



# DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

## HISTORIC PRESERVATION BOARD STAFF REPORT

### Doc's Place

Meeting	File No.	Application Type (Quasi-judicial)
July 1, 2020	2020-138-FLUM 2020-137-REZ	Future Land Use Map Amendment Rezoning and LDR Amendments
Property Owner & Applicant		Agent
Cecelia J. Egan, Diane Marshall, Vito W. Vultaggio, Philip Vultaggio, Jr.		John W. Szerdi, Architect for Banyan Fund, LLC

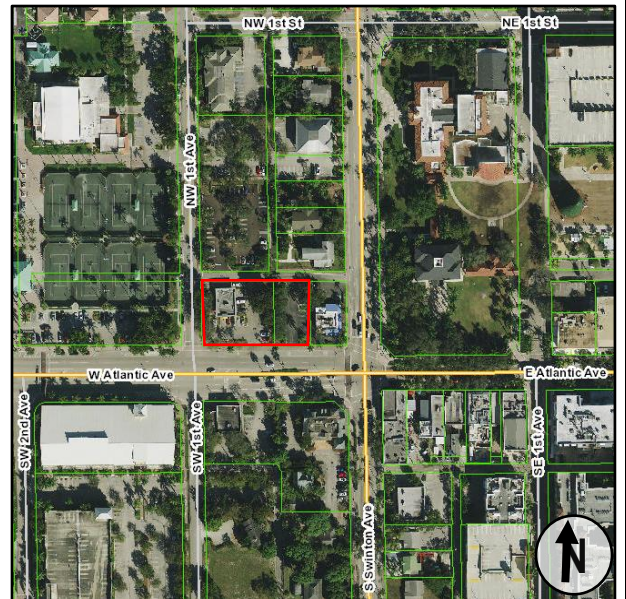
### Request

Provide a recommendation to the Planning and Zoning Board on Ordinance No. 34-20 for a small-scale Future Land Use Map Amendment from Historic Mixed Use (HMU) to Commercial Core (CC), and on Ordinance No. 35-20 for a rezoning from Old School Square Historic Arts District (OSSHAD) to Central Business District (CBD) with associated LDR amendments for two parcels totaling approximately 0.57 acres located on West Atlantic Avenue between North Swinton Avenue and NW 1<sup>st</sup> Avenue (unaddressed parcel and 37 West Atlantic Avenue).

### Background Information

The subject properties (outlined in red on both maps) 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). The site plan for the 19-space parking lot was approved by the HPB in 1994 subject to approval of an off-site parking agreement between the property owner and the City to accommodate three required parking spaces associated with Doc's All American.

The properties have been zoned OSSHAD since 1991 when the zoning district was created to support the 1988 designation of the Old School Square Historic District by encouraging the adaptive reuse of existing structures and supporting historic preservation efforts by allowing a mix of "uses which promote preservation." Prior to 1991, the properties were zoned General Commercial (GC). In acknowledgement of this shift in zoning from GC to OSSHAD, the City also created a "CBD Overlay" for those properties previously zoned CBD or GC and located along Atlantic Avenue. The "CBD Overlay" was established through LDR Amendment by listing those properties zoned OSSHAD that were also able to utilize the principal and accessory uses, and development standards of the CBD. The conditional uses of the CBD are not an option for the "CBD Overlay" properties. Comprehensive Plan Amendment 91-1 changed the Future Land Use Designation to Other Mixed Use (OMU) for properties zoned 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).



It is important to note that the Old School Square Historic District is listed both on the Local Register of Historic Places and National Register of Historic Places. The properties are identified as non-contributing to both historic district designations.

### Project Planner:

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### Attachments:

- Aerial Location Map
- Request / Justification Letter
- Existing and Proposed FLUM Map
- Existing and Proposed Zoning Map
- Ordinance No. 34-20 LUM Amendment-Draft
- Ordinance No. 35-20 Rezoning-Draft

## Description of Proposal

The request is to change the land use designation and zoning of the subject parcels from HMU to CC and OSSHAD to CBD, respectively. The associated LDR Amendments that are necessitated by the rezoning include an amendment to the CBD West Atlantic Neighborhood Sub-district Regulating Plan and elimination of the properties from any references to those that are part of the OSSHAD with "CBD Overlay."

The application indicates that the proposed use of the subject properties is "to remove the Dunkin' Donuts building, adjacent surface parking lots and all curb cuts along West Atlantic Avenue in order to construct an Art Deco style, three-story mixed use building with retail uses on entire first floor along West Atlantic Avenue and retain/revitalize the Doc's building in the process." It is noted that should the unaddressed parking lot be redeveloped, the off-site parking agreement will need to be amended to accommodate three parking spaces within the new development; the property owner would also have the option to request approval of an in-lieu of parking agreement.

