



## Cover Memorandum/Staff Report

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**File #:** 20-647

**Agenda Date:** 11/10/2020

**Item #:** 8.B.

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**TO:** Mayor and Commissioners  
**FROM:** Anthea Gianniotis, Development Services Director  
**THROUGH:** Jennifer Alvarez, Interim City Manager  
**DATE:** November 10, 2020

ORDINANCE NO. 32-20: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, REZONING AND RE-DESIGNATING LAND APPROXIMATELY 12.20 ACRES IN SIZE PRESENTLY ZONED MIXED INDUSTRIAL AND COMMERCIAL (MIC) TO SPECIAL ACTIVITIES DISTRICT (SAD), FOR THE PROPERTY AS MORE PARTICULARLY DESCRIBED HEREIN; AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES BY AMENDING CHAPTER 4, "ZONING REGULATIONS," SECTION 4.4, "BASE ZONING DISTRICT," SECTION 4.4.25, "SPECIAL ACTIVITIES DISTRICT (SAD)," SUBSECTION 4.4.25(H), "S.A.D.S", TO ADD "AURA DELRAY BEACH"; SAID LAND GENERALLY LOCATED AT THE NORTHWEST CORNER OF NORTH CONGRESS AVENUE AND WEST ATLANTIC AVENUE, AND CONSISTING OF APPROXIMATELY 12.20 ACRES, AS MORE PARTICULARLY DESCRIBED HEREIN; AMENDING "CITY OF DELRAY BEACH, ZONING MAP, JUNE 29, 2017"; 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. 32-20 on Second Reading, a privately-initiated request for the rezoning of 12.20 acres from Mixed Industrial & Commercial (MIC) to Special Activities District (SAD) with an associated Master Development Plan (MDP) to allow a 292-unit multi-family residential development at 24 dwelling units per acre and a 2,000 square foot commercial building identified as the Aura Delray Beach SAD.

### **Background:**

The Aura Delray Beach SAD properties consist of a total of 12.20 acres and are generally located at the northwest corner of West Atlantic Avenue and North Congress Avenue. All eight parcels are presently zoned MIC, with a land use of Commerce (CMR). The rezoning request is for the purpose of constructing a 292-unit multi-family residential development (24 dwelling units per acre) and a 2,000 square foot commercial building as part of the associated MDP. The LDRs indicate that SADs are regulated by the provisions established by the adopted Ordinance establishing the SAD.

The draft of Ordinance No. 32-20 provides the complete list of uses and development standards, which includes a requirement to provide a minimum of 25 percent workforce housing units on-site for moderate income families. The Development Standards attached to the ordinance have been updated from first reading to establish that moderate income is 80 to 120 percent of Area Median Income, rather than incorporate a higher range up to 140 percent. The ordinance specifies that the parcel development is governed by the Master Plan. Master Plan Modifications may be approved administratively if they are less than a 5 percent deviation from the approved standard regarding

number of dwelling units, parking count, or setbacks. The residential and commercial parts of the site may be developed independently in separate phases. Site Plans must be approved by the Site Plan Review and Appearance Board (SPRAB).

A separate amendment to the Land Development Regulations (LDRs) accompanied the initial rezoning request to establish the Aura Delray Beach Overlay District for workforce housing incentives and to add the site to the list of areas allowed for height to be increased up to 60 feet. Ordinance No. 31-20 was approved by the City Commission on September 10, 2020 and those workforce housing and height provisions have been added to the LDRs. The increase in height above 48-feet up to 60-feet requires approval of a conditional use concurrent with final approval of the SAD rezoning, which also before the City Commission.

Pursuant to **LDR Section 2.4.5(D)(2)**, valid reasons for approving a change in zoning 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 second and third criteria. The rezoning to SAD does not require an amendment to the Land Use designation, as SAD is identified as a “compatible” implementing zoning district for the Commerce land use designation. The applicant’s request statement and justification for the request is provided as an attachment.

As part of the rezoning request, consideration is to be given as whether the proposal meets the Purpose and Intent of the SAD zoning designation. Pursuant to **LDR Section 4.4.25, Special Activities District (SAD)(A), Purpose and Intent**, *the Special Activities District (SAD) is established in order to provide a zone district which is appropriate for projects which are not otherwise classified or categorized in other zone districts; or, which for some other good reason, cannot be properly accommodated in the other zone districts. Also, the SAD is to be used for large scale and mixed projects for which conventional zoning is not applicable. While SAD zoning is deemed consistent with any land use designation on the Future Land Use Map, the uses allowed within a specific SAD shall be consistent with the land use category shown on the Future Land Use Map. The uses, activities, and characteristics of a SAD are to be consistent with the Comprehensive Plan, suitable and compatible with surrounding existing development, and with the proposed character of the area.*

