



DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

PLANNING AND ZONING BOARD STAFF REPORT

Retail Eyeglass Store with Optometry Services

Meeting	File No.	Application Type
August 15, 2022	2022-199-LDR	Amendment to the Land Development Regulations
Applicant	Agent	
View Optical	Mathew H. Scott, Esq. Dunay, Miskel, & Backman LLP	

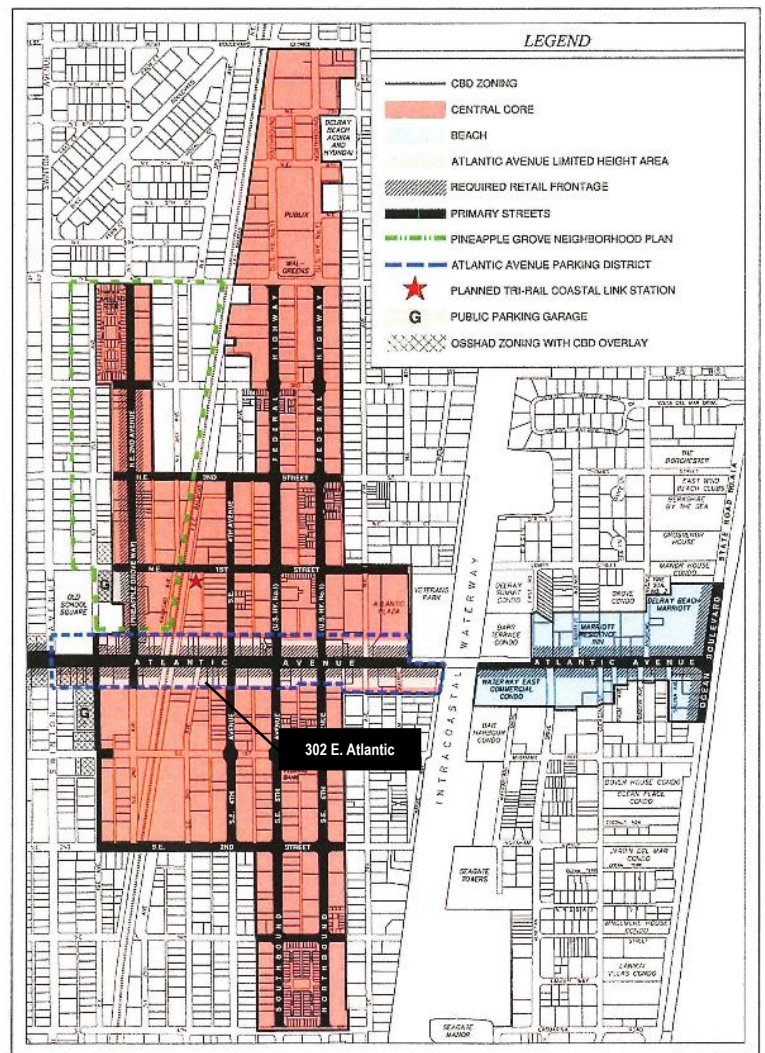
Request

Provide a recommendation to the City Commission on Ordinance No. 26-22, a privately initiated amendment the Land Development Regulations (LDR), amending Appendix A - Definitions, to define eyeglass stores with limited optometry services as a retail use.

Background

The Applicant requested a determination of a similarity of use at the March 21, 2022 meeting of the Planning and Zoning Board (PZB) to determine if a "retail establishment with optometrist services" is similar to "pharmacy." The request relates to a retail establishment located at 302 East Atlantic Avenue, which is zoned CBD, Central Core Sub-district, with Required Retail Frontage as depicted in Figure 4.4.13-B-1 in LDR Section 4.4.13 (see map at right). The applicant intends to primarily provide retail sale of eyeglass frames with prescription and nonprescription lenses, sunglasses, and associated eyecare and eyeglasses products. Optometrist services including eye exams and eye prescriptions would also be offered as an ancillary use. Thus, the subject request is directly related to the limited optometry services (which are classified as a medical office use), and therefore not allowed on a Required Retail Frontage street. At the PZB hearing, the board determined that a retail eyeglass store with optometrist services is not similar to a pharmacy.

