

ORDINANCE NO. 03-21

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF DELRAY BEACH BY AMENDING CHAPTER 4, "ZONING REGULATIONS," ARTICLE 4.4, "BASE ZONING DISTRICT," SECTION 4.4.13, "CENTRAL BUSINESS (CBD) DISTRICT", BY AMENDING SUBSECTION (C), "ALLOWABLE USES," TO EXPAND THE AREAS WHEREIN AUTOMATED PARKING GARAGES ARE A PERMISSIBLE USE; BY AMENDING SUBSECTION (D), "CONFIGURATION OF BUILDINGS," TO ADD THE RAILROAD CORRIDOR SUB-DISTRICT OF THE CENTRAL BUSINESS DISTRICT AS AN EXCEPTION TO STANDARD BUILDING HEIGHT REGULATIONS OF THE CENTRAL BUSINESS DISTRICT; BY AMENDING TABLES 4.4.13(B), "BUILDING HEIGHT," AND 4.4.13(C), "DIMENSIONAL REQUIREMENTS BY CBD SUB-DISTRICT", TO INCREASE THE MAXIMUM NUMBER OF STORIES ALLOWED IN THE RAILROAD CORRIDOR SUB-DISTRICT SOUTH OF SE 2ND STREET; BY AMENDING SUBSECTION (H), "INCENTIVE PROGRAM," TO REQUIRE THE PROVISION OF WORKFORCE HOUSING FOR A DENSITY INCREASE ABOVE 30 DWELLING UNITS PER ACRE WITHIN THE RAILROAD-CORRIDOR SUB-DISTRICT SOUTH OF SE 2ND STREET; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, a privately initiated amendment to the Land Development Regulations (LDR) of the City of Delray Beach, Code of Ordinances, was submitted by Dunay, Miskel, Backman, LLP, on behalf of 1<sup>st</sup> Avenue Capital 301 LLC; and

WHEREAS, the amendment seeks to add an exception to the standard maximum number of stories, and density for the Central Business District for the southern portion of the Railroad Corridor Sub-district of the Central Business District (CBD), which is generally bound by SE 2<sup>nd</sup> Street to the north, SE 1<sup>st</sup> Avenue to the west, SE 4<sup>th</sup> Street to the south, and SE 3<sup>rd</sup> Avenue to the east, and to expand the areas wherein automated parking garages are a permissible use; and

WHEREAS, pursuant to Florida Statutes 163.3174(4)(c), the Planning and Zoning Board for the City of Delray Beach, sitting as the Local Planning Agency, reviewed the proposed text amendments to the Land

Development Regulations (as Ordinance No. 52-20) at a public hearing on November 16, 2020, and voted 6 to 1 to recommend that the proposed text amendments be denied, finding that the request and approval thereof is inconsistent with the Comprehensive Plan and does not meet the criteria set forth in the Land Development Regulations; and

WHEREAS, the City Commission of the City of Delray Beach finds the Ordinance is consistent with the Comprehensive Plan and in the best interests of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. That the recitations set forth above are incorporated herein.

Section 2. That Section 4.4.13, “Central Business (CBD) District,” Subsection (C), “Allowable uses,” Subsection (4), “Supplemental use standards,” of the Land Development Regulations of the City of Delray Beach, Florida, be and the same is hereby amended as follows:

(4) ***Supplemental use standards.***

(a) – (c) (These subsections shall remain in full force and effect as adopted.)

(d) ***Railroad Corridor Sub-district Supplemental Use Standards.*** The following supplemental district regulations apply in the Railroad Corridor Sub-district:

1. ***Outdoor uses:*** Within the Railroad Corridor Sub-district, except for outside storage approved pursuant to Section 4.6.6(C)(2) and outdoor dining, all principal and conditional uses shall be conducted within an enclosed building.
2. ***Automobile brokerages:*** Inventory must only be located within an enclosed building. Automobiles which are part of the business inventory must not be placed in parking areas.
3. ***Parking garages, automated:*** Automated parking garages are allowed on Secondary Streets ~~located north of NE 2<sup>nd</sup> Street~~. Automated parking garages are subject to the following requirements:
  - a. A traffic statement must be provided 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.
  - b. An attendant must be on-site during all hours of operation, defined as any time the parking garage is accessible for parking purposes by the public, and the garage must be secured when not accessible for parking purposes. An attendant is not required if the parking garage is limited to private use. i.e, not available to the general public.
  - c. 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, in accordance with the fee schedule in Section 4.6.19(E)(5)(d).

- d. The 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 in Section 4.4.13(F) require City Commission approval.

(e) – (g) (These subsections shall remain in full force and effect as adopted.)

