Development Regulations may not be made until a recommendation is obtained from the Planning and Zoning Board.

BACKGROUND / ANALYSIS

At its meeting of October 3, 2006, the City Commission approved an amendment to the Central Business District (CBD) of the City's Land Development Regulations (LDRs) [LDR Section 4.4.13(H)(1)] to provide regulations relating to office uses on the ground floor of buildings on Atlantic Avenue, extending from I-95 to Ocean Boulevard, as follows:

"Office uses including financial institutions (e.g. banks, savings and loans, credit unions, and mortgage offices) shall not be allowed on the ground floor within businesses which have an entry from and/or windows along and/or frontage on Atlantic Avenue in the Central Core Area or the Beach Area. Office uses shall be allowed up to 50% of the ground floor as a permitted use within businesses which have an entry from and/or windows along and/or frontage on Atlantic Avenue in the West Atlantic Area and as a Conditional Use if greater than 50%. Office uses are allowed on floors other than the ground floor along Atlantic Avenue and on all floors elsewhere in the CBD district."

Subsequent to adoption of the ordinance, there were some concerns raised by tenants/owners at the Waterway Condominium (900 E. Atlantic Avenue), which contains numerous business offices on the ground/first floor. While the existing uses are grandfathered in, the ordinance does prohibit the establishment of new office uses. This particular building is somewhat unique to Atlantic Avenue in that it is set back approximately 28' from the property line and up to 53' from the edge of the sidewalk. This design does not provide for easy access to the storefronts by pedestrians, and in fact, most of the visitors to the building get to the site from the parking lot on the south side of the building. Given the

IV.A.

existing site design and building setback, the building is more conducive to office uses and not retail/pedestrian-oriented uses.

Another property that has similar site design challenges is Atlantic Plaza, which is set back approximately 70' with a parking lot between the building and Atlantic Avenue. The only other properties/buildings on East Atlantic Avenue that have similar site conditions are the Delray Beach Marriott, the Marriott Residence Inn and the Citco gas station, which will require redevelopment of the site with any change of use. Redevelopment of these properties will need to comply with the CBD Development Standards [LDR Section 4.4.13(F)(4)], which require a minimum of seventy percent (70%) and a maximum of ninety percent (90%) of the building frontage to be set back no greater than ten feet (10') from the property line. Therefore, this modification will not apply to any future redevelopment of these properties or any other properties having frontage along Atlantic Avenue.

It is noted that the *Downtown Delray Beach 2004 Patron Profile, Cluster Analysis and Retail Development Strategy Update* identified strategies for various areas (Clusters) throughout the downtown. The strategy for Cluster 6 (Atlantic Avenue, between NE/SE 5th Avenue and the Intracoastal Waterway) acknowledges that in order to maintain the continuity of pedestrian activity and add continuous storefronts on the north side of Atlantic Avenue, redevelopment of the Citco gas station and Atlantic Plaza is necessary. Further, the description of Cluster 8 (east of the Intracoastal Waterway) states the following: *"While the 'Retail Strategy' includes the addition of retailing and limiting the proliferation of 'beach convenience shops' and ground floor office uses, the ability to lease these nonconforming structures in the short term until redevelopment provides a more retail and pedestrian-oriented design is critical to the overall appearance and attractiveness to the Atlantic Avenue Corridor."*

The proposed amendment provides an exemption for buildings in the Central Core and Beach Areas of the Central Business District that have the majority of their building frontage set back 25' or greater. While limited in its application, the exemption will enable these buildings to be leased, enhancing the Avenue, until such time that the properties are redeveloped. The exemption would not apply to the West Atlantic Avenue Neighborhood of the Central Business District, since office uses are already allowed to occupy up to 50% of the ground floor as a permitted use.

Based upon the above, an amendment to the Land Development Regulations 4.4.13(H)(1), "Special Regulations" of the Central Business District (CBD) Regulations is requested as follows:

(1) Office uses including financial institutions (e.g. banks, savings and loans, credit unions, and mortgage offices) shall not be allowed on the ground floor within businesses which have an entry from and/or windows along and/or frontage on Atlantic Avenue in the Central Core Area or the Beach Area. Office uses shall be allowed up to 50% of the ground floor as a permitted use within businesses which have an entry from and/or windows along and/or frontage on Atlantic Avenue in the West Atlantic Area and as a Conditional Use if greater than 50%. Office uses are allowed on floors other than the ground floor along Atlantic Avenue and on all floors elsewhere in the CBD district. This regulation shall not apply to existing buildings in the Central Core Area or the Beach Area that have 80% or more of their frontage at a setback of 25 feet or greater.

REQUIRED FINDINGS:

LDR Section 2.4.5(M)(5) (Findings): Pursuant to LDR Section 2.4.5(M)(5) (Findings), in addition to LDR Section 1.1.6(A), the City Commission must make a finding that the text amendment is consistent with and furthers the Goals, Objectives and Policies of the Comprehensive Plan.

The proposed LDR amendment will enable buildings with storefronts that are not conducive to retail and pedestrian-oriented uses to be occupied by office uses, thereby promoting business activity and discouraging vacant storefronts along Atlantic Avenue. While the amendment does not specifically further the Goals, Objectives, and Policies of the Comprehensive Plan, it is not inconsistent with them.