Additionally, **LDR Section 4.4.25(B)(2)**, specifies that the SAD zone designation is required for the following:

- (a) *Any development which is designated as a Large Scale Mixed Use pursuant to the Comprehensive Plan.*
- (b) *Any Development of Regional Impact (DRI).*
- (c) *A full service marina.*
- (d) *Any use which is otherwise not accommodated in any of the other zone districts.*

The intent of the SAD zoning designation is to accommodate unique uses and development types not otherwise accommodated in conventional zoning districts, but that are compatible with the land use designation. The proposed development is for multi-family units and 2,000 square feet of retail; both

are allowed in other zoning districts. The multi-family residential development allowed in other zoning districts is permitted at varied densities, but all of those outside of the Central Business District (CBD) that allow more than 12 dwelling units per acre require workforce housing.

The only zoning district that allows residential uses and is deemed "preferred" or "compatible" with the CMR land use besides SAD is Mixed Industrial and Commercial District (MIC) (see attached Table NDC-1, Land Use Designations: Density, Intensity, and Implementing Zoning Districts). MIC allows multiple family residential development as a Conditional Use "up to a maximum of 24 units per acre" in a focused area, "within the I-95/CSX Railroad Corridor Overlay District," subject to workforce housing provisions in the code. These workforce housing provisions implement the Revitalization/Incentive Density allowed in the CMR land use designation and accommodate the Delray Station complex within the 1-95/CSX Railroad Corridor Overlay District. MIC allows retail use "as a secondary use" to a primary industrial use, but not as a standalone building.

Pursuant to **LDR Section 3.1.1, Required findings**, *prior to the approval of development applications, certain findings must be made in a form which is a part of the official record. This may be achieved through information on the application, written materials submitted by the applicant, the staff report, or minutes. Findings shall be made by the body which has the authority to approve or deny the development application.*

**(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.*

The resulting use of land is predominantly residential with limited commercial use available, per the customized SAD regulations proposed by the applicant. While the zoning designation is "compatible" with the land use designation, consideration must be given as to whether the proposed uses and regulations are consistent with the Commerce land use designation, which is categorized as an Industrial land use designation.

The Neighborhoods, Districts, and Corridors Element provides descriptions of each land use designation. **Objective NDC 1.4, Industrial Land Use Designations**, provides direction that the industrial land use designations are to be applied to those areas "*where industrial type uses, such as fabrication and assembly of goods, warehousing, and vehicle repair, are the primary economic strategy for the district, to ensure that those industries, which are essential to the local economy, are appropriately accommodated in the city.*" The following policies provide specific direction regarding the implementation of the Commerce land use designations:

**Policy NDC 1.4.6:** *Allow a maximum floor area ratio of 0.60 for nonresidential uses and a revitalization/incentive density up to 24 dwelling units per acre with at least 25% of the units provided as workforce housing units, for properties with a Commerce land use designation.*

**Policy NDC 1.4.7:** *Use the Commerce land use designation for property located along or adjacent to the North Congress Avenue corridor, north of West Atlantic Avenue, where it is appropriate to accommodate a mix of industrial, service, and commercial uses, and limited residential development opportunities.*

**Policy NDC 1.4.8** *Recognize the importance of maintaining the Commerce land use designation for long term economic prosperity by discouraging amendments to the Future Land Use Map that diminish the quantity of property with Commerce land use designation.*

**Policy NDC 1.4.9:** *Analyze the existing land use and zoning designations of Commerce and Congress Avenue Mixed Use assigned to property along the Congress Avenue Corridor for the purpose of accommodating a balanced mix of commercial, industrial, office, and residential uses with a cohesive aesthetic for the corridor.*

While the proposed zoning does not require a land use change, thereby complying with Policy NDC 1.4.7, consideration must be given as to whether the request meets the intent of and implements the designation. CMR allows “limited” residential, but strives to maintain opportunities for industrial, services, and commercial uses, particularly those which have limited opportunities to be accommodated in the city. Additional policies in the Economic Prosperity Element further support maintaining opportunities for industrial-type uses.

**(B) Concurrence.** There are no anticipated issues with respect to concurrency of school, water and sewer, solid waste, drainage, or parks and open space. Regarding traffic concurrency, the applicant has provided a traffic impact analysis, which indicates a net increase of 2,383 daily trips based on the development of 292 dwelling units, and a 2,000 square foot “coffee/donut shop.” The Palm Beach County Traffic Division has reviewed the request and provided a letter indicating that “the proposed development meets the Traffic Performance Standards of Palm Beach County.” The letter also indicates that the owner is responsible for the construction of a right turn lane north approach at the northernmost project driveway on Congress Avenue, and to extend the northbound left turn lane.

