



# DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

## PLANNING AND ZONING BOARD STAFF REPORT

### Ordinance No. 12-20, CBD Retail Requirement Exception

Meeting	File No.	Application Type
June 15, 2020	2019-124	Land Development Regulations Amendment
Property Owner	Applicant	Authorized Agent
NA	City of Delray Beach	NA

#### Request

Provide a recommendation to the City Commission regarding Ordinance No. 12-20, a City-initiated amendment to the Land Development Regulations, Section 4.4.13 "Central Business District," subsection 4.4.13(C)(3)(b), to provide exception to the retail requirement within the Central Core and Beach Sub-districts for properties that have 80 percent or more of frontage at a setback of 25 feet or greater.

#### Background Information

Within the Central Business District, certain streets are designated as "Required Retail Frontage" as a means of providing a lively, highly active pedestrian environment that supports businesses and reinforces local character. East Atlantic Avenue, Pineapple Grove Way/NE 2<sup>nd</sup> Avenue, and North/South Ocean Boulevard are designated as Required Retail Frontage streets in the Central Core and Beach Sub-districts. This designation requires 100% of the building frontage at the sidewalk-level story be comprised of retail uses, service establishments, or lodging uses. Ordinance No. 12-20 seeks to re-instate an exception to the ground-floor retail requirement within the Central Core and Beach Sub-Districts for property with a building constructed prior to 1980 with a front setback of 25 feet or greater for 80 percent or more of the building frontage. This amendment would only apply to Waterway East located at 900 East Atlantic Avenue; the only other building that meets the exemption criteria will be demolished as part of the approved Atlantic Crossing redevelopment project. This amendment does not change the allowable uses in the Central Business District Sub-Districts, as described in Table 4.4.13(A).

In October of 2006, an LDR amendment was adopted that prohibited office uses at greater than 50% of the ground floor area on Atlantic Avenue. The tenants and owners of Waterway East expressed concern because the setback for the building is 28 feet from the property line and up to 53 feet from the edge of the sidewalk, which limits the visibility of businesses in the plaza from the pedestrian and vehicle pathways, particularly compared to nearby buildings with a smaller setbacks. In June of 2007, Ordinance No. 21-07 provided an exemption to the ground floor retail requirement for existing structures with front setbacks of 25 feet or more for most of the street frontage. Eliminating the requirement for ground-floor retail requirement allowed property owners in these buildings to have more flexible uses that are less dependent on visibility, including office uses. In 2015, the CBD LDRs were amended and reorganized through Ordinance 27-15, and the update inadvertently excluded the retail exemption for these buildings. This proposed amendment provides a remedy to an inadvertent omission, and will allow uses other than retail along the ground floor in buildings that do not meet current maximum setback or street frontage criteria. If the property is redeveloped in the future, the exemption would no longer apply.

This proposed amendment previously appeared before the Planning and Zoning Board as Ordinance No. 17-19 on May 20, 2019, and the Board voted 7-0 to recommend approval. Ordinance No. 17-19 was reviewed by City Commission at first reading on July 2, 2019, and the motion to approve did not pass on a vote of 3-1. At a subsequent meeting, the City Commission recalled the item for rehearing, and Ordinance No. 12-20 was assigned. Pursuant to review by the City Attorney's Office, this item must be reviewed again by the Planning and Zoning Board prior to first and second reading by the City Commission.

#### Review and Analysis

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 a City-initiated text amendment to the Land Development Regulations.

Pursuant to **LDR Section 2.4.5(M)(5), Findings**, in addition to LDR Section 1.1.6(A), 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 accommodates the unique nature of certain existing properties where the building is significantly setback, and will benefit from additional use options within the tenant spaces. The applicability of this amendment is limited to particular properties, and all properties are still subject to the allowable uses in Table 4.4.13(A) – Allowable Uses in the CBD Sub-Districts. Should the property redevelop, the exception to the ground floor retail requirement would no longer apply.

- **Economic Development Element, 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.*

Standards in Section 4.4.13 would result in a development that supports ground floor retail, should the site redevelop. Until such occurs, the proposed amendment facilitates the use of an existing building with unique attributes that present a challenge to meeting the ground floor retail requirement.

#### Review By Others

The **Downtown Development Authority (DDA)** reviewed Ordinance No. 17-19 (reassigned Ordinance No. 12-20) at its meeting of May 13, 2019 and unanimously recommended approval.

The **City Commission** is anticipated to review Ordinance No. 12-20 at its meetings in July (First Reading) and August (Second Reading, Final Adoption).