## Review and Analysis

### Land Use Map Amendment

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.

**NOTE:** The subject requests were submitted after the adoption of the Always Delray Comprehensive Plan on February 4, 2020. As a result, there are outdated references to the Comprehensive Plan in the LDRs; however, the applicable references or Goals, Objectives, and Policies have been identified.

### LAND USE MAP

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 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 table below provides a comparison of density and intensity limitations for both the HMU and CC land use designations. The proposed amendment will increase the potential building scale and the density on the parcels.

Land Use Designation	Density (Standard dwelling units/acre)	Intensity (Maximum Floor Area Ratio)
HMU	10	1.0
CC	12-30	3.0

The NDC Policies listed below describe the intent and provide direction regarding the implementation of the existing and proposed land use designations

### Objective NDC 1.3, Mixed-use Land Use Designations

**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. It includes a substantial portion of the Transportation Concurrency Exception Area described in the Future Land Use Element and graphically shown in Map 9. The Commercial Core designation accommodates a variety of uses including commercial and office development; residential land use upper story apartments; older homes renovated to accommodate office use; and uses such as "bed and breakfast" establishment; and industrial/commerce type uses.*

**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 1.3.23** *Within the Historic Mixed Use land use designation, support adaptive reuse of historic structures and achieve compatible infill development that is consistent with the development pattern and scale of Delray Beach's historic commercial main streets through the limited use of the Central Business District overlay in the land development regulations, without increasing density or intensity or changing neighborhood character; the area within the Central Business District Overlay shall not be expanded beyond its current (2019) boundaries.*

### **Objective NDC 3.4, Land Use Map Amendments**

**Policy NDC 3.4.1** *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.*

**Policy NDC 3.4.2** *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 (See Table NDC-1).*

Consistency with these policies is to be considered as part of this request, per Policy NDC 3.4.1. The applicant's justification (included as an attachment) provides an analysis of "demonstrated need" by applying the methodology for determining land utilization. The Data, Inventory, and Analysis of the NDC Element uses a methodology to identify 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."

A review of concurrency is provided further in this report. In consideration of the request's compatibility with surrounding land use designations, the chart below provides an overview of the adjacent properties.

	<b>Land Use Designation</b>	<b>Zoning District</b>	<b>Use</b>	<b>Overlay District</b>
<b>North</b>	HMU	OSSHAD	CRA Office / Parking Lot	Old School Square Historic District
<b>South</b>	HMU	OSSHAD w/CBD Overlay	Mixed-Use	
<b>East</b>	HMU	OSSHAD w/CBD Overlay	Restaurant (Doc's All American)	
<b>West</b>	CF	CF	Tennis Center	None

While the CC land use designation strives to support historic preservation and supporting the historic scale within the downtown, 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 floor area ratio (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 the CC land use.

Given that the subject properties are located within the Old School Square Historic District, are classified as non-contributing, are likely to eventually redevelop and are located along East Atlantic Avenue, 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 be required to ensure compliance with Policy NDC 3.4.2 by providing new development that is consistent with and complementary to adjacent development.

## CONCURRENCY

*Pursuant to **LDR Section 3.1.1(B), Concurrency**, concurrency as defined pursuant to Objective B-2 of the Future Land Use Element of the Comprehensive Plan 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.*

**Traffic.** The applicant has provided a traffic impact analysis, dated February 19, 2020; the analysis 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. Table 1, "Trip Generation," analyzes the traffic impacts of the current uses (fast food without drive-thru and coffee shop without drive-thru) and proposed uses (quality restaurant, fast food without drive-thru, general office, and retail); 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 not yet been received but is required prior to consideration by the City Commission.

**Schools.** A review by the Palm Beach County School District for compliance with the adopted Level of Service for School Concurrency is pending. However, a fee will not be required if residential uses are not proposed; this requirement is reviewed again upon site plan submittal if residential units are proposed.

**Water and Sewer.** Municipal water service is available via connections to an existing 12-inch water main located within West Atlantic Avenue; an 8-inch main runs along NW 1<sup>st</sup> Avenue. A raw water transmission main also runs along NW 1<sup>st</sup> Avenue. Sewer service is available via connections to an existing sanitary sewer lines within the east/west alley along the rear of the property. Pursuant to the Comprehensive Plan, treatment capacity is available at the South Central County Waste Water Treatment Plant for the City at build-out. The Comprehensive Plan also states that adequate water and sewer treatment capacity exists to meet the adopted LOS at the City's build-out population based on the current FLUM.

