



# DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

## PLANNING & ZONING BOARD

### Aura Delray Beach Overlay District

Meeting	File No.	Application Type
September 21, 2020	2020-247-USE-PZB	Conditional Use (Increased Height)
Applicant	Property Owner	Authorized Agent
Trinsic Residential Group	Delray Land Holdings, LLC; Steve Retterath; Debra J. Langel and Michael R. Langel; and Ruth D. Adams, Mary D. Amar, Daniels Family Trust, Elizabeth D. Taylor, Corey D. Daniels, Trustee, and Lula M. Smith, Trustee.	Dunay, Miskel, and Backman, LLP Bonnie Miskel, Esq. / Beth Schrantz, Land Planner

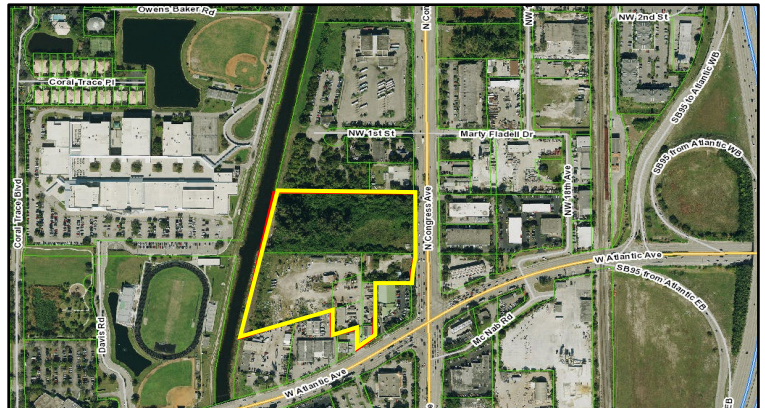
### Request

Consideration of a conditional use request to increase the maximum allowable height for the Aura Delray Beach Overlay District from 48' to 55' feet pursuant to LDR Section 4.3.4(J)(4)(b).

### Background Information

The subject site is composed of 8 parcels totaling 12.20 acres and is generally situated at the northwest corner of West Atlantic Avenue and North Congress Avenue.

- On November 8, 1988, the City Commission adopted Ordinance No. 127-88 annexing the subject site (part of Enclave 66) into the City of Delray Beach city boundary. The subject parcels that were annexed were zoned Light Industrial (LI) and General Commercial (GC) zoning.
- On September 25, 1990, the City Commission adopted Ordinance No. 25-90, which replaced all previously adopted maps of the City of Delray Beach. The zoning amendment changed the zoning of the subject site from LI and GC to Mixed Industrial & Commercial (MIC).
- On June 24, 2020, the Development Services Department received a Class V Site Plan application associated with the construction of two 3-story buildings, and four 5-story buildings, containing a total of 292 multifamily apartment units, a clubhouse, and a small commercial outparcel building for the proposed Aura Delray Beach development.
- On August 18, 2020, the City Commission also conducted the 1<sup>st</sup> reading of Ordinance No. 32-20 for the rezoning of the subject site from MIC to Special Activities District (SAD). A second meeting is required at a subsequent date to-be-determined for the consideration of the rezoning subsequent to approval of the associated site plan by the Site Plan Review and Appearance Board (SPRAB).
- On September 10, 2020, the City Commission adopted Ordinance No. 31-20 to establish the Aura Overlay District, an overlay which requires a minimum of 25 percent of the units in the development be provided as on-site workforce housing units and the addition of the Aura Delray Beach Overlay District to the list of properties eligible for an increased height up to 60 feet listed as in LDR Section 4.3.4(J)(4)(b)(i).



#### Project Planner:

Kent Walia, [walia@mydelraybeach.com](mailto:walia@mydelraybeach.com), 561-243-7365

#### Attachments:

- Justification Statement
- Draft Resolution
- Proposed site plans

- The site is currently zoned Mixed-Industrial Commercial (MIC) with a land use designation of Commerce (CMR). Records indicate that since annexation, some of the parcels have been developed, while other have remained vacant.

#### Description of Proposal

The proposed conditional use is for the increase of allowable height from 48 feet to 55 feet in accordance with LDR Section 4.3.4 (J)(4)(b). The proposed development consists of two 3-story buildings, and four 5-story buildings, containing a total of 292 multifamily apartment units. The height proposed for the 3-story buildings is 34 feet and 55 feet for the 5-story buildings.

