



# DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

## PLANNING AND ZONING BOARD STAFF REPORT

### Application Processing

Meeting	File No.	Application Type
August 21, 2023	2023-215-LDR and 2023-216-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 regarding a City-initiated amendment to the Land Development Regulations (LDR), repealing and replacing Chapter 2, "Administrative Provisions" (Ordinance No. 31-23) to amend development review procedures; amending Chapter 4, "Zoning Regulations" (Ordinance No. 32-23) for consistency with Ordinance No. 31-23; and amending Chapter 3, "Performance Standards" and Chapter 6, "Infrastructure and public property" for consistency with Ordinance No. 31-23 (Ordinance No. 33-23).

### Background Information

The City Commission directed staff to streamline the development review process at its meeting on April 18, 2023.

The majority of the regulations relative to development review are located in Chapter 2, "Administrative Provisions," but changes are also necessary to Article 4.3, "District Regulations, General Provisions," Article 4.4, "Base Zoning District," and Article 4.7, "Family/Workforce Housing for consistency with the changes proposed in Chapter 2. Chapter 3, "Performance Standards" and Chapter 6, "Infrastructure and public property" absorbed requirements currently located in Chapter 2. The proposed changes are outlined below.

### Description of Proposal

#### CHAPTER 2, "ADMINISTRATIVE PROVISIONS"

The proposed major policy changes are a result of the general direction of the City Commission. The specific changes proposed by staff are data-driven, and the result of analysis of 5 years of development applications. A summary of the data is provided as an attachment.

Generally, the existing regulations in Chapter 2 are duplicative; it is not uncommon to miss requirements because the requirements are located in multiple places. Many of the proposed changes reorganize the content to make it more intuitive and clarify language. As a result, the ordinance will be in the form of repealing and replacing Chapter 2. Substantive details are outlined in the following section.

#### Review Thresholds

Currently, site plans are divided into five classifications. Class I—Class IV are modifications to site plans which include exterior site or building improvements and additions, and Class V site plans are used for new development of vacant land, or modification of a property originally developed as a single-family residence or duplex and which requires full review of Performance Standards found in Section 3.1.1. Nearly all items go before a Board for review, including simple items like color changes or new awnings. The proposed amendment establishes new review thresholds that allow for more development requests to be reviewed administratively. It also eliminates the need for multiple Board hearings when a request requires relief or conditional use approval by consolidating items for review under one application. This change allows consolidates the review to a more holistic board review, eliminating the current bifurcation of certain

#### Project Contact:

Anthea Gianniotis, AICP, Director  
gianniotesa@mydelraybeach.com  
561.243.7040, Ext. 7043

Rebekah Dasari, Principal Planner  
dasarir@mydelraybeach.com  
561.243.7040, Ext. 7044

#### Attachments:

- Ordinance No. 31-23
- Ordinance No. 32-23

requests (i.e. Planning and Zoning Board deciding conditional use for increased density and Site Plan Review and Appearance Board reviewing the Site Plan).

The proposed review thresholds are as follows:

- **Level 1 (Administrative Review):** Level 1 Site Plan applications include improvements or modifications to existing development that do not increase building area and are generally limited to landscaping, hardscaping, elevations, materials, and colors.
- **Level 2 (Administrative Review):** Level 2 Site Plan applications include new construction or additions to an existing building that consists of no more than a total of five residential dwelling units for multi-family residential development or 15,000 gross square feet of mixed-use or non-residential development.
- **Level 3 (Board Review):** Level 3 Site Plan applications include new construction or additions to an existing building that consists of more than a total of five residential dwelling units for multi-family residential development or 15,000 gross square feet of mixed-use or non-residential development.
- **Level 4 (Board Recommendation, City Commission Final Action):** Level 4 Site Plan applications include requests that would otherwise be classified as a Level 2 or Level 3 Site Plan application but require final action by the City Commission for one or more of the following:
  1. A request for a height or density increase.
  2. A request to utilize the CBD Incentive Program.
  3. A concurrent Conditional Use request.
- Single family homes and duplexes, and associated site improvements, are still approved through the building permit process with review by Planning and Zoning for compliance with Land Development Regulations.

