



# DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

## PLANNING AND ZONING BOARD STAFF REPORT

### CBD Railroad Corridor Sub-District LDR Amendments

Meeting	File No.	Application Type
November 16, 2020	2020-093-LDR	Land Development Regulations Amendment
Authorized Agent		Applicant
Christina Bilenki (Dunay, Miskel, Backman, LLP)		1st Avenue Capital 301 LLC

#### Request

Provide a recommendation to the City Commission on Ordinance No. 52-20, a privately-initiated request to amend the Land Development Regulations (LDR) Section 4.4.13, Central Business District (CBD), regarding automated parking garages, height of rooftops, maximum number of building stories and building height, upper story front setbacks, and density within the Railroad Corridor Sub-district located south of SE 2<sup>nd</sup> Street.

#### Background Information

In February 2015, Ordinance No. 02-15 was adopted, which provided a rewrite of the regulations applicable to the CBD, as an award-winning Form-Based Code. Prior to February 2015, the **standard height and density** for the CBD was a maximum of 48 feet and a maximum of 30 du/ac for the area now known as the Central Core Sub-district (See area outlined in red on map) and Railroad Corridor Sub-district, previously zoned CBD-Railroad Corridor (See area outlined in orange).

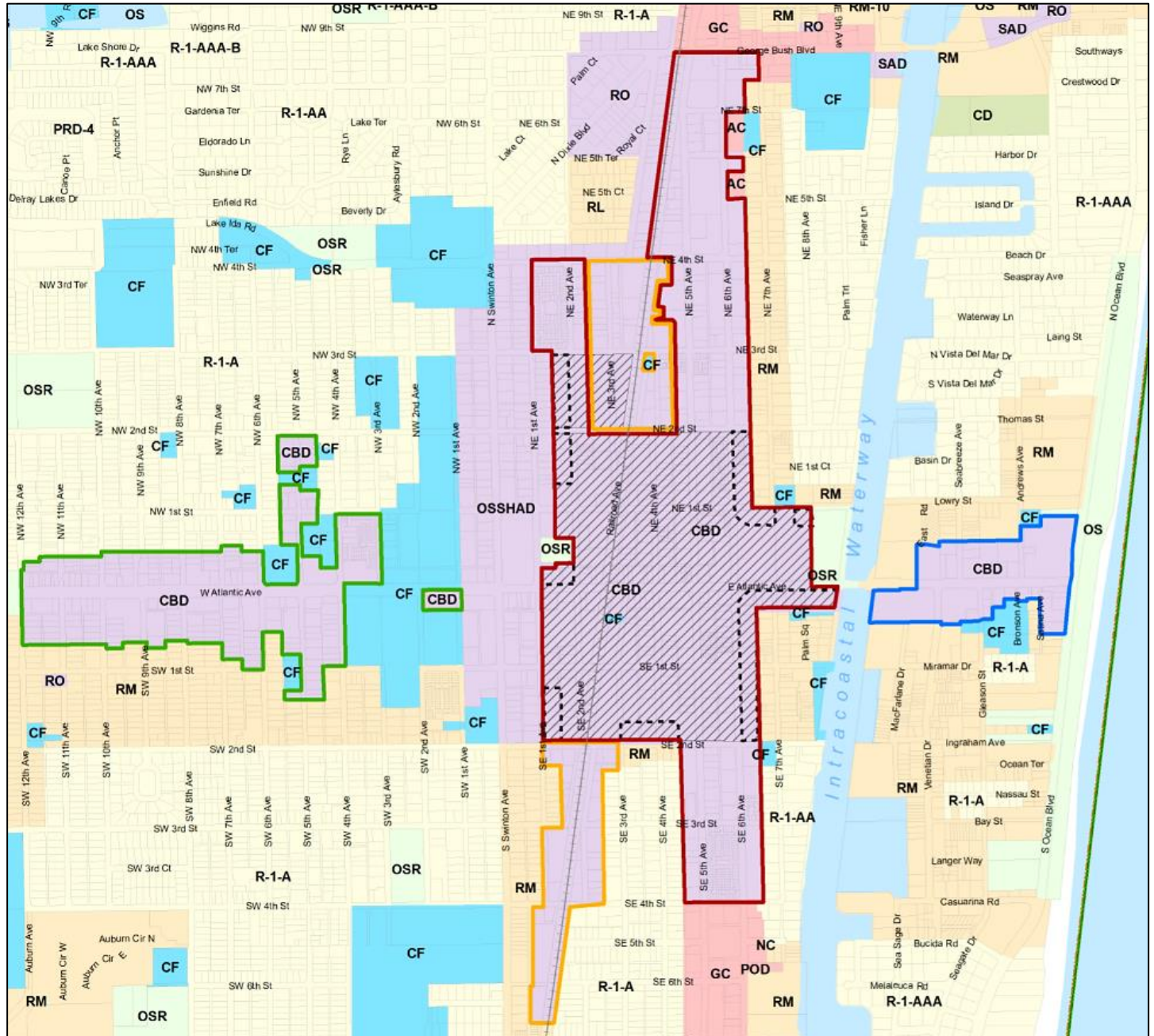
An increase in density to more than 30 du/ac was available via a conditional use process with the provision of workforce housing for a limited area within the downtown. To minimize impacts on residential neighborhoods surrounding the downtown, the area available for higher density was limited to properties located south of NE 2<sup>nd</sup> Street and North of SE 2<sup>nd</sup> Street, and the area west of the FEC railroad north of NE 2<sup>nd</sup> Street and South of NE 3<sup>rd</sup> Street, all subject to specific performance standards (see hatched area on map). The Comprehensive Plan at the time established the density for properties with a Commercial Core Future Land Use designation as a maximum of 100 du/ac, subject to approval of a conditional use request.