#### Analysis

Pursuant to **LDR Section 4.3.4. (J), Height**, the height of all structures within the City of Delray Beach shall be measured as the vertical distance from the base building elevation to the highest finished roof surface of a flat roof. For sites not located within a FEMA designated special flood hazard area (SFHA), the base building elevation shall be a minimum of 18 inches (or less with approval by the City Engineer) and a maximum of 30 inches (which allows for 12 inches of freeboard) above the mean elevation of the crown of the street along the lot frontage or the average of the mean elevation of the crowns of the streets for lots with multiple lot frontages. For sites located within a FEMA designated Special Flood Hazard Area (SFHA), the base building elevation is established as the minimum required base flood elevation, as required by FEMA and the Florida Building Code (FBC), as amended, and allowing up to 12 inches for freeboard.

- The subject site is located in the FEMA X and AE-9 flood zones. The maximum base building elevation for the buildings in the X zone is 13.5' NAVD (12' crown of road + 18") and 11' NAVD for the buildings located AE zone (9' BFE + 12" FBC + 12" optional freeboard). The plans provided show 11' NAVD being used for the base building elevation and 13.5' NAVD as the finish floor for all the buildings on site for a uniform grade on the site.

The Aura Delray Beach development is proposing two 20 unit 3-story apartment buildings, four 63 unit 5-story apartment buildings, and one single story retail outparcel building. As measured from the base building elevation to the top of the flat roof, the 3-story buildings are 34'-0" tall (31.5' above grade) and the 5-story buildings are 55' tall (52.5' above grade). The maximum overall height currently allowed for the parcels (as zoned MIC) and as zoned SAD (proposed) is 48 feet; per LDR Section 4.3.4(K), Development Standards Matrix—Nonresidential Zoning Districts. A request for an increase in height to 55' is proposed for buildings 3, 4, 5 and 6 to accommodate 5 stories each with 10' ceiling heights.

Pursuant to **LDR Section 4.3.4.(J)(4)(a), Prohibitions**, there are no provisions which allow, nor is the Board of Adjustment empowered to grant, an increase of height for any purpose in the following zone districts: Single Family (R-1) Districts, Rural Residential (RR) Agriculture (Ag), Mobile Home (MH), Low-Density Residential (RL), Medium Density Residential (RM), Planned Residential Development (PRD), Residential Office (RO), Neighborhood Commercial (NC), Professional and Office District (POD), Conservation District (CD), Open Space (OS).

- The proposed SAD designation is not listed as a prohibited zoning district in the LDR section listed above, thus is eligible for height increase up to maximum height of 60 feet subject to City Commission approval of a conditional use request.

Pursuant to **LDR Section 4.3.4.(J)(4)(b), Allowances**, an increase, to a maximum height of 60 feet, may be approved by the City Commission in any zone district not listed above, except for the CBD zoning district, when approved pursuant to the processing of a conditional use request and based upon a finding of compliance with each of enumerated criteria listed below, as applicable.

**(i) That the structure is to be located in one of the following geographic areas:**

- On September 10, 2020, the City Commission adopted Ordinance No. 31-20 adding the Aura Delray Beach Overlay District to the list of properties eligible for an increased height up to 60 feet listed as in LDR Section 4.3.4(J)(4)(b)(i). The subject site is now in the geographic boundary required.

**(ii) That the increase in height will not provide for, nor accommodate, an increase in the floor area (within the structure) beyond that which could be accommodated by development which adheres to a height limitation of 48 feet, except for the following situations: (1) An increase in height is allowed when the increase from 48 feet to 60 feet is for the purpose of accommodating residential use on the top floor of the structure; however, the increase in height is only for the added residential use area.**

- The proposed development provides a building height of 55 feet for the four 5-story multi-family apartment buildings to provide residential units throughout the buildings, inclusive of the top floor, as the development does not contain a mix of uses within any of the apartment buildings.

(iii) **Workforce housing units, equal to at least 20 percent of the residential units on the top floor, shall be provided within the development onsite, offsite, or through monetary contributions as referenced in Article 4.7 (fractions shall be rounded up). The workforce housing units shall be at the low or moderate income levels and shall comply with other applicable provisions of Article 4.7.**

- The request to increase the height to 55 feet is for the 5-story buildings (3, 4, 5, and 6). The buildings have 14 units on the 5<sup>th</sup> floor (top floor) of each building. Thus, in accordance with the LDR section, the property would need to provide a minimum of 12 workforce housing units ( $14 \times 4 \text{ buildings} = 56 \times 20\% = 11.2$ ) onsite, offsite, or through monetary contributions. Since the property has a land use designation of Commerce (Industrial), to receive a maximum of 24 dwelling units per acre a minimum of 25% of units must be workforce housing units. The approved Aura Delray Beach Overlay District requires a minimum of 25% units provided on-site, which equate to 73 units. Thus, the project is providing 61 more units on site than the 12 units required as part of the increased height criteria.