Section 3. That Section 4.4.13, “Central Business (CBD) District,” Subsection (D), “Configuration of buildings,” Subsection (1), “Standards for CBD,” of the Land Development Regulations of the City of Delray Beach, Florida, be and the same is hereby amended as follows:

- (1) ***Standards for CBD.*** The following building configuration standards apply to all CBD Sub-districts:

- (a) ***Building height.*** Unless otherwise specified herein, the height of buildings shall be measured in and regulated by the number of stories and the maximum overall building height (See Table 4.4.13(C)). Stories are measured from the finished floor to finished ceiling. (See Figure 4.4.13-10).
  1. Within the Atlantic Avenue Limited Height Area, maximum overall building height is 38 feet and maximum building height in number of stories is three. The Atlantic Avenue Height Limit Area is defined as those properties, or portions of properties, located within 125 feet north or south of the East Atlantic Avenue right-of-way line, between Swinton Avenue and the Intracoastal Waterway. (See Figure 4.4.13-5).
  2. Within the West Atlantic Neighborhood Limited Height Area, the maximum overall building height in feet is 35 feet and the maximum number of stories is three. The West Atlantic Neighborhood Limited Height Area is required for those properties rezoned from Single-family Residential (R-1-A) to Central Business District.
  3. Except within limited height areas and the Railroad Corridor Sub-district south of SE 2<sup>nd</sup> Street, the maximum overall building height in feet is 54 feet and maximum building height in number of stories is four.

4. - 12. (These subsections shall remain in full force and effect as previously adopted).

(b) - (e) (These subsections shall remain in full force and effect as previously adopted).

Section 4. That Section 4.4.13, “Central Business (CBD) District,” Subsection (D), “Configuration of buildings,” Subsection (1), “Standards for CBD”, Table 4.4.13(B), “Building Height,” of the Land Development Regulations of the City of Delray Beach, Florida, be and the same is hereby amended as follows:

Table 4.4.13(B) Building Height		
A	Maximum Building Height in the Atlantic Avenue Limited Height Area	3 stories and 38 ft.
	Maximum Building Height in the West Atlantic Neighborhood Limited Height Area	3 stories and 35 ft.
	Maximum Building Height outside of the Atlantic Avenue Limited Height Area	4 stories and 54 ft.
	<u>Maximum Building Height in the Railroad Corridor Sub-district south of SE 2<sup>nd</sup> Street</u>	<u>5 stories and 54 ft.</u>
B	Ground Floor Finish Level	
	Residential Units in the Beach, Central Core, and Railroad Corridor Sub-districts	18" min.
	Residential Units in the West Atlantic Neighborhood Sub-district	12" min.
C	Ground Story Height	
	Commercial and Mixed-Use Buildings, with ground floor commercial uses.	12 ft. min.
	Residential Buildings	10 ft. min.
D	Upper Story Height	9 ft. min.
E	Additional Setback Above 3 <sup>rd</sup> Story	varies

Section 5. That Section 4.4.13, “Central Business District (CBD)”, Subsection (D), “Configuration of buildings,” Subsection (2), “Dimensional requirements for CBD Sub-district,” Table 4.4.13(C), “Dimensional requirements for CBD Sub-district,” of the Land Development Regulations of the City of Delray Beach, Florida, be and the same is hereby amended as follows:

Table 4.4.13 (C) Dimensional Requirements by CBD Sub-district					
		Central Core	Railroad Corridor	Beach	West Atlantic Neighborhood
<i>Lot Size</i>					
Lot Width		20 ft. min.	20 ft. min.	20 ft. min.	20 ft. min.
Lot Area		2000 sf. min.	2000 sf. min.	2000 sf. min.	2000 sf. min.
<i>Building Placement</i>					
<i>A</i>	Front Setback <sup>1</sup>	10 ft. min./ 15 ft. max.	10 ft. min./ 15 ft. max.	10 ft. min./ 15 ft. max.	10 ft. min./ 15 ft. max.

Table 4.4.13 (C) Dimensional Requirements by CBD Sub-district					
		Central Core	Railroad Corridor	Beach	West Atlantic Neighborhood
<b>B</b>	Side Setback <sup>1</sup>	0 ft. or 5ft. min. <sup>2</sup>	0 ft. or 5 ft. min. <sup>2</sup>	0 ft. or 5ft. min. <sup>2</sup>	0 ft. or 5ft. min. <sup>2</sup>
<b>C</b>	Rear Setback	10 ft. min.	10 ft. min.	10 ft. min.	10 ft. min.
<b>B C</b>	Side Setback Abutting Res. District; 1 <sup>st</sup> to 3 <sup>rd</sup> Story	10 ft. min.	10 ft. min.	10 ft. min.	10 ft. min.
<b>B C</b>	Side/Rear Setback Abutting Res. District Above 3 <sup>rd</sup> Story	30 ft. min.	30 ft. min.	30 ft. min.	30 ft. min.
<b>D</b>	Front Setbacks Above 3 <sup>rd</sup> Story <sup>1</sup>	20 ft. min.	20 ft. min.	20 ft. min.	20 ft. min.
<b>E</b>	Building Frontage Required on Primary Streets	75% min./100% max.	N/A	75% min./100% max.	75% min./100% max.
<b>Building Height</b>					
Min. Building Height on Primary Streets		1 Story and 18 ft.	1 Story	1 Story and 18 ft.	1 Story
Max. Building Height in Atlantic Avenue Limited Height Area		3 Stories and 38 ft.	N/A	N/A	N/A
Max. Building Height in West Atl. Neigh. Limited Height Area		N/A	N/A	N/A	3 stories and 35 ft
Max. Height outside of the Atlantic Avenue Limited Height Areas		4 Stories and 54 ft.	4 Stories and 54 ft. <u>north of NE 2<sup>nd</sup> Street; 5 stories and 54 ft. south of SE 2<sup>nd</sup> Street.</u>	4 Stories and 54 ft.	4 Stories and 54 ft.
<b>Density</b>					
Density		30 du/ac	30 du/ac	12 du/ac	12 du/ac <sup>3</sup>
<b>Civic Open Space Requirement (See Section 4.4.13(G))</b>					
Sites smaller than 20,000 sq._ft.		0%	0%	0%	0%
Sites Between 20,000 and 40,000 sq. ft.		5% of area above 20,000	5% of area above 20,000	5% of area above 20,000	5% of area above 20,000
Sites Greater than 40,000 sq. ft.		5% of area above 20,000 + 9% of area above 40,000	5% of area above 20,000 + 9% of area above 40,000	5% of area above 20,000 + 9% of area above 40,000	5% of area above 20,000 + 9% of area above 40,000