In addition to an increase in density, a conditional use to **increase the building height** from 48 feet to 60 feet was also an option prior to adoption of Ordinance No. 02-15. This height increase was available for "all property within the Central Core portion of the CBD, except for that portion within 150 feet of any zoning district which has a maximum height limit of 35 feet, measured from the property lines of the CBD zoned property." (See the dashed lines on map for the properties excluded from requesting additional height) Those properties eligible to request a conditional use height increase were subject to "a finding of compliance" with the applicable criteria, as follows:

- Same Floor Area: 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 an increase in height when the increase 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 area.
- Workforce Housing: 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...the workforce housing units shall be at the low or moderate income levels...
- That the increase in height shall be allowed if two or more of the following are met:
  - Additional Setbacks: 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 for the portion of the building that extends above 48 feet. In lieu of this setback requirement, buildings in the CBD zone shall adhere to the setback requirements of that district;

- Mixed-Use Development: That a minimum of 50 percent of the ground floor building frontage consist of nonresidential uses (excluding parking);
- Open Areas: That open areas, such as courtyards, plazas, and landscaped setbacks, be provided to add interest and provide relief from the building mass.



In 2015, with the adoption of Ordinance No. 02-15, the **standard height** was increased to a maximum of 54 feet and four stories to accommodate taller ceiling heights without increasing the overall building capacity. The density was limited to 30 du/ac for the areas located within the Central Core and Railroad Corridor Sub-districts. The conditional use process to allow density higher than 30 du/ac and additional height were purposefully eliminated and replaced by a “**Residential Incentive Program**” to allow an increased density



"to encourage a variety of unit types and income ranges within the downtown area, opportunities to increase density are offered in certain CBD Sub-districts. This Residential Incentive Program is the only way to obtain increases in density for property zoned CBD" (LDR Section 4.4.13(H)(1)). The West Atlantic Neighborhood Sub-district is the only CBD Sub-district currently included in the Residential Incentive Program, where requests can be made to increase the density from 12 du/ac to 30 du/ac; however, additional height is not offered in the CBD. The increase in density is based on compliance with the required Performance Standards that includes the provision of workforce housing units equal to at least 20 percent of the bonus density within the development onsite, offsite, or through monetary contributions. Applications to utilize the Incentive Program are reviewed as part of a site plan by SPRAB or HPB for compliance with the regulations. The Board will make a recommendation to the City Commission on the site plan before the City Commission takes final action to approve or deny the site plan and the increased density.