(iv) **That the increase in height shall be allowed if two or more of subsections 4.3.4(J)(iv)(1), (2) or (3) are met:**

1. That for each foot in height above 48 feet, an additional building setback of two feet is provided from the building setback lines which would be established for a 48-foot tall structure. The additional setback is required from all setback lines (i.e., front, side, and rear) for the portion of the building that extends above 48 feet;
  2. That a minimum of 50 percent of the ground floor building frontage consist of nonresidential uses (excluding parking);
  3. That open areas, such as courtyards, plazas, and landscaped setbacks, be provided in order to add interest and provide relief from the building mass.
- The project is proposing to comply with subsection 1 and 3. Subsection 2 is not applicable since the apartment building portion of the development is entirely residential. The Aura Delray Beach project is requesting an additional 7 feet to the maximum overall height allowed for buildings 3,4,5 and 6. Subsection 1 requires an additional two foot setback for each additional foot of height requested. Therefore, an additional 14-foot setback will be required above 48 feet for each of the buildings requesting the increase in height.

Although not yet rezoned to SAD, it is important to consider compliance with the specific requirements applicable to those properties zoned SAD. LDR Section 4.4.25(E)(1) requires that a minimum setback of 15 feet be established around the perimeter of any property developed under the SAD designation. Therefore, a minimum setback of 29 feet is required from the property line for those portions of buildings 3,4,5 and 6 above 48 feet. As indicated in the chart below, all setbacks provided meet or exceed the minimum 15 foot building setback for the SAD zoning district and the 29 foot setback for buildings with height above 48 foot.

Building #	Required Setback above 48 feet	Provided Setback			
		North	South	East	West
3	29 feet	174.5 feet	420 feet	260 feet	226 feet
4		394 feet	200 feet	284 feet	233 feet
5		29 feet	485 feet	550 feet	70 feet
6		410 feet	118.83 feet	620 feet	65 feet

Subsection 3 requires that open areas such as courtyards, plazas, and landscaped setbacks, be provided in order to add interest and provide relief from the building mass. The site plan provided shows that a 15 foot perimeter landscape buffer has been provided; a 15 foot wide greenway trail with benches on the west side of the property, linear green spaces, tot lot, dog park, and a swimming pool are also provided throughout the development that add open space and amenities to add interest to the project and assist in providing relief from the mass of the buildings. The buildings are internally spaced apart between 86 feet, ten inches to 152 feet, ten inches which further reduces the overall massing effect of the buildings.

Pursuant to **LDR Section 2.4.5 (E)(5), Findings**, in addition to provisions of Chapter 3, the City Commission must make findings that establishing the conditional use will not:

- a) **Have a significantly detrimental effect upon the stability of the neighborhood within which it will be located;**
- b) **Hinder development or redevelopment of nearby properties.**

The subject site is situated adjacent to the corner of West Atlantic Avenue and Congress Avenue. The property is surrounded by a mix of industrial and commercial uses. The site is separated from the Atlantic Community High School to the west by the Lake Worth Drainage District (LWDD) E-4 canal, which is approximately 90 feet wide. The property is surrounded by Commerce (CMR) and General Commercial (GC) land uses, and MIC and GC zoning districts, all of which have a maximum building height of 48 feet. Since the development is proposing a majority residential use in a majority industrial area, it is unlikely that the project would degrade the habitability or stability of the area. In addition, the taller buildings are proposed more internal and to the rear of the site; the two buildings located along Congress Avenue contain three stories. The properties located along the east side South Congress Avenue and west of Interstate-95 are also eligible to request a conditional use for an increase in building height up to 60 feet. More specifically, the noise, odor, and dust would be likely created more by the surrounding commercial properties than the proposed residential development.

If approved, the proposed conditional use to increase the maximum allowable height for the 5-story buildings to 55' would not hinder the development or redevelopment of nearby properties. The maximum height allowed for the surrounding MIC and GC zoning districts is 48'. LDR Section 4.3.4 (J)(4)(a), lists zoning districts that are not allowed to increase their maximum allowable. MIC and GC are not listed, thus are eligible to increase their height to a maximum allowable height of up to 60' under similar findings. The site has remained, mostly vacant since it was annexed into the City, and the proposed development would essentially improve a vacant property.

In addition to the above, Housing Element Policy HOU 1.1.12 of the Always Delray Comprehensive Plan (Comprehensive Plan) requires *"that proposals for new development illustrate compatibility with adjacent neighborhoods with respect to noise, odors, dust, traffic volumes and circulation patterns in terms of their potential to negatively impact the safety, habitability and stability of residential areas. If the development will result in a degradation of any neighborhood, the project shall be modified accordingly or denied."* The Residential Neighborhood Stabilization map in the Comprehensive Plan lists the area as "Non-Residential."

