



Cover Memorandum/Staff Report

File #: 20-725

Agenda Date: 10/6/2020

Item #: 9.A.

TO: Mayor and Commissioners
FROM: Anthea Gianniotis, Development Services Director
THROUGH: Jennifer Alvarez, Interim City Manager
DATE: October 6, 2020

ORDINANCE NO. 34-20: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, ADOPTING A SMALL SCALE LAND USE MAP AMENDMENT RE-DESIGNATING LAND APPROXIMATELY 0.57± ACRES IN SIZE FROM HISTORIC MIXED USE (HMU) TO COMMERCIAL CORE (CC), PURSUANT TO SECTION 163.3187, FLORIDA STATUTES, FOR THE PROPERTIES LOCATED AT 37 WEST ATLANTIC AVENUE AND AN ABUTTING UNADDRESSED PARCEL TO THE EAST, AS MORE PARTICULARLY DESCRIBED HEREIN; PROVIDING A CONFLICTS CLAUSE AND A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES. (FIRST READING)

Recommended Action:

Review and consider Ordinance No. 34-20 on First Reading, a privately initiated land use map amendment redesignating the property located at 37 West Atlantic Avenue and an abutting unaddressed parcel to the east from Historic Mixed Use (HMU) to Commercial Core (CC).

Background:

The subject request is to change the land use designation for two properties from Historic Mixed Use (HMU) to Commercial Core (CC). The two properties consist of an unaddressed parking lot located west of 10 North Swinton Avenue (Doc's All American) and 37 West Atlantic Avenue (Dunkin Donuts). The properties are located within the Old School Square Historic District; the structure at 37 West Atlantic Avenue is classified as non-contributing as it was constructed in 1980 (Church's Fried Chicken). Comprehensive Plan Amendment 91-1, approved in 1991, changed the Land Use Designation to Other Mixed Use (OMU) for properties zoned Old School Square Historic Arts District (OSSHAD); with the adoption of the Always Delray Comprehensive Plan on February 4, 2020, the land use district name changed to Historic Mixed Use (HMU).

Pursuant to **LDR Section 2.4.5(A)**, Comprehensive Plan amendments must follow the procedures outlined in the Florida Statutes. The Future Land Use Map is adopted as part of the Comprehensive Plan. Therefore, the FLUM amendment is being processed as a small-scale Comprehensive Plan amendment pursuant to Florida Statutes, F.S. 163.3184 through F.S. 163.3253.

Pursuant to **LDR Section 3.1.1, Required Findings**, "findings shall be made by the body which has the authority to approve or deny the development application." These findings relate to the Future Land Use Map (FLUM), Concurrency, Comprehensive Plan Consistency, and Compliance with the Land Development Regulations.

Pursuant to **LDR Section 3.1.1(A), Future Land Use Map**, "*the resulting use of land or structures*

must be allowed in the zoning district within which the land is situated and said zoning must be consistent with the applicable land use designation as shown on the Future Land Use Map."

Neighborhoods, Districts, and Corridors (NDC) Element

Table NDC-1, Land Use Designation: Density, Intensity, and Implementing Zoning District, identifies the preferred and compatible implementing zoning districts for each land use designation. The existing land designation of HMU lists OSSHAD zoning as the preferred implementing zoning district; CF is the sole implementing zoning district listed as compatible. The CBD zoning designation is not listed as an implementing zoning district for the HMU land use designation. Therefore, the applicant has requested both a land use designation change and a rezoning to meet the consistency requirement.

The HMU designation allows a maximum density of 10 dwelling units per acre with a maximum Floor Area Ratio (FAR) of 1.0. The proposed CC land use designation allows a maximum density of 12-30 dwelling units per acre with a maximum FAR of 3.0. The applicant is proposing an amendment to the LDRs (included in Ordinance No. 35-20 as part of the companion rezoning requested) to establish a Limited Floor Area Ratio for the two properties of 2.6, and a Limited Floor Area Ratio of 2.0 for the two properties combined with the property at 10 North Swinton Avenue (Doc's All-American), subject to preservation of the Doc's All-American (10 North Swinton Avenue).