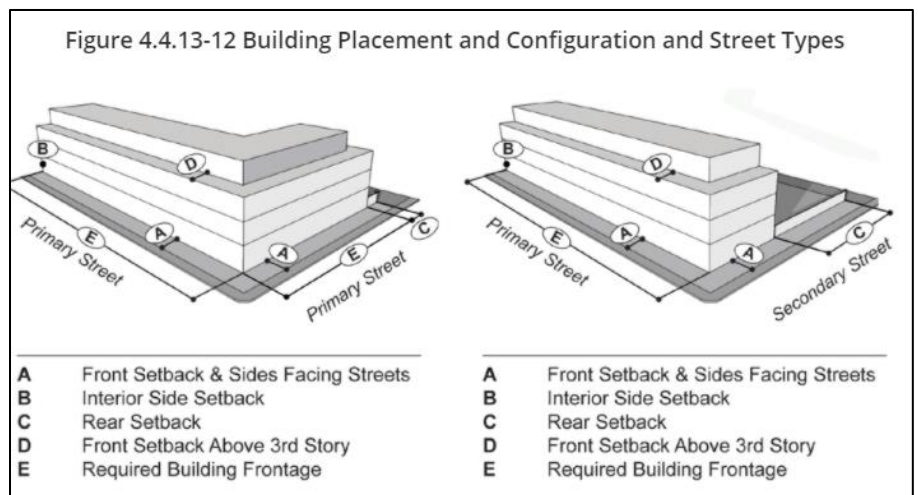
The **current CBD parking calculations** (adopted in 2015) are applicable to the entire CBD and are modified from those of Section 4.6.9, Off-Street Parking, which are applicable to the balance of the city. The purpose of these modified regulations are to "recognize that the downtown is a compact, interconnected area with multimodal transportation options, and that improper placement of parking and mandatory duplication of the parking supply on each building site separates the various land uses from each other. This separation reduces the viability of the mixed-use districts and harms the walkability of the streets in the downtown area. These regulations reflect the needs of the urban, mixed use downtown. When in conflict with the regulations in Section 4.6.9, this section shall rule" (LDR Section 4.4.13(I)(1)).

The CBD regulations also acknowledge the impact of more intense development of a larger scale on adjacent properties, particularly those in abutting residential zoning districts where the maximum building height is 35 feet. Therefore, the CBD requires additional **upper story setbacks** above the 3<sup>rd</sup> story with 20 feet for the front, and 30 feet for the side and rear. See Figure 4.4.13-12.

In 2018, the CBD regulations were amended to provide specific guidance regarding the **use of rooftops** and associated covered structures. The regulations were intended to mitigate any impacts on adjacent development, particularly those with residential uses, from additional height, lighting, or noise on the rooftop of a building in the CBD. All required screening, railings, and parapets are limited to a height of 60 feet. Covered structures, which are limited to a maximum of 25 percent of the total roof area, are also limited to a height of 60 feet. The maximum height of the CBD is 54 feet and 4 stories, except for the Atlantic Avenue Limited Height Area, which is limited to 38 feet and 3 stories.