The applicant requested – and received – sponsorship of an LDR amendment at the May 17, 2022 City Commission Workshop, and submitted a request to amend the LDR subsequent to receiving sponsorship.



Description of Proposal

The proposed LDR amendment provides regulations to define eyeglass stores, with limited optometry services, as a retail use. The proposed amendment is summarized as follows:

Appendix A, Definitions

EYEGLASS STORE. A retail establishment offering eyeglasses, sunglasses, and related optical goods for sale. A retail eyeglass store may also offer accessory optometry services such as eye exams and eye tests to assist customers in purchasing prescription eyeglasses, sunglasses, and related optical goods. No more than 20 percent of the floor area may be allocated to optometry services, and the optometry services area shall not be positioned at the front of the store, in order to be considered retail.

If the proposed amendment to the LDR is approved, **any business meeting the proposed definition of Eyeglass Store would be permitted to operate on a Required Retail Frontage street within the CBD**, and an **Eyeglass Store with less than 20 percent of its floor plan as optometry services would be categorized as retail in any zoning district** in the city.

Review and Analysis

Pursuant to **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. 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, City Administration, or a member of the public. The proposed amendment is privately initiated.

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 objectives and policies of the adopted Always Delray Comprehensive Plan are applicable to the proposed amendment.

Neighborhoods, Districts, and Corridors Element

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.

Policy NDC 1.3.7: Implement the Commercial Core land use designation using form-based code to provide for adaptive-reuse, development, and redevelopment that preserves the downtown’s historic moderate scale, while promoting a balanced mix of uses that will help the area continue to evolve into a traditional, self-sufficient downtown. This designation is applied to the Community’s downtown area. [...].

Objective NDC 2.2: Downtown and Surrounding Neighborhoods Protect and enhance the “Village by the Sea” character of the downtown and neighborhoods located east of I-95.

Policy NDC 2.2.4: Provide incentives in the Land Development Regulations that encourage the long-term viability, adaptive reuse, and redevelopment of small properties located within mixed-use and commercial land use designations to maintain the historic development pattern over time.

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.

Economic Prosperity Element

Goal ECP 4 Business Climate & Competitiveness: Cultivate a more business-friendly environment and dynamic entrepreneurial ecosystem which allow local establishments to grow in place, attract new industry clusters and firms and produce new homegrown enterprises.

Policy ECP 6.3.2: Encourage predictability and consistency in the City’s Land Development Regulations, while also allowing for flexibility and creativity in the site development process.

The proposed LDR amendment would categorize any business meeting the proposed definition of Eyeglass Store as retail in any zoning district in the city. The most notable potential impacts relate to Required Retail Frontage streets within the CBD. Certain areas of CBD do not allow medical uses at the sidewalk level. The following definitions from the LDR are applicable to the subject request:

