

ORDINANCE NO. 12-17

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF DELRAY BEACH; AT ARTICLE 2.4, "GENERAL PROCEDURES", BY AMENDING SECTION 2.4.7, "PROCEDURES FOR OBTAINING RELIEF FROM COMPLIANCE WITH PORTIONS OF THE LAND DEVELOPMENT REGULATIONS", SUBSECTION (E), "APPEALS", TO CLARIFY AND UPDATE THE PROCEDURES FOR SAME, PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE AND FOR OTHER PURPOSES.

WHEREAS, the City desires to change the Land Development Regulations to amend the procedure to appeal a final decision of a City board or City staff.

WHEREAS, pursuant to LDR Section 1.1.6. the Planning and Zoning Board reviewed these amendments at a public hearing held on _____ 2017 and voted _____ to approve the amendments; 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 adopts the findings in the Planning and Zoning Staff Report; and

WHEREAS, the City Commission of the City of Delray Beach finds the ordinance is consistent with the Comprehensive Plan and is in the best interests of the City.

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 Article 2.4, "General Procedures", Section 2.4.7, "Procedures for Obtaining Relief from Compliance with Portions of the Land Development Regulations", Subsection (E) "Appeals", of the Land Development Regulations of the City of Delray Beach, Florida, is hereby amended to read as follows:

Section 2.4.7 Procedures for Obtaining Relief From Compliance With Portions of the Land Development Regulations:

(E) Appeals: An appeal is a request for a review and reversal of any action which if not appealed ~~would be~~ is final. An appeal shall be conducted as a new evidentiary hearing ~~via de novo review~~ in accordance with the City's quasi-judicial procedures. ~~and shall not be limited to the record below.~~

(1) Rule: An appeal may be made of an administrative interpretation; ~~or, of a finding made by an approving body;~~ or of a decision made by an approving body. The appeal of an ~~administrator~~ administrative interpretation shall be ~~appealed~~ made to the ~~B~~board for which such power has been granted; an appeal of an approving board's action shall be made to the City Commission. All such actions are appealable unless an appeal is expressly prohibited. ~~An appeal may be made by an aggrieved party.~~ Only the applicant and the City Commission may appeal a decision to the City Commission

(2) Required Information: ~~Except for an appeal initiated by the City Commission, a~~ An appeal by an aggrieved party must be made in writing, directed to the City Clerk, and must provide the following information:

- * The name of the appellant;
- * Identification of the action being appealed;
- * Identification of who took the action and when it was made;
- * The basis of the appeal.
- * ~~The relief being sought; and,~~
- * ~~The name of the appellant and the appellant's interest in the matter.~~

(3) Procedure: The following procedures shall be adhered to in the processing of any appeal:

- (a) ~~Receipt of the letter of appeal from the aggrieved party, by the City Clerk, within 10 working days of the action being appealed. When the appeal is by the City Commission, it shall be made no later than that meeting of the Commission at which the Board's action is reported to it. The appellant shall submit a letter, accompanied by the appropriate fee, to the City Clerk within ten (10) business days of the decision or action being appealed.~~
- (b) ~~Consideration of the appeal at the next regular meeting of the body who is to act upon it provided that the appeal has been received in time for proper placement on that agenda. If the appeal is initiated by the City Commission, a motion to appeal the action shall be made at the Commission meeting at which the Board's action is reported.~~
- (c) ~~Consideration of the appeal at which time the appeal may be granted, denied, or set for further consideration. The hearing shall be held no more than sixty (60) calendar days from date of the City Clerk's receipt of the request to appeal or, in the case of an appeal initiated by the City Commission, no more than sixty (60)~~

days after the meeting at which the decision to appeal was made, unless both the appellant and the City Commission or the board hearing the appeal mutually agree to postpone the hearing.

(d) Upon the request of the appellant, the City Commission or the board hearing the appeal may grant a one-time postponement of the hearing upon a showing of good cause. All requests for postponement must be considered at the meeting prior to the scheduled appeal hearing. All postponement requests shall be submitted in writing to the City Clerk at least ten (10) days prior to the meeting upon where the postponement request will be considered. In no case shall a postponement exceed sixty (60) calendar days.

(e) At the hearing, the subject of the appeal may be granted, granted with conditions, denied, or set for further consideration.

(4) Conditions:

(a) The granting of an appeal of an interpretation or application of regulations is not subject to conditions.

(b) The granting of an appeal pertaining to a decision on a development application may be conditioned in the same manner as the development application may have been conditioned originally.

(5) ~~Findings~~ Standard of review:

(a) ~~The granting of an appeal of an interpretation or application of regulations requires only a finding that the administrative officer was incorrect in the application of the regulation.~~ The appeal of an administrative interpretation may be granted upon a finding that the administrative officer's interpretation was plainly erroneous or inconsistent with the City's ordinances and regulations.

(b) ~~The granting of an appeal pertaining to a decision on a development application must consider those items upon which a finding is required and the appellate body must make findings on those items. The appeal of a decision made by an approving body shall be subject to de novo review and shall not be limited to the record below. The appellant may offer or submit additional evidence and testimony at the hearing.~~

Section 3. That should any section or provision of this ordinance, or any paragraph, sentence, or word thereof, be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder of this ordinance 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 are hereby repealed.

Section 5. Specific authority is hereby given to codify this Ordinance.

Section 6. That this ordinance shall become effective upon its adoption on second and final reading.

PASSED AND ADOPTED in regular session on second and final reading on this ____ day of _____, 2017.

Cary D. Glickstein, Mayor

ATTEST:

City Clerk

First Reading _____

Second Reading _____