#### **Reviewing Officials and Authorities**

- Planning and Zoning Board (PZB)
  - Changing the makeup of PZB from 4 to 5 professionally credentialed members.
  - Variances with a Level 2, 3, or 4 Site Plans will be reviewed by PZB.
  - Recommendations to City Commission on Level 4 Site Plan applications, including any density or height increases, and associated relief such as waivers, variances, etc.
  - Recommendations to City Commission on relief to the requirements of the CBD prior to the consideration of an associated site plan application.
  - Final approval of Level 3 Site Plan applications, including any relief, as applicable.
  - Final approval of Level 2 Site Plan applications if a variance is associated with the request.
  - Appeals of administrative determinations associated with a Level 2 Site Plan Application.
- Site Plan Review and Appearance Board (SPRAB)
  - Appeal of an administrative interpretation associated with
    - Section 4.6.7, Signs
    - Section 4.6.16, Landscape Regulations
    - Level 1 Site Plan Applications
    - Level 2 Site Plan Applications

- When a Level 1 or Level 2 Site Plan application requires relief from one or more of the following, SPRAB will take action on the relief prior to Administrative approval:
  - The number of parking spaces required for specific uses, pursuant to Section 4.6.9(F)(1).
  - Landscaping (Section 4.6.16) through the waiver process.
  - Master Sign Programs and any signage that does not meet the minimum requirements of Section 4.6.7, Signs.
  - Appeals to any adopted Design Guidelines, including the Central Business District Architectural Design Guidelines and Section II of the Beach Property Owners Design Manual for the North Beach and Seagate Neighborhoods as set forth in Section 4.5.13.
  - All Waivers associated with Level 1 or Level 2 Site Plan Applications.
- Board of Adjustment (BOA)
  - Leaving all powers with BOA, except for those consolidated with another action.
- Development Services Management Group (DSMG). DSMG is an administrative body comprised of City Department heads “to guide the implementation of the Land Development Regulations and local ordinances, to recommend amendments and policy changes, and to consider and grant relief to technical requirements, as authorized by the Land Development Regulation.” DSMG has always been a part of the development review process, but its powers to grant relief were limited. The proposed update expands the powers of DSMG to give more authority to grant relief base on technical issues. For example, right-of-way dedications often result in appeals to the dedication to DSMG followed by setback variance requests to BOA. DSMG would have the authority to review both the right-of-way dedication and allow an adjustment to the required setback to absorb the dedication amount, up to 5 feet max.

## Process Changes

- Waivers in Historic Districts

The proposed update adds the authority for Historic Preservation Board (HPB) to approve waivers, including those in the Central Business District (CBD), eliminating the recommendation to City Commission and return to the board for final action. HPB currently has the authority to grant Variances and the City is seeking additional incentives for historic properties. Reducing the process is an incentive.

- Revocation of Conditional Use Approval

The proposed policy allows the City Commission to initiate revocation of a conditional use approval. A conditional use can be revoked for misrepresentation of fact, violation of the terms of the approval, or a determination that the use is not in compliance with the findings of approval by having a detrimental effect on the stability of the neighborhood.

- Elimination of Conditional Use to Obtain a Density Incentive

Under the current process, applicants seeking a density incentive bonus must obtain conditional use approval (with a hearing at both Planning and Zoning Board and City Commission), prior the Site Plan review at SPRAB. Since the PZB does not consider incentive density increases with the site plan, it is difficult for the PZB to determine if the density increase is appropriate because the Board only reviews based on compliance with the workforce housing requirements for the incentive area, not the performance standards that must also be met at site plan review to achieve a density increase. Further, requiring conditional use approval adds another step that makes it unnecessarily difficult to develop workforce housing – another City priority. If a development without workforce housing can go straight to the SPRAB for site plan approval, a development providing workforce housing should have that same path available. Under the proposed process, applicants would have the request reviewed as part of the site plan approval process, subject to the same standards currently required by the conditional use process.

