



## Cover Memorandum/Staff Report

File #: 23-1612

Agenda Date: 12/5/2023

Item #: 8.C.

**TO:** Mayor and Commissioners  
**FROM:** Anthea Gianniotis, Development Services Director  
**THROUGH:** Terrence R. Moore, ICMA-CM  
**DATE:** December 5, 2023

ORDINANCE NO. 38-23: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, REZONING A PARCEL OF LAND MEASURING APPROXIMATELY 4.87 ACRES LOCATED AT 5185 ATLANTIC AVENUE, AS MORE PARTICULARLY DESCRIBED HEREIN, FROM PALM BEACH COUNTY AGRICULTURE RESIDENTIAL TO CITY OF DELRAY BEACH MEDIUM DENSITY RESIDENTIAL; AMENDING THE "CITY OF DELRAY BEACH, ZONING MAP, JULY 6, 2021"; PROVIDING A CONFLICTS CLAUSE AND A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES. (SECOND READING/PUBLIC HEARING)

### **Recommended Action:**

Review and consider Ordinance No. 38-23, a privately initiated request for a rezoning from Palm Beach County Agriculture Residential to City of Delray Beach Multiple Family Residential for a parcel of land located at 5185 Atlantic Avenue, subject to the City of Delray Beach Land Development Regulations Section 2.4.5(B).

### **Background:**

The applicant has requested a rezoning for a vacant 4.87-acre parcel from Palm Beach County Agriculture Residential to City of Delray Beach Multiple Family Residential. The rezoning request is being reviewed concurrently with a petition for a voluntary annexation, a small-scale Land Use Map Amendment from Palm Beach County Residential High to City of Delray Beach Medium Density Residential, and a privately-initiated amendment to the Land Development Regulations to adopt The Flo Delray Overlay District for the purpose of establishing a revitalization incentive density bonus of up to 24 dwelling units per acre at the subject property. The annexation request shall be considered prior to the land use designation and rezoning requests.

**LDR Section 2.4.5(B), Land Use Actions: Change of zoning district designation, "amendments to the Official Zoning Map may be initiated by the city or by the owner of the property."** Sandra J Megrue of Urban Design Studio (agent) on behalf of Alice Clayton, LLC (property owner) filed the rezoning request.

Pursuant to LDR Section 2.4.5(B)(3)(b), valid reasons for approving a change in zoning are:

- 1. That the zoning had previously been changed, or was originally established, in error;*
- 2. That there has been a change in circumstance which makes the current zoning inappropriate;*
- 3. That the requested zoning is of similar intensity as allowed under the Future Land Use Map and that it is more appropriate for the property based upon circumstances particular to the site and/or neighborhood.*

The application is being processed under the second and third criteria. The subject property is in the City's Planning Area and is therefore, anticipated to be included within the ultimate boundaries of Delray Beach. The voluntary annexation necessitates the adoption of City land use and zoning, which shall be compatible pursuant to the Always Delray Comprehensive Plan. The proposed RM zoning is a preferred implementing zoning district of the proposed MD land use, and is generally consistent with the surrounding multi-family and commercial uses.

Pursuant to **LDR Section 3.1.1, Required Findings**, *prior to the approval of development applications, certain findings must be made. These findings relate to the Land Use Map, concurrency, consistency, and compliance with the Land Development Regulations.*

Pursuant to **LDR Section 3.2.2, Standards for Rezoning Actions**, rezoning requests must meet five standards:

- (A) *The most restrictive residential zoning district that is applicable given existing development patterns and typical lot sizes shall be applied. Requests for rezonings to a different zoning designation, other than Community Facilities, Open Space, Open Space and Recreation, or Conservation shall be denied unless the proposed changes implement an adopted neighborhood or redevelopment plan.*
- (B) *Rezoning of land located west of Interstate-95 to accommodate auto dealerships or to AC (Automotive Commercial) is prohibited pursuant to Policy NDC 2.5.2 of the Neighborhoods, Districts, and Corridors Element of the adopted Comprehensive Plan.*
- (C) *Zoning changes that would result in strip commercial development shall be avoided. Where strip commercial developments or zoning currently exists along an arterial street, consideration shall be given to increasing the depth of the mixed-use zoning to provide for more substantive, mixed-use projects that provide compatible transitions in form and use to the surrounding area.*
- (D) *Rezoning of land shall result in allowing land uses deemed compatible with adjacent and nearby land uses both existing and proposed; or that if an incompatibility may occur, that sufficient regulations exist to properly mitigate adverse impacts from the new use.*
- (E) *Remaining infill lots within the Coastal High Hazard Area of the Coastal Planning Area shall be developed using zoning which is identical or similar to the zoning of adjacent properties or that results in less intense development.*

A detailed review of these, and all other required findings and relevant information for review is provided in the attached Planning and Zoning Board staff report.

The Planning and Zoning Board reviewed Ordinance No. 38-23 at the September 26, 2023 meeting and recommended approval by a vote of 6 to 0 (Joy Howell absent). The concerns raised were generally related to the income and affordability mix proposed in the concurrent amendment to the Land Development Regulations to establish The Flo Delray Overlay District. The Board requested that the applicant amend the overlay requirements to require the low income affordability category (in addition to moderate income affordability), and to include a requirement that one three-bedroom unit be designated as affordable.

The City Commission voted 5 to 0 to approve Ordinance No. 38-23 on first reading at the November 14, 2023 meeting.

**City Attorney Review:**

Ordinance No. 38-23 was approved to form and legal sufficiency.

**Funding Source/Financial Impact:**

Not applicable.

**Timing of Request:**

Ordinance No. 36-23 must be approved prior to approval of Ordinance No. 37-23, Ordinance No. 38-23, and Ordinance No. 39-23. Ordinance No. 39-23 will be effective concurrent with the effective date of Ordinance No. 38-23.