In 2019, a privately initiated amendment was approved to allow **automated parking garages** within the CBD. The request was adopted but specifically limits the new use to Secondary Streets located north of NE 2<sup>nd</sup> Street within the Railroad Corridor Sub-district. Four additional requirements must be met by the automated parking garages:

- A traffic statement detailing the ingress, egress, queuing, and circulation demonstrating the specific measures taken to minimize stacking onto public right-of-way resulting from the automated parking garage.
- An attendant must be on-site during all hours of operation (unless the garage is limited to private use), and the garage must be secured when not accessible for parking purposes.
- Projects with driveways that limit the ability to install the required number of street trees shall either provide the required trees at another location on-site or contribute to the Tree Fund.
- SPRAB may approve automated parking garages that utilize an alternative façade design or cladding materials provided photovoltaic cells (solar panels) are incorporated into the structure and used as a power source for the garage operations or

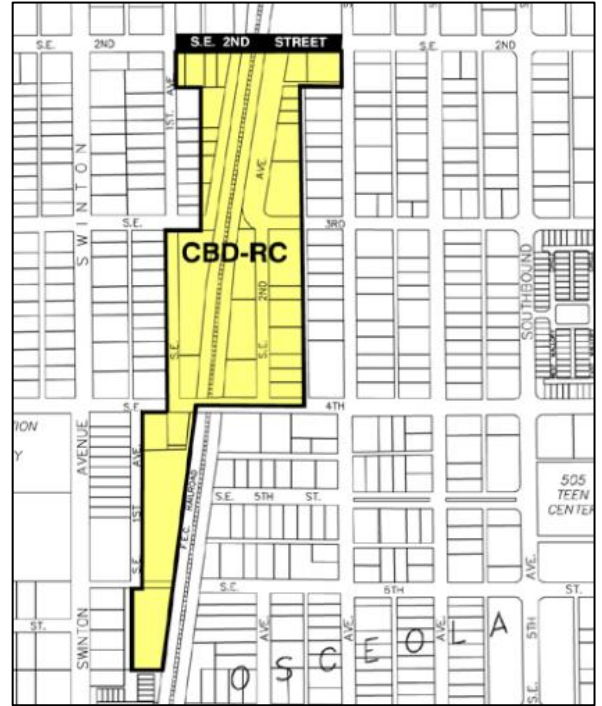


uses associated with the automated parking garage; if solar panels are not incorporated, facades that do not meet the architectural standards require City Commission approval.

### Description of Proposal

The proposed amendments, as outlined below, are applicable to the Railroad Corridor Sub-district located south of SE 2<sup>nd</sup> Street (see area highlighted in yellow) of the Central Business District (CBD).

- Building Stories and Height: Increase to 6 stories and 60 feet from 4 stories and 54 feet within the Railroad Corridor Sub-district
- Density Bonus and Workforce Housing: Add the Railroad Corridor Sub-district to the Residential Incentive Program; increase density to up to 80 du/ac, when at least 20 percent of the bonus density is provided as workforce housing units at the moderate income level either onsite, office, or through monetary contribution.
- Automated parking garages: Allow on any Secondary Street within the Railroad Corridor; currently limited to Secondary Streets north of NE 2<sup>nd</sup> Street within the Railroad Corridor Sub-district.
- Height of Rooftops on Buildings: Extend maximum height on rooftops within the Railroad Corridor Sub-district from 60 feet to 10 feet above the maximum permitted height.
- Setback above 3<sup>rd</sup> Story: Decrease minimum front and rear setback requirements at the top of the 3<sup>rd</sup> story from 20 feet to 10 feet.



The request indicates that the purpose of the amendments is to facilitate the redevelopment of a 1.46 acre property located at 301 SE 1<sup>st</sup> Avenue. The submitted narrative indicates that the property is currently vacant, and the applicant proposes to develop the property “*with an attractive new multi-family residential development with a small café and retail component.*” The complete request letter and narrative memo are provided as attachments. It is important to note the LDR Amendments will apply to all of the properties within this portion of the Sub-District, and not just the applicant's property.

### 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 privately-initiated, and requested by Christina Bilenki of Dunay, Miskel, Backman, LLP, for 1st Avenue Capital 301 LLC.