**Solid Waste.** The Solid Waste Authority has indicated that its facilities have sufficient capacity to handle all development proposals until the year 2047. The following generation rates will be used to calculate impact:

- Office: 5.4 pounds per square foot per year
- Restaurant: 24.9 pounds per square foot per year
- Retail: 10.2 pounds per square foot per year

**Drainage.** Within this area of the city, drainage is usually accommodated on-site via exfiltration trench systems or swale retention areas. While no problems are anticipated with obtaining South Florida Water Management District permits, technical comments and issues pertaining to the drainage will be addressed during the and site plan process. At site plan submittal, the applicant will be required to provide a signed and sealed drainage report indicating the proposed system's ability to meet storm water requirements in accordance with the South Florida Water Management District regulations per LDR Section 2.4.3(D)(8); requirements in LDR Section 6.1.9 for the surface water management system; and signed and sealed calculations indicating current and proposed estimated flows into the City's sewer system.



**Parks and Open Space:** Additionally, a park impact fee is collected to offset any impacts that a residential project may have on the City's recreational facilities. Pursuant to LDR Section 5.3.2, a park impact fee of \$500.00 per dwelling unit will be collected prior to issuance of a building permit for each residential unit at the time a project is presented for approval at the Building Department. This item will be addressed during the site plan review process if residential units are proposed.

### CONSISTENCY WITH COMPREHENSIVE PLAN

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.*

### Historic Preservation Element

#### Objective HPE 1.4, Historic Preservation Planning

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.

In addition to the review of the applicable components of the Always Delray Comprehensive Plan provided above, Policy HPE 1.4.1 is important to consider and reinforces the provisions of Section 3.2.4(E). 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 or 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 for new development will be necessitated given the increased maximum floor area ratio from 1.0 for HMU land use designations to 3.0 for CC land use designations. 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.

### COMPLIANCE WITH LAND DEVELOPMENT REGULATIONS

Pursuant to **LDR Section 3.1.1(D), Compliance with LDRs**, *whenever an item is identified elsewhere in these Land Development Regulations (LDRs), it shall specifically be addressed by the body taking final action on a land development application/request. Such items are found in Section 2.4.5 and in special regulation portions of individual zoning district regulations.*

A redevelopment application has not been submitted for review; however, once received, it will be processed by Development Services, and the proposed development will be subject to all applicable provisions and requirements of the Land Development Regulations, particularly those applicable to the West Atlantic Neighborhood Sub-district, and LDR Section 4.5.1. The subject parcels are also subject to the West Atlantic Avenue Redevelopment Plan; implementation requirements from the Plan have been adopted in the Land Development Regulations.

### Rezoning

Pursuant to **LDR Section 2.4.5(D)(1)**, the City Commission may amend the Official Zoning Map by ordinance after review and recommendation for approval by the Planning and Zoning Board. The submitted application complies with the submittal requirements in **LDR Section 2.4.3**.

**LDR Section 2.4.5(D)(2)** outlines the procedures for a zoning change, which includes the standard application items in Section 2.4.3.

Valid reasons for approving a change in zoning, pursuant to **LDR Section 2.4.5(D)(2)** are:

- *That the zoning had previously been changed, or was originally established, in error;*
- *That there has been a change in circumstance which makes the current zoning inappropriate;*

- *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 requested rezoning is to be considered under the third criteria. The rezoning request is accompanied by a change in land use designation as the application indicates the following:

*The parcels currently have a CBD Overlay in the OSSAHD zoning. There is a concurrent application for a FLUM amendment from HMU to CC to accommodate a FAR that is more consistent with the CBD uses, character and intensity along Atlantic Ave. This zone change will also support a continuous downtown pedestrian experience to the West Atlantic corridor while still preserving the nostalgic local icon "Docs" on Lot 16 (which is to remain the same zoning). To accommodate the mixed use with needed Class "A" office above the continuous 1<sup>st</sup> floor retail and associated parking, the amended FLUM use and zoning need to be compatible."*

It is important to note that the current OSSHAD zoning with CBD Overlay allows the uses within the CBD (except Conditional Uses) that are being sought through the rezoning. Further, the continuous downtown pedestrian experience is part of the CBD streetscape and site design requirements. By rezoning to CBD from OSSHAD with CBD Overlay, is the ability to request a conditional use applicable to the CBD zoning district, West Atlantic Neighborhood Sub-district.

Pursuant to **LDR Section 3.2.2, Standards for Rezoning Actions**, rezoning requests must meet five standards, which are described below as they relate to the proposed rezoning under consideration.

- (A) *The most restrictive residential zoning district that is applicable given existing development patterns and typical lot sizes shall be applied to those areas identified as "stable" and "stabilization" on the Residential Neighborhood Categorization Map. Requests for rezonings to a different zoning designation, other than Community Facilities, Open Space, Open Space and Recreation, or Conservation shall be denied.*

Not applicable.