- Re-Application After a Denial. Changes from 12 months to 36 months to resubmit the same request. Maintains the City Commission's authority to allow for earlier reapplication by a majority vote.
- Relocating Transportation Demand Management (TDM) and Bus Shelter Requirements. These requirements are relocated to Section 3.2.4 (TDM) and Section 6.1.14 (bus shelters).
- Zoning Certificate of Use (ZCU) Process. The ZCU process has always been a part of the LDR, but the proposed changes provides necessary limitations on the process, and extends the expiration date from 60 days to 180 days.
- Elimination of obsolete practices relative to outside agencies. The process associated with preliminary engineering plans refers to a process no longer used by Palm Beach County.
- Zoning Verification Letter (ZVL). Zoning verification letters are included in the adopted LDR, but the new language provides limitations on the process.
- Technical Advisory Committee (TAC). The process has always been in the LDR, but it was not clear to applicants what to expect in the intake and review process. The proposed update provides clarity on expectations from submittal to approval.
- Developments of Regional Impact (DRI). The DRI process is no longer a development approval process regulated by the State of Florida.
- Preliminary Plat. The preliminary plat serves no obvious purpose and creates an extra hurdle in review.
- Public Notice. Public notice mailers are currently the responsibility of staff, with the applicant providing the addressed, stamped envelopes. Preparation of the notice consumes immense staff time. The proposed update transfers the responsibility to the applicant, with staff responsible to prepare the notice for the applicants to use. This is a method employed by other municipalities.

#### **Relief**

- In-Lieu Parking. An expiration of approval is proposed.

Note: the In-Lieu of Parking program is under review and currently the subject of a Zoning in Progress. This ordinance does not change that status.

- Administrative Relief. An expansion of the requests available for administrative relief is proposed.
- Waivers. Added expiration of approvals and establishes PZB as the recommending body for CBD waivers. HPB's authority is expanded to allow final action on Waivers.

### **CHAPTER 4, "ZONING REGULATIONS"**

#### **Article 4.2, "Annexation and Initial Zoning"**

- [Repealed] Article 4.2. The Article duplicates the regulations in Chapter 2, and conflicts with the proposed updates to Chapter 2. Article 4.2 is repealed and reserved for future use.

#### **Article 4.3, "District Regulations, General Provisions"**

- [NEW] Section 4.3.3(BB). Multiple sections of the LDR have the same requirements, but they currently refer back to the standards in Section 4.4.6, "Medium Density Residential." The proposed update centralizes the location of the Performance Standards related to density increases for multi-family development. Additional performance standards are also proposed, in support of sound planning practices in multi-family development site design.
- [Policy Change] Section 4.3.4 (J). Eliminates the conditional use process to obtain additional height relative to the provision of workforce housing. The approval of additional height will be part of the site plan review process, subject to the approval criteria in the Section.

#### Article 4.4, “Base Zoning District”

- References to conditional use approval to obtain a density bonus were eliminated from the base zoning districts.
- In most zoning districts, the review and approval process was eliminated. It was retained in sections where the process for a particular zoning district is unique to the district. In Section 4.4.13, “Central Business (CBD) District,” the CBD waiver process was relocated to Chapter 2 for consistency and to make it simpler to locate the relief requirements.

#### Article 4.7, “Family/Workforce Housing”

The only policy change proposed is the elimination of the conditional use requirement to obtain a density bonus, or revitalization incentive (discussed above).

The City adopted Article 4.7 on December 6, 2004, through Ordinance No. 66-04. This ordinance was related to the creation of three specific overlay districts with workforce housing density bonuses: the Southwest Neighborhood Overlay District, the Southwest 10th Street Overlay District, and Carver Estates Overlay District). The ordinance has been periodically updated as workforce housing incentives were added to additional areas of the city. The various updates to the Article 4.7 as incentive areas were added has resulted in choppy wording and poor organization, making it necessary to overhaul the entire Article to improve readability and accessibility to members of the public seeking information on development incentives. Updates for readability are consistent with the intent of development review update to provide process simplification.

Organizational changes to Article 4.7 are summarized in the chart below.