#### Assessment and Conclusion

The proposed amendment provides relief for property owners where the unique nature of the existing development impedes its productive use, and is consistent with the Comprehensive Plan and meets the criteria set forth in LDR Section 2.4.5(M).

#### Alternative Actions

- Continue with direction.
- Move a recommendation of **approval**, as amended, of Ordinance No. 12-20, a City-initiated request to amend Land Development Regulations Section 4.4.13 "Central Business District", subsection 4.4.13(C)(3)(b) to provide a procedure for relief from retail requirements, finding that the amendment and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in the Land Development Regulations.
- Move a recommendation of **denial** of Ordinance No. 12-20, a City-initiated request to amend Land Development Regulations Section 4.4.13 "Central Business District", subsection 4.4.13(C)(3)(b) to provide a procedure for relief from retail requirements for existing properties of a unique nature, finding that the amendment and approval thereof is not consistent with the Comprehensive Plan and does not meet the criteria set forth in LDR Section 2.4.5(M).

#### Public and Courtesy Notices

NA Courtesy Notices are not applicable to this request.

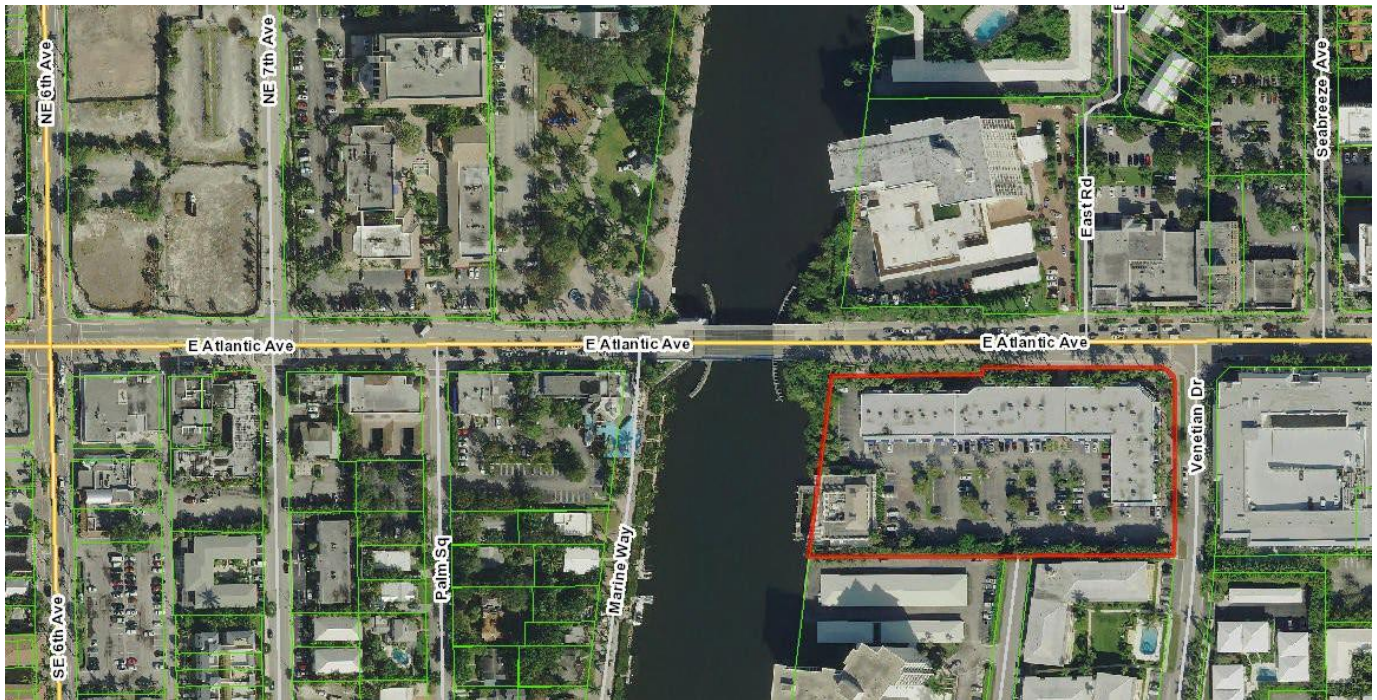
X Courtesy Notices were sent to the following:

- Chamber of Commerce
- CRA
- DDA

X Agenda was posted on Monday, June 8, 2020, at least 5 working days prior to meeting.



## Aerial View of Waterway East





Aerial View of Atlantic Crossing, Pre-Demolition