The attached Planning and Zoning Board Report provides those NDC Policies that describe the intent and provide direction regarding the implementation of the existing and proposed land use designations, including

Policy NDC 1.3.22: Use the Historic Mixed Use land use designation for properties within the Old School Square Historic District to encourage the preservation and adaptive reuse of historic structures and to maintain and enhance the historic, pedestrian scale and character, while providing for a mix of residential, commercial, and arts uses.

Policy NDC 1.3.5: Use the Commercial Core land use designation to stimulate the vitality and economic growth of the city while simultaneously enhancing and preserving the cultural and historic downtown area.

The required findings for land use designation amendments are found in Policy NDC 3.4.1, which states, *"amend the Land Use Map only when a demonstrated need for the requested land use is based upon circumstances that are verified and supported by data and analysis, such as shifts in demographic trends, changes in the availability of land, changes in the existing character and Land Use Map designations of the surrounding area, fulfillment of a comprehensive plan objective or policy, annexation into the municipal boundaries, or similar circumstances, and the following findings can be determined:*

- That the requested land use designation is consistent with the goals, objectives, and policies of the most recently adopted Comprehensive Plan; and,*
- That development at the highest intensity possible under the requested land use designation meets the adopted concurrency standards; and,*
- That the requested land use designation is compatible with the land use designations of the surrounding area; and,*
- That the requested land use designations are compliant with the provisions and requirements*

of the Land Development Regulations.

The applicant's justification (attached) provides an analysis of "demonstrated need" by applying the methodology for determining land utilization used the Data, Inventory, and Analysis of the Always Delray Comprehensive Plan. The methodology identifies underutilized parcels as "parcels having a land value that exceeds the improvement value on the site by more than 50%...This condition could result...from a land use designation with a higher density or intensity than the existing development."

In consideration of the request's compatibility with surrounding land use designations, the adjacent properties are:

<u>Location</u>	<u>Land Use Designation</u>	<u>Zoning District</u>	<u>Use</u>
North	HMU	OSSHAD	CRA Office/Parking Lot
South	HMU	OSSHAD w/CBD Overlay	Mixed-Use
East	HMU	OSSHAD w/CBD Overlay	Restaurant (Doc's)
West	CF	CF	Tennis Center

The CC land use designation strives to stimulate economic vitality and growth and to preserve the downtown's historic moderate scale; the HMU land use designation is specific for properties within the Old School Square Historic District. Both land use designations support the historic downtown area; the primary difference is the increased density from a maximum of 10 du/ac to a range of 12-30 du/ac and the increased intensity from a maximum FAR of 1.0 to 3.0. Historic commercial/mixed use properties located along East Atlantic Avenue, the City's historic main street, have an FAR that ranges from 0.3 (8 E Atlantic Avenue - Tin Roof) to 1.52 (44 E Atlantic Ave - Masonic Lodge). Some historic commercial buildings exceed 1.0 FAR allowed under the HMU land use district, but do not approach the 3.0 that would be allowed under a change to CC land use. The proposed accompanying amendment to the LDRs limits the maximum FAR for the subject properties to 2.6; and, an additional overall limit to a total of 2.0 FAR is proposed for the three properties combined as part of a redevelopment.

Given that the subject properties are classified as non-contributing in the Old School Square Historic District, are located along Atlantic Avenue, and have a high land value compared to improvement value, it is likely that they will be redeveloped. The request must be weighed with the direction provided by Policy NDC 1.3.22. If the subject requests are approved, careful consideration of the proposed development will also be required to ensure compliance with Policy NDC 3.4.2, which states, *"Use the development review process to determine development, redevelopment, and adaptive reuse is consistent with and complementary to adjacent development, regardless of the implementing zoning designations for each land use designation."*

Pursuant to LDR Section 3.1.1(B), Concurrency, concurrency must be met and a determination made that the public facility needs, including public schools, of the requested land use and/or development application will not exceed the ability of the City and The School District of Palm Beach County to fund and provide, or to require the provision of, needed capital improvements in order to maintain the Levels of Service Standards established in Table CI-GOP-1 of the adopted

Comprehensive Plan of the City of Delray Beach.