N/A is "Not Applicable"

<sup>1</sup> Side lot lines facing streets are regulated by front setback requirements. Side lot lines along alleys are regulated by rear setbacks.

<sup>2</sup> See Section 4.4.13(D)(1)(b)(2).

<sup>3</sup> See Incentive Program in Section 4.4.13(H) for potential density increases pursuant to certain location and performance criteria.

Section 6. That Section 4.4.13, “Central Business District (CBD),” Subsection (H), “Incentive program,” of the Land Development Regulations of the City of Delray Beach, Florida, be and the same is hereby amended as follows:

(H) ***Incentive program.*** Certain incentives may be offered from time to time to encourage development that advances City strategic, policy-driven goals, such as diverse residential housing opportunities, sustainable building practices, historic preservation, public parking, civic open space, or office uses within the CBD. The specific incentives and required performance criteria are set forth in this section and may be revised or amended after seeking community input and in response to factors such as update to the Downtown Master Plan, changing conditions within the CBD, transportation impacts, or market and/or demographic shifts. Any incentives shall be broad based and applicable within the entire CBD or CBD sub-district, no incentives programs shall be considered on a case-by-case basis or project-by-project basis.

(1) ***Residential Incentive Program.*** 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. The maximum density allowed by Table 4.4.13(C) in certain CBD Sub-districts may only be increased in the locations described below. The required Performance Standards are set forth in Section 4.4.13(H)(2).

- (a) Density may be increased over 12 du/ac (up to 30 du/ac) within the West Atlantic Neighborhood Sub-district.
- (b) Properties located within a historic district or on individually designated sites as listed on the Local Register of Historic Places in Section 4.5.1(I) are not eligible to use the Residential Incentive Program, except properties that meet the criteria in (c) below.
- (c) Properties located within the West Atlantic Neighborhood Sub-district that are also located within the West Settlers Historic District may utilize the Residential Incentive Program to increase the density to over 12 du/ac (up to 20 du/ac) if the following criteria is met:
  - 1. The property is located between West Atlantic Avenue and NW 1<sup>st</sup> Street; and,
  - 2. The property does not contain a contributing structure;
  - 3. The property does not contain a non-contributing structure that is at least 30 years old, from the original date of construction;
  - 4. If the property is vacant, it has not contained a structure on the site for at least 15 years.

(d) Density may be increased over 30 du/ac (up to 70 du/ac) within the Railroad Corridor Sub-district south of SE 2<sup>nd</sup> Street.

(2) ***Performance standards for density increases.*** Projects ~~which~~ proposing to increase density from the base amount allowed in the West Atlantic Neighborhood Sub-district or the Railroad Corridor Sub-district shall provide workforce housing units. Workforce housing units, equal to at least 20 percent of the bonus density 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.

(3) ***Approval process for incentives.***

- (a) Applications to utilize the Incentive Program will be reviewed as part of a Class V site plan by the SPRAB or HPB for compliance with the regulations in this code that direct building configuration, uses, open space, streetscape design, parking location and quantity, and the performance standards in Section 4.4.13(H)(2). The SPRAB or HPB will make a recommendation to the City Commission on the entire Class V site plan before the City Commission takes final action to approve or deny the site plan and the increased density.
- (b) Applications must include, in addition to the standard application items of 2.4.3(A), a site and development plan (including landscaping, elevations, and floor plans) of sufficient detail to determine that the applicable development and performance standards are being met.

Section 7. Should any section or provision of this Ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

Section 8. All ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.

Section 9. Specific authority is hereby given to codify this Ordinance.

Section 10. This Ordinance shall become effective immediately upon its adoption on second and final reading.

PASSED AND ADOPTED in regular session on second and final reading on this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

ATTEST:

\_\_\_\_\_  
Katerri Johnson, City Clerk

\_\_\_\_\_  
Shelly Petrolia, Mayor

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

Approved as to form and legal sufficiency:

\_\_\_\_\_  
Lynn Gelin, City Attorney