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 that has the authority to approve or deny the development application. The following findings relate to consistency with the Land Use Map (LUM), Concurrency, Comprehensive Plan Consistency, and Compliance with the LDR:

- a) **Land Use Map (LUM):** 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 Land Use Map.
  - The subject site has a LUM designation of Commerce (CMR), a current zoning designation of MIC, and a proposed zoning designation of SAD. Both the current and proposed zoning designations are compatible with the CMR LUM designation. As mentioned, the proposed 292-unit multi-family apartment development with a future outparcel retail building would be a permitted use contingent upon City Commission approval of the SAD Ordinance No. 32-20.
- b) **Concurrency.** Concurrency as defined by Objective NDC 3.1 of the Neighborhoods, Districts, and Corridors Element of the adopted 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 CIE-2, Level of Service Standards, of the Capital Improvements Element of the adopted Comprehensive Plan of the City of Delray Beach.
  - **Traffic:** The provided traffic statement mentions that the proposed 292-unit development will add 2,383 new daily trips. The statement indicates that the development meets the requirements of the Palm Beach County Traffic Performance Standards. The provided Traffic Performance Standards (TPS) concurrency review letter from the Palm Beach County mentions that the proposed development meets the Traffic Performance Standards of Palm



Beach County as long as the project constructs a right turn lane at the northernmost driveway on congress avenue, and extend the northbound turn lane storage length at the intersection of NW 1<sup>st</sup> Street and Congress Avenue. The roadway improvements will be included in the Class V site plan review before the Site Plan Review and Appearance Board (SPRAB) at a later meeting date.

- Schools: The site plan application provided includes a School Capacity Availability (SCAD) Determination letter indicating that the proposed development will not have a negative impact on the public school system. Applicable impact fees would be determined during the permitting.
- Water and Sewer: The engineering plans indicate that the proposed development would be connecting into an 8" PVC water line 8" Sewer line off of Congress Avenue.
- Solid Waste:  
Proposed Demand:  
Proposed Apartment Buildings: 6 buildings x 1.99 tons per year = 11.94 tons per year  
Proposed retail outparcel building: 1,700 gsf x 10.2 lbs = 17,340/ 2,000 = 8.67 tons per year

**Total Tonnage per year = 20.61 tons**

The proposed Aura Delray Beach development would add approximately 20.61 tons of waste per year to the current demand. The Solid Waste Authority has indicated that its facilities have sufficient capacity to handle all development proposals until the year 2048.

- 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.
- **Housing Element Policy HOU 4.1.7** – “Support innovative use of higher density in detached and attached housing which maintains usable open space, while providing larger living spaces.”
  - **Housing Element Policy HOU 6.1.4** – “Implement incentives in the Land Development Regulations, such as increases in density, to establish workforce housing units within targeted areas.”
  - **Housing Element Policy HOU 6.2.4** – “Utilize incentives outlined in the workforce housing ordinance to develop additional workforce housing units.”

The proposed development demonstrates compliance with the Comprehensive Plan by providing a minimum of 25% workforce housing on site and requesting the additional height to accommodate larger living spaces in units, to obtain the maximum density allowed of 24 du/ac in the Commerce (CMR) land use district. Furthermore, the development provides 43.6% open space which include landscape buffers, a greenway trail, linear green spaces, tot lot, and a dog park.

**Board Action Options:**

- A. Move a recommendation of approval to the City Commission of the Conditional Use request for the increase to the maximum allowable height of 55 feet for Aura Delray Beach, located generally at the northwest corner of the intersection of Congress Avenue and West Atlantic Avenue, by finding that the request is consistent with the Comprehensive Plan and meets the criteria set forth in the Land Development Regulations.

B. Move a recommendation of denial to the City Commission of the Conditional Use request for the increase to the maximum allowable height of 55 feet for Aura Delray Beach, located generally at the northwest corner of the intersection of Congress Avenue and West Atlantic Avenue as amended, by finding that the request is consistent with the Comprehensive Plan and meets the criteria set forth in the Land Development Regulations.

C. Move to continue with direction.

#### Public and Courtesy Notices

- ✓ Courtesy Notices were provided to the following Homeowner's Associations:
- High Point of Delray
  - Woodlake

- ✓ Public Notice was posted at the property on **September 14, 2020**
- ✓ Public Notice was mailed to property owners within a 500' radius on **September 11, 2020** at least ten days before the meeting date.
- ✓ Public Notice was posted to the City's website on **September 11, 2020**.
- ✓ Public Notice was posted in the main lobby at City Hall on **September 11, 2020**.
- ✓ Courtesy Notice was e-mailed on **September 14, 2020**.