Existing Section Name and Number	Proposed Name and Number	Summary of Changes
Section 4.7, Findings	Section 4.7.1, Purpose and Intent	<ul style="list-style-type: none"> <li>Updated to remove references to specific incentive areas.</li> <li>Updated language for readability.</li> </ul>
Section 4.7.1, Definitions	Section 4.7.2, Applicability	<ul style="list-style-type: none"> <li>Creates Subsection (A), Definitions.</li> <li>Creates Subsection (B), Workforce housing incentive areas.</li> </ul>
Section 4.7.2, Applicability	Section 4.7.3, General requirements	<ul style="list-style-type: none"> <li>Removes/relocates references to specific incentives.</li> <li>Adds language from the current Sections 4.7.3, 4.7.9, and 4.7.10.</li> <li>Eliminates duplicate language.</li> </ul>
Section 4.7.3, Provision of Workforce Housing Units	Section 4.7.4, Density bonus areas	<ul style="list-style-type: none"> <li>Created general language relative to density incentives for the provision of workforce housing.</li> <li>Reorganized the language for the existing density incentive areas.</li> <li>Added other density incentives that are currently hidden throughout the LDR in other sections.</li> <li><b>[Policy Change]</b> Eliminates the conditional use process.</li> </ul>
Section 4.7.4, Density Bonus Program for the Southwest Neighborhood Overlay District, the Carver Estates Overlay District, and the Infill Workforce Housing Area		
Section 4.7.5, Density Bonus Programs		
Section 4.7.6, Rental housing units	Section 4.7.5	<ul style="list-style-type: none"> <li>Edits to improve readability.</li> <li>Renumbering for consistency with the rest of the LDR.</li> <li>Updated with language from other sections relative to rental units.</li> </ul>
Section 4.7.7, For sale housing units	Section 4.7.6	<ul style="list-style-type: none"> <li>Minor edits to improve readability.</li> </ul>
Section 4.7.8, Resale and subsequent rentals of affordable units	Section 4.7.7	<ul style="list-style-type: none"> <li>Eliminated duplicate language.</li> </ul>

		- Updated with language from other sections relative to the resale or re-lease of a designated workforce unit.
Section 4.7.9, General provisions	Section eliminated.	- Content relocated to appropriate sections.
Section 4.7.10, Review and approval process	Section eliminated.	- Content relocated to [new] Section 4.7.3, General requirements
Section 4.7.11, Other incentives	Renumbered as Section 4.7.8.	- Minor edits to improve readability; no policy changes.

## Review and Analysis

**LDR Section 1.1.6, Amendments** says that *“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. The anticipated review dates are September 5, 2023 and September 19, 2023 (Public Hearing).

Pursuant to **LDR Section 2.4.5(M)(1)**, amendments to the Land Development Regulations may be initiated by the City Commission, Planning and Zoning Board or City Administration; or an individual.

The proposed amendment is initiated by the City Commission.

**Section 2.4.5(M)(5), Findings**, says that *“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 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.** *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.*

The proposed amendment will improve the development review process by providing clear policies and procedures to staff and members of the development community.



## Review By Others

The **City Commission** is anticipated to review the proposed LDR Amendments at its meetings on September 5, 2023 (First Reading) and September 19, 2023 (Second Reading).

## Options for Board Action

### Chapter 2, Administrative Provisions

- A. Recommend **approval** to the City Commission of Ordinance No. 31-23; amending Chapter 2, “Administrative provisions” of the Land Development Regulations by repealing and replacing the adopted language; 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. 31-23, **as amended**; amending Chapter 2, “Administrative provisions” of the Land Development Regulations by repealing and replacing the adopted language; 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. 31-23, amending Chapter 2, “Administrative provisions” of the Land Development Regulations by repealing and replacing the adopted language; 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 Regulations.

### Chapter 4, Zoning Regulations

- A. Recommend **approval** to the City Commission of Ordinance No. 32-23; amending Chapter 4, “Zoning regulations” of the Land Development Regulations, to provide consistency with the language in Chapter 2, “Administrative provisions” adopted by Ordinance No. 31-23; 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. 32-23, **as amended**; amending Chapter 4, “Zoning regulations” of the Land Development Regulations, to provide consistency with the language in Chapter 2, “Administrative provisions” adopted by Ordinance No. 31-23; 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. 32-23, amending Chapter 4, “Zoning regulations” of the Land Development Regulations, to provide consistency with the language in Chapter 2, “Administrative provisions” adopted by Ordinance No. 31-23; 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.

### Chapter 3, Performance Standards and Chapter 6, Infrastructure and Public Property

- A. Recommend **approval** to the City Commission of Ordinance No. 33-23; amending Chapter 3, “Performance Standards” and Chapter 6, “Infrastructure and public property,” to provide consistency with the language in Chapter 2, “Administrative provisions” adopted by Ordinance No. 31-23; 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. 33-23, **as amended**; amending Chapter 3, “Performance Standards” and Chapter 6, “Infrastructure and public property,” to provide consistency with the language in Chapter 2, “Administrative provisions” adopted by Ordinance No. 31-23; 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. 33-23, amending Chapter 3, “Performance Standards” and Chapter 6, “Infrastructure and public property”; 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

X Courtesy Notices are not applicable to this request.

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