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 (GOPs) of the Comprehensive Plan. The following GOPs of the adopted Comprehensive Plan are applicable to the proposed amendment:

**NOTE:** The subject request was submitted prior to the adoption of the Always Delray Comprehensive Plan on February 4, 2020, then subsequently placed on hold by the applicant prior to the onset of COVID-19 and the cancelation of public meetings for three months. Therefore, in addition to the Goals, Objectives, and Policies adopted in the Always Delray Comprehensive Plan, the applicable Goals, Objectives, and Policies from the prior Comprehensive Plan have also been provided and reviewed. However, the previous Comprehensive Plan stipulated a conditional use process as the mechanism for increased density and this process was removed as an option in the LDRs in 2015. The only way to increase density is via the policies set forth in The Always Delray Comprehensive Plan. The “new” plan specifies that a density between 30 – 100 du/ac in the Commercial Core land use designation is limited to a revitalization or incentive density. Per adopted Policy NDC 1.1.7, “The Revitalization/Incentive density is the maximum density that may be offered in the LDRs to achieve a certain community benefit in a specific area *as part of an incentive program, or to implement the recommendations*

of an adopted redevelopment or neighborhood plan. [Emphasis added]. The proposed amendments include amendments to the “Residential Incentive Program” with a requirement for workforce housing. The Downtown Master Plan is the adopted redevelopment plan for the area.

**Policy NDC 1.1.14** *Continue to require that property be developed or redeveloped or accommodated, in a manner so that the use, intensity and density are appropriate in terms of soil, topographic, and other applicable physical considerations; encourage affordable goods and services; are complementary to and compatible with adjacent land uses; and fulfill remaining land use needs. (Prior Comprehensive Plan Future Land Use Element Objective A-1 and Policy A-2.3)*

**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. (Prior Comprehensive Plan Future Land Use Element Objective C-3)*

**Policy NDC 1.1.2:** *Provide a complementary mix of land uses, including residential, office, commercial, industrial, recreational, and community facilities, with design characteristics that provide:*

- *Similar uses, intensity, height, and development patterns facing each other, especially in residential neighborhoods.*
- *Uses that meet the daily needs of residents.*
- *Public open spaces that are safe and attractive.*

**Policy NDC 1.1.7:** *“...Standards in the Land Development Regulations, including those guiding compatibility and transitions, such as setbacks, height limitations, open space criteria, etc. may limit the actual density achievable on a specific site.”*

The proposed increase in height (including increasing the number of stories and the height of rooftop appurtenances), reduced upper setbacks (above the 3<sup>rd</sup> story), and density amendments will increase the scale of future development, beyond what is currently allowed in the code or envisioned in the Downtown Master Plan. In terms of protecting the character of the downtown, it is noteworthy that the 2015 City-initiated LDR amendments to the CBD included extensive public outreach, with over 17 public meetings, and resulted in changes that did not increase the number of stories and that removed density incentives from this area. This amendment proposes fundamental changes to the built environment of the downtown area and a new incentive program for a limited portion of a sub-district, both as a private initiative. Consideration must be made whether the proposed changes help realize the community’s “Village by the Sea” vision. The most recent redevelopment plan that includes this area is the Downtown Master Plan, which does not recommend increasing building height.

In terms of compatibility, the change in scale and density will likely have an impact on adjacent properties, particularly those with zoning designations that establish development of a much smaller scale and lower densities. The southern portion of the Railroad Corridor Sub-district, the location of this request, is primarily surrounded by Multiple-Family Residential, Medium Density (RM) zoning to the west and south, and Single-family residential (R-1-A) to the east and south; both the RM and R-1 districts have height limits of 35 feet. Single-family zoning is limited to a single unit per property, while the RM zoning allows a maximum density of 12 du/ac. The Central Core sub-district of the CBD is adjacent to the north with a height limit of 54 feet and four stories.