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

**3.2.2(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.

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

Not applicable..

*3.2.2(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 zoning change is customized to the site, and does not allow for strip commercial development, as its predominantly multi-family residential with commercial uses limited to no more than 20% of the total development area. The proposed commercial development is limited to a 2,000 square foot commercial building along North Congress Avenue, which functions as a separate parcel, as there is no connectivity or physical relationship with the residential development.

*3.2.2(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.*

The existing uses and zoning surrounding the proposed development include a variety of industrial and service/commercial types of uses, consistent with the land use designation and MIC zoning throughout this portion of the corridor (see below).

|       | Zoning  | Land Use            | Use   |
|-------|---|---------------------|---|
| North | MIC   | CMR                 | Palm Tran Bus Terminal and Offices              |
| South | MIC   | CMR                 | Convenience Store; Auto Business; Const. Equip. |
|       | General Commercial (GC)                       | GC                  | Retail Plaza                                    |
|       | Planned Commercial (PC)                       | GC                  | Shopping Plaza                                  |
| East  | GC  | GC                  | Gas Station (Chevrolet)                         |
|       | MIC   | CMR                 | Mix of Industrial based businesses              |
| West  | Single-family Residential (R-1-AA)            | Low Density (LD)    |   |
|       | Multi-Family Residential, Medium Density (RM) | Medium Density (MD) |   |

The makeup of the Congress Avenue corridor shifts south of West Atlantic Avenue where residential uses exist and are encouraged, given the proximity to the Tri-Rail station to facilitate transit-oriented development within a ½ mile radius. A sliver of the subject property along West Atlantic Avenue is within this radius. Consideration is to be given as to whether the resulting land uses are deemed compatible and, if incompatible, whether sufficient regulations are provided to mitigate any adverse impact.

*3.2.2(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.

A review of **LDR Section 3.2.4, Standards for Specific Areas or Purposes** is provided in the Planning and Zoning Board Staff Report. The areas applicable to the subject properties include Wellfield Zones and Floor Prone Areas.

**(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.*

Concurrent with the review of the rezoning request, the LDRs relative to the development and use of the site have been applied and will be acted on separately by the Site Plan Review and Appearance Board (SPRAB). Section 4.4.25, Special Activities District specifies that SADs are established by an ordinance which is processed the same as a rezoning. However, a complete site plan is required to be reviewed concurrently, which can also be approved by SPRAB between First and Second Reading of the ordinance. The site plan was approved by SPRAB prior to second reading of Ordinance No. 32-20 at its meeting of September 23, 2020.

### **Master Development Plan**

Pursuant to **LDR Section 2.4.5(F)(6), Master Development Plans, Special Provisions**, the Master Development Plan *“shall be the guide for any subsequent site plan or subdivision action. A site plan shall be required for any phase or the entire area encompassed by a MDP...Variances and waivers to the requirements of base district standards and supplemental district regulations, referred to herein, may be granted by the Planning and Zoning Board concurrent with approval of the Master Development Plan (MDP) without the requirement of a public hearing.”*

In accordance with the SAD provisions, the MDP has been submitted, which identifies the general details of the site development, including placement, uses, parking, landscape area, amenities, etc. The MDP guides the site plan, which provides more in-depth details and information such as floor plans, elevations, landscaping specifications, and engineering plans. As required, the site plan was approved by SPRAB prior to second reading of Ordinance No. 32-20 at its meeting of September 23, 2020.

In addition to the above differences with the LDR requirements, the following is a summary of the specific considerations to be made for the subject request:

- whether the proposal meets the intent of the SAD zoning designation;
- whether the proposed uses and regulations are consistent with the Commerce land use designation, which is categorized as an Industrial land use designation, particularly given the limited opportunities to accommodate industrial and service type uses;
- whether the request meets the intent of and implements the Commerce land use designation; and,
- whether the resulting land uses are deemed compatible with the surrounding land uses.

The Planning and Zoning Board reviewed the request at its meeting of July 20, 2020 and recommended approval on a vote of 4-0, subject to the provision that all workforce housing units (a minimum of 25 percent) be provided on-site. NOTE: This revision has been incorporated into the ordinance.

### **City Attorney Review:**

Approved as to legal form and sufficiency.

### **Funding Source/Financial Impact:**

N/A

**Timing of Request:**

Approval of Ordinance No. 32-20 must occur prior to the approval of the associated Conditional Use request for an increase in height above 48 feet.