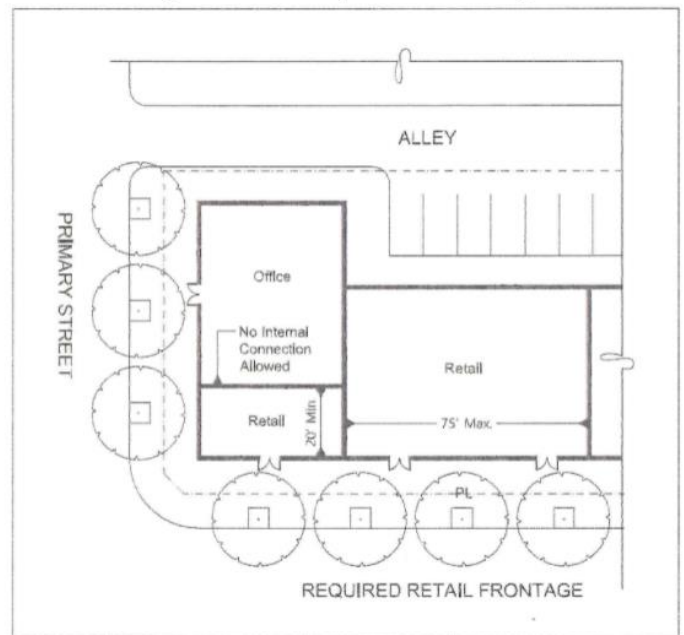
- **MEDICAL OFFICE.** *Shall mean an office providing services to the public by physicians, dentists, surgeons, chiropractors, osteopaths, physical therapists, nurses, acupuncturists, podiatrists, optometrists, psychiatrists, (who are also known as health care practitioners) or others who are duly licensed to practice their respective professions in the State of Florida, as well as others, including but not limited to technicians and assistants, who are acting under the supervision and control of a licensed health care practitioner. Also included in this section shall be all providers or facilities licensed under Fla. Stat. Sections 397.311 (25)(a)3., "Day or Night Treatment", 397.311(25)(a)6, "Intensive Outpatient Treatment" and 397.311(25)(a)8, "Outpatient Treatment" and 397.311(25)(a)9., "Residential Treatment Levels 1 and 2 only as defined by F.A.C. 65D-30.007, as amended from time to time.*
- **MEDICAL CLINIC.** *An establishment where patients, not lodged overnight except for emergency treatment and observation, including out-patient surgery, are admitted for examination and treatment by one or more persons practicing any form of healing or medical health services. Such persons may be chiropractors, dentist, naturopaths, opticians, optometrists, psychologist, surgeons, or any other medical profession, the practice of which is lawful in the state.*

Optometrists conduct examinations on patients based on scheduled appointments and formulate eye prescriptions, which are medical office functions. While the CBD zoning district allows both optometrists offices in most areas, the subject request is directly related to a property that seeks to offer limited optometry services as part of a retail establishment at 302 E. Atlantic Avenue - a required Retail Frontage street. Therefore, the Applicant is seeking an amendment to the LDR to define Eyeglass Store(s) with limited optometry services as retail, and thus allow the use in the first story of Required Retail Frontage properties, inasmuch as medical offices are strictly prohibited on required the ground floor of retail streets.

The ground floor retail requirement is related to preserving the historic character of the downtown. Streets designated on the Regulating Plan with Required Retail Frontage are intended to be "lively, highly active pedestrian environments that support businesses and reinforce local character," pursuant to LDR Section 4.4.13(C)(3). It is the intent of the Required Retail Frontage to provide for the type of uses that will activate the pedestrian realm, common to traditional main streets. Therefore, the code narrows the types of uses allowed at the sidewalk level on streets with this designation (Atlantic Avenue, Pineapple Grove Way, and Ocean Boulevard). Uses allowed in the first story of properties with Required Retail Frontage are General Retail uses, such as jewelry stores, art galleries, ice cream shops, clothing store, pharmacies, etc.; Services and facilities, such as barber and beauty shops and salons, restaurants; and, lodging uses, such as Hotels. Medical and Professional office uses are limited to upper stories or any story on other streets in the downtown.

Figure 4.4.13-C-2 (at right) demonstrates the appropriate transition between uses. This diagram, along with the LDR requirement for clear separation between permitted and prohibited uses (language provided below), was added to the code in 2018 to prevent the intrusion of office uses in retail establishments on Required Retail Frontage streets.

Figure 4.4.13-C-2 Required Retail Frontage



LDR Section 4.4.13(C)(3)(a)2.