A review of schools, water and sewer, solid waste, and drainage indicated no concerns regarding concurrency. The traffic impact analysis (provided as an attachment) includes the subject parcels, as well as the traffic generation rates for Doc's All-American at 10 North Swinton Avenue. The parcels are located within the City's Transportation Concurrency Exception Area (TCEA), which allows the City to mitigate any impacts from the development through diverse strategies rather than conventional road widening, etc. The analysis indicates a net increase of 670 daily trips. While the property is located within the TCEA, the number of daily trips (over 201) requires compliance with the requirements of the Palm Beach County Traffic Performance Standards Ordinance. A letter of compliance from Palm Beach County has been received that notes the proposed fast food restaurant shall not be allowed to open before 10am on weekdays.

Pursuant to **LDR Section 3.1.1(C), Consistency**, *a finding of overall consistency may be made even though the action will be in conflict with some individual performance standards contained within [Article 3.2](#) provided that the approving body specifically finds that the beneficial aspects of the proposed project (hence compliance with some standards) outweighs the negative impacts of identified points of conflict.*

Pursuant to **LDR Section 3.2.4(E), Standards for specific areas or purposes: Historic districts**, *that the proposed development is consistent with the purpose and provisions of the Historic Preservation Overlay District pursuant to LDR [Section 4.5.1](#) and the Delray Beach Historic Preservation Design Guidelines and the Secretary of the Interior's Standards for Rehabilitation.*

Policy HPE 1.4.1 is also important to consider and reinforces the provisions of LDR Section 3.2.4 (E).

Policy HPE 1.4.1: Continue to require that the Historic Preservation Board make findings that any land use or development application for a historic structure, site or within a historic district, is consistent with the provisions of the Secretary of the Interior's Standards for Rehabilitation, the Land Development Regulations, and Delray Beach Historic Preservation Design Guidelines."

Proposed development is required to be consistent with Section 4.5.1, which contains the Visual Compatibility Standards for properties, both historic and non-historic including new construction, under the purview of the Historic Preservation Board. If the request is approved, additional focus on the compatibility of the scale and mass of proposed development will be necessary, especially given the increased FAR from 1.0 for HMU to the 2.6 proposed in the LDR Amendments for these properties. Consideration of the applicable provisions from the Delray Beach Historic Preservation Design Guidelines and the Secretary of the Interior's Standards for rehabilitation will also be part of the consideration regarding compatibility and appropriateness of the new development as part of the Old School Square Historic District. Although the subject properties are classified as non-contributing to the district's two designations, the impact of any new development on those designations will be part of a resource resurvey of the historic district.

The **Historic Preservation Board** reviewed the request at its July 1, 2020 meeting; a recommendation of denial on a vote of 7 to 0 was provided. The Board's concerns focused on Doc's, a non-contributing structure located at 10 North Swinton Avenue; the Board supported designation or reclassification of the site to "contributing", given that the structure was included as part of the

applicant's presentation. Note: The property located at 10 North Swinton Avenue is not part of the subject LUMA and rezoning requests.

The **Downtown Development Authority (DDA)** reviewed the request at its July 13, 2020 meeting; a recommendation of approval on a vote of 4 to 3 was provided with comments. The DDA's decision letter is included as an attachment.

The **Planning and Zoning Board** reviewed the request at its August 17, 2020 meeting; a recommendation of approval on a vote of 6 to 1 was provided.

City Attorney Review:

Approved as to legal form and sufficiency.

Funding Source/Financial Impact:

N/A

Timing of Request:

This request must be approved prior to approval of Ordinance No. 35-20.