- (B) *Rezoning to AC (Automotive Commercial) to accommodate auto dealerships shall not be permitted west of I-95.*

Not applicable. Auto dealerships are not a proposed use.

- (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 should be given to increasing the depth of the commercial zoning in order to provide for better project design.*

The proposed CBD zoning is a form-based code and does not permit strip-type commercial development. Further, the requirements applicable to properties located within a historic district would also not support strip commercial development as it is not consistent with the historic development pattern of the Old School Square Historic District.

- (D) *That the rezoning shall result in allowing land uses which are deemed compatible with adjacent and nearby land use both existing and proposed; or that if an incompatibility may occur, that sufficient regulations exist to properly mitigate adverse impacts from the new use.*

Under the proposed CC future land use designation, the proposed CBD zoning district will be compatible for the subject properties. The allowed uses with the existing and proposed zoning will not significantly change except for the allowed conditional uses; therefore, an incompatibility with respect to uses is not anticipated. However, the increased floor area ratio resulting from the new land use designation will allow a more intense development than possible under the HMU land use designation. LDR Section 4.5.1 provides regulations that intend to mitigate impacts on the historic district from new development through both qualitative and quantitative standards.

The existing uses and zoning surrounding the proposed development are as follows:

	Zoning Designation	Land Use Designation	Use	Overlay District
<b>North</b>	OSSHAD	HMU	CRA Office / Parking Lot	Old School Square Historic District
<b>South</b>	OSSHAD w/CBD Overlay	HMU	Mixed-Use (existing and approved new development)	
<b>East</b>	OSSHAD w/CBD Overlay	HMU	Doc's All-American	
<b>West</b>	CF	CF	Tennis Center	None

(E) Remaining, isolated infill lots within the coastal planning area shall be developed under zoning which is identical or similar to the zoning of adjacent properties; and, the resulting development shall be of a design and intensity which is similar to the adjacent development.

Not applicable. The proposed development is not within the coastal planning area.

As part of the rezoning, the City must amend the Zoning Map, the West Atlantic Neighborhood Sub-district Regulating Plan in Figure 4.4.13- 6 in LDR Section 4.4.13, Central Business (CBD) District, and to remove the subject properties from those properties listed in Section 4.4.24, Old School Square Historic Arts District (OSSHAD) as part of the "CBD Overlay." The adoption ordinance includes these amendments.

#### Review By Others

The **Downtown Development Authority (DDA)** will review the request at its July 13, 2020 meeting.

The **Planning and Zoning Board** will review the request at its July 20, 2020 meeting.

The First and Second Readings of the subject request are tentatively scheduled for **City Commission** on August 18, 2020 and September 22, 2020.

#### Board Action Options

##### Future Land Use Map Amendment

- A. Move a recommendation of **approval** to the Planning and Zoning Board of Ordinance No. 34-20, a request for a Future Land Use Map amendment from Historic Mixed Use (HMU) to Commercial Core (CC) for **Doc's Place**, finding that the amendment and approval thereof is consistent with the Comprehensive Plan and meets the applicable criteria set forth in the Land Development Regulations.
- B. Move a recommendation of **denial** to the Planning and Zoning Board of Ordinance No. 34-20, a request for a Future Land Use Map amendment from Historic Mixed Use (HMU) to Commercial Core (CC) for **Doc's Place**, finding that the amendment and approval thereof is not consistent with the Comprehensive Plan and does not meet the applicable criteria set forth in the Land Development Regulations.
- C. Continue with Direction

##### Rezoning and LDR Amendments

- A. Move a recommendation of **approval** to the Planning and Zoning Board of Ordinance No. 35-20, a request for a rezoning from Old School Square Historic Arts Districts (OSSHAD) to Central Business District (CBD) and associated amendments to the Land Development Regulations for **Doc's Place**, finding that the rezoning and approval thereof is consistent with the Comprehensive Plan and meets the applicable criteria set forth in the Land Development Regulations.
- B. Move a recommendation of **denial** to the Planning and Zoning Board of Ordinance No. 35-20, a request for a rezoning from Old School Square Historic Arts Districts (OSSHAD) to Central Business District (CBD) ) and associated amendments to the Land Development Regulations for **Doc's Place**, finding that the rezoning and approval thereof is not consistent with the Comprehensive Plan and does not meet the applicable criteria set forth in the Land Development Regulations.
- C. Continue with Direction

#### Public and Courtesy Notices

☒ Courtesy Notices are not applicable to this request.

☒ Public Notices are not required for this request.