Consideration is needed regarding whether the proposed amendments, as presented, achieve compliance with or meet the intent of the identified GOPs, particularly related to compatibility with adjacent properties. The density increase that was allowed in the LDRs prior to 2015 was limited to those areas of the Railroad Corridor Subdistrict west of the FEC railway. The increase in height to 60 feet that was allowed in the LDRs prior to 2015 was limited to properties not located within 150 feet of a zoning district with a maximum height of 35 feet. The proposed amendment seeks to apply the increased density and height throughout the southern portion of the Railroad Corridor Sub-district, regardless of proximity to zoning districts with a lower scale of development, and in areas that were not afforded this scale or intensity of development in the past.

In addition, the request to increase building height to 60 feet is further extended by the proposed additional 10 feet for rooftop structures, resulting in a total potential building height of 70 feet within the Railroad Corridor Sub-district – in some areas across the street from and facing single family homes. While rooftop structures are limited to no more than 25% of the total roof area, careful consideration was provided when the rooftop regulations were initially adopted in 2018. The intent is to provide attractive rooftop amenities desired in the downtown while maintaining an appropriate height and mitigating potential impacts on neighboring developments, regardless of the use or zoning district.

Other “Community benefits”, in addition to the provision of the proposed Workforce Housing units, should also be considered, such as, high-level green building certifications (currently new buildings within the CBD with more than 50,000 square feet require a Silver level certification), additional civic open space, provisions for public parking, a higher percentage or range of workforce units price points serving a wider range of income brackets, etc.

Properties within the CBD Railroad Corridor Sub-district have a land use designation of Commercial Core (CC), which is limited in intensity by a Floor Area Ratio (FAR) of 3.0. The surrounding land use designations of Medium Density (MD) and Low Density (LD) are limited in scale and massing based on the allowed density and the development standards in the LDRs, including height, setbacks, and lot coverage.

The following Objective and Policies are to be considered with the proposed density increase and associated workforce housing requirement, to determine whether the proposed amendments meet their intent:

### **Housing Element**

**Objective HOU 3.2 Expansion of the Housing Supply** *Expand the housing supply by allowing different unit types in a variety of locations for all income levels.*

**Policy HOU 3.2.1** *Allow a variety of housing types to reflect the needs of all household types, including both rental and ownership opportunities for single people, couples, families, seniors, persons with disabilities and multi-generational families.*

**Policy HOU 3.2.2** *Establish and regularly reassess criteria for requiring workforce housing units in new development (either on-site or through participation in a housing program) based upon proposed development density, intensity, and size. Policy HOU 6.1.2 Encourage income diversity by requiring a mix of unit types in new development.*

**Policy HOU 6.1.3** *Promote mixed income development in areas with access to amenities including parks, recreational and cultural facilities, transit services, employment centers and healthcare services.*

**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.*

**Policy HOU 6.4.10** *Encourage a shared responsibility for the private sector to address workforce housing needs by offering incentives.*

The proposed density change will increase the current maximum of 30 du/ac for market rate units to 80 du/ac, provided that 20% of the additional units are reserved as Workforce Housing units at the moderate level. For their companion request to develop a 1.43-acre parcel, the applicant cites the number of units allowed would increase from 42 to 114 – an increase of 72 units. 20% of the 72 units results in a requirement for 15 units to be Workforce Housing at the moderate level. 15 units is approximately 13% of the overall number of units. The moderate level is 80-120% of the Average Median Income (AMI), currently \$79,100 for Palm Beach County. Under the current AMI, the moderate level range for a family of 4 is a total household income of \$70,240 – 105,360 with a rental range of \$1,827 – 2,740 for a 3-bedroom unit. Given the considerable density increase (271% increase), consideration should be given to both the proposed percentage of Workforce housing and the proposed income level as well as the context of the location. The West Atlantic Sub-district has not had the number of new private, market rate residential development as the core area of downtown has had in the last 10 years, raising the question of whether an incentive in the Railroad Corridor Sub-district should require a higher percentage of workforce units and/or a wider range of income levels, such as the very low (up to 60% AMI) and low (61% - 80% AMI).

It is important to note that requests for an increased density require a recommendation by the applicable site plan review Board (either Site Plan Review and Appearance Board or Historic Preservation Board) to the City Commission; the final action would be taken by the City Commission.

