



# DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

## PLANNING AND ZONING BOARD STAFF REPORT

### Notice Requirements for Waivers Requiring City Commission Approval

Meeting	File No.	Application Type
June 17, 2024	2024-147-LDR	Amendment to the Land Development Regulations
Applicant	Property Owner	Authorized Agent
City of Delray Beach	Not applicable.	Not applicable.

### Request

Provide a recommendation to the City Commission on Ordinance No. 21-24, a City-initiated amendment to the Land Development Regulations (LDR), amending Section 2.6.3 to add public notice requirements for waiver requests that require Commission approval.

### Background Information

At its May 7, 2024 meeting, the City Commission directed staff to add public notice requirements to the LDR for waivers requiring Commission approval, due to a concern that adjacent property owners be adequately notified prior to Commission hearing, due to the potential of waiver requests to have a negative impact. Waivers can be approved by multiple boards with responsibilities for the implementation and application of these Land Development Regulations. Recommendation and approval authority for waivers is established in the LDR as follows:

	Recommendation	Final Approval
<b>City Commission</b>	-	<ul style="list-style-type: none"> <li>CBD Waivers</li> <li>Any waiver any provision of these regulations when there is no other avenue for relief available.</li> </ul>
<b>Historic Preservation Board</b>	<ul style="list-style-type: none"> <li>Recommendation to PZB on Level 4 Site Plan applications not associated with a Conditional Use.</li> </ul>	<ul style="list-style-type: none"> <li>Waivers within the Central Business District.</li> </ul>
<b>Planning and Zoning Board</b>	<ul style="list-style-type: none"> <li>Level 4 Site Plan Applications, including density or height increases, &amp; associated relief such as waivers, variances, etc.</li> <li>Relief to the requirements of the Central Business District prior to the consideration of an associated site plan application.</li> </ul>	<ul style="list-style-type: none"> <li>Level 3 Site Plan applications, including any relief, as applicable.</li> <li>Level 2 Site Plan applications, if a variance is associated with the request.</li> </ul>
<b>Site Plan Review and Appearance Board</b>	-	<ul style="list-style-type: none"> <li>Level 1 or Level 2 Site Plan applications when associated with the following requests for relief:               <ol style="list-style-type: none"> <li>1. Waivers that do not require City Commission action.</li> <li>2. Reduction in the number of parking spaces required for specific uses.</li> <li>3. Waivers to landscape regulations.</li> </ol> </li> <li>Master Sign Programs</li> </ul>

No approving body is given the authority to grant a waiver for the use of land or structures, public hearing or notice requirements, or a regulation for which it is stated that there shall be no waiver provided. Additional limitations on waivers are provided within the CBD, where a waiver cannot be granted to increase the number of stories or maximum height of a building; reduce the front setback, if it results in a streetscape that does not meet the minimum requirements of CBD; or decrease the minimum sidewalk width.

Where authority is given to an appointed board, rather than City Commission, the potential impact is generally considered to be less significant than the impact of waivers requiring City Commission approval. Landscape waivers heard by an appointed board for final approval would not rise to the level of public notice, for example, but requests that require City Commission approval would. Examples of such requests include:

- Relief from required vehicular access to off-street parking from a Primary Street, whereas the alley is the required primary vehicular access point;
- Waiver to the workforce housing requirement for lots greater than 40 feet in width, but less than the zoning district minimum;
- Waivers for subdivision plats that do not meet the minimum zoning district standards;
- Waiver from the minimum dwelling unit size; and
- Waiver from fence height requirements.

### Description of Proposal

The following change is proposed to LDR Section 2.6.3, to adopt a new Subsection (H):

*(H) **Waivers.** Public notice in accordance with Section 2.6.2 (A), (B), (C), and (D) shall be provided prior to final action at a Public Hearing of the City Commission.*

LDR Section 2.6.2 requires the following forms of public notice in (A), (B), (C), and (D):

- (A) Mailed notice to property owners within 500 feet of the perimeter of the property under consideration 10 days prior to a public hearing (to property owners within 100 feet 20 days prior to a public hearing, for abandonment requests).
- (B) Posted property notice on a placard with the time and date of the meeting.
- (C) Posting of the agenda in the main lobby of City Hall at least seven calendar days prior to the day of a regular meeting.
- (D) Notice of a public hearing on the City's web page at least ten calendar days prior to the date of the scheduled hearing.

By adopting the language proposed as LDR Section 2.6.3(H), these notice requirements would apply to waiver requests.

### Review and Analysis

#### **LDR Section 1.1.6, Amendments**

*The text of these Land Development Regulations may from time to time be amended, changed, supplemented, or repealed. No such action however, shall be taken until a recommendation is obtained from the Planning and Zoning Board and until a public hearing has been held by the City Commission.*

The recommendation of the Planning and Zoning Board will be provided to the City Commission, where the amendments will be reviewed at two public meetings.

#### **LDR Section 2.4.7(A)**

*Amendments to the Land Development Regulations may be initiated by the City Commission, City Administration, or by a member of the public.*

The proposed amendment is initiated by the City Commission.

#### **LDR Section 2.4.7(A)(5), Findings**

*For any approval, the City Commission must make a finding that the text amendment is consistent with the Comprehensive Plan, and that the amendment furthers the implementation of an adopted neighborhood plan, if applicable.*

The following Goals, Objectives, and Policies (GOPs) of the adopted Comprehensive Plan are applicable to the proposed amendment:

## Neighborhoods, Districts, and Corridors Element

Objective NDC 3.5 Update Land Development Regulations Regularly review and update the Land Development Regulations to provide timely, equitable and streamlined processes including, but not limited to, building permit processes for residential developments and to accommodate mixed-use developments, address market changes and development trends, and other innovative development practices.

## Private Property Rights Element

Objective PPR 1.2 Transparency, Reliability, and Predictability in Decision-making Decision-making shall be transparent, reliable and predictable, based on adherence to adopted local regulations, in order to promote sound, long-term investments in the community.

Policy PPR 1.2.1 Continue to make available all development applications, including comprehensive plan amendments for public review and provide an affected party an equal opportunity for participation in all associated hearings.

Policy PPR 1.2.2 Continue to allow any affected person that will suffer an adverse effect to an interest protected or furthered by this comprehensive plan to participate in and be a party to a hearing on a local government decision.

The proposed amendment provides additional opportunities for potentially affected parties to be aware of development requests that may have an adverse impact.

## Review By Others

The **City Commission** is anticipated to review the proposed LDR Amendments at its meetings in August 2024.

## Options for Board Action

- A. Recommend **approval** to the City Commission of Ordinance No. 21-24; amending Section 2.6.3 of the Land Development Regulations to add public notice requirements for waiver requests that require City Commission approval; finding that the amendment and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in Land Development Regulations.
- B. Recommend **approval** to the City Commission of Ordinance No. 21-24, **as amended**; amending Section 2.6.3 of the Land Development Regulations to add public notice requirements for waiver requests that require City Commission approval; finding that the amendment, as amended, and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in Land Development Regulations.
- C. Recommend **denial** to the City Commission of Ordinance No. 21-24, amending Section 2.6.3 of the Land Development Regulation to add public notice requirements for waiver requests that require City Commission approval s; finding that the amendment and approval thereof is not consistent with the Comprehensive Plan and does not meet the criteria set forth in Land Development Regulation

## Public and Courtesy Notices

Courtesy Notices are not applicable to this request.

N/A Public Notices are not required for this request.