- c. *“The depth of an individual commercial space shall be at least 20 feet and contain only uses permitted in 4.4.13(C)(3)(b) and (c); combinations of permitted uses with other uses not permitted at the sidewalk level are not allowed.”*
- d. *Uses not permitted in 4.4.13(C)(3)(b) and (c) shall not be accessed from the street designated with Required Retail Frontage and must be physically separated with no interior connections between common walls (See Figure 4.4.13-C-2).”*

The limited optometry use is complimentary to the retail portion of the retail eyeglass use, but it does not fully align with the intent of the Required Retail Frontage requirements set forth in LDR Section 4.4.13(C)(3). Classifying a retail establishment with limited optometrist services as retail may establish a precedent wherein intrusive accessory medical uses would be proposed within existing or proposed retail establishments in the future.

Similarly, another factor in the limitation of uses is protection of main street retailers, which face increasing competition from big box and on-line retailers. Additionally, as downtown Delray Beach has revitalized, the desirability of Atlantic Avenue and NE 2nd Ave (Pineapple Grove Way) for office uses, such as financial services, real estate, and medical offices has increased, and could further

squeeze local retail businesses out if the ground floor retail requirement is eroded. Without this limitation, the historic character of the downtown and the lively pedestrian experience could be negatively impacted. Conversely, it may also have a positive impact by allowing a more diverse retailer that still generally retains an active storefront, and thus contributes to the active pedestrian character of downtown streets.

Finally, the parking requirements for retail uses and medical uses are (minimally) different. Medical office uses are required to park at a rate of 5 spaces per 1,000 square feet (gross), whereas retail uses park at a rate of 4.5 spaces per 1,000 square feet. If the medical use area is parked at the lower retail use rate, fewer parking spaces will be required of a portion of the business that is generally considered to require more parking. However, as demonstrated in the table at right, staff does not anticipate parking deficits to result from use areas associated with the proposed definition.

Example Parking Calculation			
	Retail Area	Optometry Area	Total
1,000 SF - 20 % Optometry Services (200 SF) / Retail (800 SF)			
Optometry Area at the Medical Office rate, 5 spaces per 1,000	3.6 spaces	1.0 spaces	5.0 spaces
Optometry Area at the Retail rate, 4.5 spaces per 1,000	3.6 spaces	0.9 spaces	5.0 spaces
5,000 SF - 20 % Optometry Services (1,000 SF) / Retail (4,000 SF)			
Optometry Area at the Medical Office rate, 5 spaces per 1,000	18 spaces	5 spaces	23 spaces
Optometry Area at the Retail rate, 4.5 spaces per 1,000	18 spaces	4.5 spaces	23 spaces
NOTE: Any fraction less than one-half space shall be rounded down to the nearest whole number and any fraction of one-half space or more shall be rounded up.			

Board Considerations

The following should be considered by the Board in making a determination:

- Whether the amendment to consider an eyeglass store with 20 percent optometry services as a retail use has the potential to negatively impact the active sidewalk experience within the CBD, or if the definition supports downtown retail by moving away from a rigid definition of retail in a time when retail preference are rapidly changing.
- Whether the proposed amendment weakens the ground floor retail requirement within the CBD, or whether it allows for a flexible business model that supports the retention of retailers in the downtown area.

Options for Board Action

- A. Recommend **approval** to the City Commission of Ordinance No. 26-22, amending Appendix A - Definitions, to adopt a definition for eyeglass stores with limited optometry services, by 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. 26-22, **as amended**, amending Appendix A - Definitions, to adopt a definition for eyeglass stores with limited optometry services, by 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. 26-22, amending Appendix A - Definitions, to adopt a definition for eyeglass stores with limited optometry services, by 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.

D. Continue with direction.

Review by Others

The Downtown Development Authority reviewed the request on April 11, 2022 and unanimously recommended approval.

The City Commission is anticipated to hear the request at meetings in September and October.

Public and Courtesy Notices

Courtesy Notices were sent to:

- Chamber of Commerce
- Downtown Development Authority

Public Notices are not required for this request.