### **Automated Parking Structures**

While the amendment maintains the use of automated parking structures within the Railroad Corridor Sub-district, the initial inclusion of automated parking structures as a use was focused to a much smaller area so that impacts, such as noise and traffic could be observed prior to a wider application. To date, one structure has been approved, but has not been constructed. The additional location proposed would expand the direction from 2019. There are certain requirements associated with this use that strive to mitigate traffic



impacts and allow architectural deviations related to the function in exchange for the incorporation of solar panels into the design. Additional considerations, such as the orientation of the facility, whether it faces a residential zoning district, and compatibility with the surrounding neighborhood may necessary under this expansion.

#### Additional Height and Stories

The current requirement for height and stories is 54 feet and four stories; the proposal is to increase the building height by an additional six feet to 60 feet, while increasing the number of stories to six. The CBD regulations specify that “stories are measures from the finished floor to finished ceiling” and minimum story heights for buildings are as follows:

- the ground story of commercial or mixed-use buildings shall be a minimum of 12 feet tall;
- the ground story of residential buildings shall be a minimum of ten feet tall; and
- each story above the ground story in all buildings must be at least nine feet tall.

The proposed building height and number of stories raises concerns of the ability to meet the minimum required story heights in the code. Tall ceilings provide a high standard of development and foster the adaptive re-use of buildings over time. A six-story building with a ground story 10 feet tall plus five upper stories of nine feet each, leaves just five feet, or approximately 10 inches, to accommodate the structural and mechanical components between floors, as well as the roof of the building.

#### Considerations

The Board should consider the following in reviewing the subject request:

- Additional height (from 54 feet to 60 feet and 4 stories to 6 stories) and density (from 30 to 80 du/ac) in the Railroad Corridor Sub-district is a shift in policy in an area where these options have not previously been available.
- Additional Workforce Housing Units are needed in Delray Beach to accommodate residents and attract a workforce who can live, work, and play here; is the proposed percentage of units (20% of the bonus density) and income level (80%-120% AMI) appropriate for the proposed increase in height and density?
- Other community benefits could be included in the requested height and density provisions.
- The requested reduced setbacks above the 3<sup>rd</sup> story add to the building scale and mass; increases in setbacks to the current requirement could help reduce impacts to the adjacent residential zoning districts where the maximum height is 35 feet.
- Additional height of rooftop structures extends the proposed building height up to 70 feet.

#### Review By Others

The proposed LDR Amendments have been reported to the **Community Redevelopment Agency (CRA)**.

The **City Commission** review of the proposed LDR Amendments has not yet been determined.

#### Alternative Actions

- Recommend **approval** to the City Commission of Ordinance No. 52-20, a privately-initiated request to amend the Land Development Regulations (LDR) Section 4.4.13, Central Business District (CBD), regarding automated parking garages, height of rooftops, maximum number of building stories and height, upper story front setbacks, and density within the Railroad Corridor Sub-district, by finding that the amendment and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in Land Development Regulations.
- Recommend **approval, as amended**, to the City Commission of Ordinance No. 52-20, a privately-initiated request to amend the Land Development Regulations (LDR) Section 4.4.13, Central Business District (CBD), regarding automated parking garages, height of rooftops, maximum number of building stories and height, upper story front setbacks, and density within the Railroad Corridor Sub-district, 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.
- Recommend **denial** to the City Commission of Ordinance No. 52-20, a privately-initiated request to amend the Land Development Regulations (LDR) Section 4.4.13, Central Business District (CBD), regarding automated parking garages, height of rooftops, maximum number of building stories and height, upper story front setbacks, and density within the Railroad Corridor Sub-district, 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.

#### Public and Courtesy Notices

☒ Courtesy Notices were provided to the following via email, at least 5 working days prior to the meeting:

- Chamber of Commerce
- Osceola Park Neighborhood Association

N/A Public Notices are not required for this request.