REVIEW BY OTHERS

Community Redevelopment Agency (CRA)

The CRA considered this request at its April 26, 2007 meeting. After considerable discussion, the Board was split 3/3 on the amendment. It is noted, however, that the full Board of the CRA had earlier authorized CRA staff to initiate this amendment.

Downtown Development Agency (DDA):

The DDA considered this amendment at its May 14, 2007. After discussion, the Board unanimously recommended approval of the proposed amendment.

Courtesy Notices:

Courtesy notices were provided to the following civic association:

- Neighborhood Advisory Council

Letters of objection and support, if any, will be provided at the Planning and Zoning Board meeting.

ASSESSMENT AND CONCLUSION

The intent of the earlier amendment to prohibit office uses on the ground floor on East Atlantic Avenue was to facilitate the development of the downtown with a mix of uses which include pedestrian oriented retail activities on the ground floor with office and residential on the upper floors. Office uses are not encouraged along the street front facades on Atlantic Avenue as they create "holes" in the retail fabric of the street. However, this regulation creates an unnecessary hardship to lease existing buildings with storefronts that are not conducive to retail and pedestrian-oriented uses. The proposed amendment will allow those buildings to be occupied by office uses, thereby promoting business activity and discouraging vacant storefronts along Atlantic Avenue. The ability to lease these structures in the short term, until redevelopment provides a more retail and pedestrian-oriented design, is critical to the overall appearance and attractiveness of the Atlantic Avenue Corridor. While the amendment does not specifically further the Goals, Objectives, and Policies of the Comprehensive Plan, it is not inconsistent with them.

RECOMMENDED ACTION

Move to recommend to the City Commission approval of the CRA-initiated amendment to Land Development Regulations Section 4.4.13 "Central Business District," Subsection 4.4.13(H)(1), to provide an exemption to the prohibition of office uses on the ground floor of buildings along East Atlantic Avenue, by adopting the findings of fact and law contained in the staff report and finding that the request is consistent with the Comprehensive Plan and meets criteria set forth in Section 2.4.5(M) of the Land Development Regulations.

Attachment:

- Proposed Ordinance

s:\planning & zoning\boards\p&z board\ldr amendment - offices on atlantic avenue.doc

cc: Lanelda

for
6/11/07
agenda

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Boca Raton/Delray Beach News - Tuesday-Wednesday, June 12-13, 2007 • www.bocanews.com

**CITY OF DELRAY BEACH
NOTICE OF PROPOSED
AMENDMENT TO THE LAND
DEVELOPMENT
REGULATIONS TO PROVIDE
AN EXEMPTION TO THE
PROHIBITION OF OFFICE
USES ON THE GROUND
FLOOR OF BUILDINGS ON
ATLANTIC AVENUE, BETWEEN
SWINTON AVENUE AND
OCEAN BOULEVARD (UNDER
CERTAIN CIRCUMSTANCES)**

The City Commission of the City of Delray Beach, Florida, proposes to adopt the following ordinance:

ORDINANCE NO. 21-07

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES, BY AMENDING SECTION 4.4.13, "CENTRAL BUSINESS (CBD) DISTRICT", SUBSECTION 4.4.13(H)(1), TO PROVIDE AN EXEMPTION TO THE PROHIBITION OF OFFICE USES ON THE GROUND FLOOR OF BUILDINGS ON ATLANTIC AVENUE, EXTENDING FROM SWINTON AVENUE TO OCEAN BOULEVARD, UNDER CERTAIN CIRCUMSTANCES; PROVIDING A SAVINGS CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

The City Commission will conduct two (2) Public Hearings for the purpose of accepting public testimony regarding the proposed ordinance. The first Public Hearing will be held on **MONDAY, JUNE 4, 2007 AT 7:00 P.M.** in the Commission Chambers at City Hall, 100 N.W. 1st Avenue, Delray Beach, Florida. If the proposed ordinance is passed on first reading, a second Public Hearing will be held on **TUESDAY, JUNE 19, 2007 AT 7:00 P.M.** (or at any continuation of such meeting which is set by the Commission) in the Commission Chambers at City Hall, 100 N.W. 1st Avenue, Delray Beach, Florida.

All interested citizens are invited to attend the public hearings and comment upon the proposed ordinance or submit their comments in writing on or before the date of these hearings to the Planning and Zoning Department. For further information or to obtain a copy of the proposed ordinance, please contact the Planning and Zoning Department, City Hall, 100 N.W. 1st Avenue, Delray Beach, Florida 33444 (email at pzmail@mydelraybeach.com) or by calling 561/243-7040, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays.

Please be advised that if a person decides to appeal any decision made by the City Commission with respect to any matter considered at these hearings, such person may need to ensure that a verbatim record includes the testimony and evidence upon which the appeal is to be based. The City does not provide nor prepare such record pursuant to F.S. 286.0105.

CITY OF DELRAY BEACH
Chevelle D. Nubin, CMC
City Clerk

PUBLISH: Monday, May 28, 2007
Tuesday, June 12, 2007
BOCA RATON/DELRAY BEACH NEWS

✓ cc: Lancelida
beje

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Boca Raton/Delray Beach News - Monday, May 28, 2007 • www.bocanews.com

**CITY OF DELRAY BEACH
NOTICE OF PROPOSED
AMENDMENT TO THE LAND
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Chevelle D. Nubin, CMC
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