

ORDINANCE NO. 21-21

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF DELRAY BEACH CODE OF ORDINANCES, BY AMENDING CHAPTER 2, "ADMINISTRATIVE PROVISIONS," ARTICLE 2.2, "ESTABLISHMENT OF BOARDS HAVING RESPONSIBILITIES FOR LAND DEVELOPMENT REGULATIONS," SECTION 2.2.4, "THE BOARD OF ADJUSTMENT," TO REVISE THE BOARD COMPOSITION REQUIREMENTS AND DUTIES OF THE BOARD OF ADJUSTMENT; PROVIDING A CONFLICTS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AUTHORITY TO CODIFY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Land Development Regulations ("LDR") of the City of Delray Beach ("City") Code of Ordinances provide authority for the City Commission to amend, change, supplement, or repeal the LDR from time to time; and

WHEREAS, pursuant to LDR Section 2.2.4(B), "Composition," the Board of Adjustment ("Board") currently consists of five regular members and two alternate members; and

WHEREAS, amending the Board composition to change the alternate members to regular members will improve Board operations and increase the ability to achieve quorum; 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, considered this item at a public hearing on September 20, 2021; and voted 7 to 0 to recommend these proposed text amendments be approved, finding the request and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in the Land Development Regulations; and

WHEREAS, the City Commission of the City of Delray Beach finds that Ordinance No. 21-21 is consistent with the Comprehensive Plan and meets the criteria set forth the Land Development Regulations.

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

Section 1. The recitations set forth above are incorporated herein.

Section 2. Section 2.2.4, "The Board of Adjustment," of the Land Development Regulations of the City of Delray Beach Code of Ordinances is hereby amended as follows:

- (A) ***Creation.*** A Board of Adjustment for the City of Delray Beach is hereby created under the authority of the City Charter Section 3.14.
- (B) ***Composition.***
- (1) The Board of Adjustment shall consist of ~~five~~ seven regular members. ~~In addition, there shall be two alternate members. In the absence of a regular member, an alternative member shall be called to sit, and act in lieu of the regular member, by the Chairperson of the Board.~~
 - (2) Each of ~~three~~ four seats on the Board must be filled with either an attorney, architect, landscape architect, realtor/real estate broker, engineer, general contractor, or land planner, building inspector, fire safety professional, or other design professional who is familiar with Florida Building Code. The remaining ~~two~~ three seats ~~shall~~ may be at large. The appointing body shall endeavor to appoint as many disciplines as possible to the Board. If there is a lack of applicants to fill the seats reserved for professionals, at large members may be considered.
- (C) ***Meetings and quorum.***
- (1) The Board of Adjustment shall hold ~~two~~ at least one regularly ~~scheduled business~~ meeting each month with said meeting being duly noticed and held in the evening hours. However, the required regular meetings shall be canceled if there are no petitions before the Board.
 - (2) A quorum of the Board consists of ~~four~~ five members. The concurring vote of ~~four~~ five members shall be necessary to ~~decide in favor of an applicant with respect to reversing reverse~~ a decision of the Chief Building Official ~~or the granting of a variance.~~
 - ~~(3) The Chairperson may administer oaths and compel the attendance of witnesses.~~
 - (3) An applicant seeking retroactive approval will be scheduled for the first available meeting and is prohibited from requesting an alternate meeting date.
- (D) ***Duties, powers, and responsibilities.***
- (1) The Board hereby has the authority to hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made by the Chief Building Official, with the exception of interpretations of use matters and other items specifically preempted or granted to others pursuant to these ~~Land Development Regulations~~ LDR.
 - (2) The Board, so long as its actions are in conformity with the ~~terms of these Land Development Regulations~~ LDR, may reverse or affirm, wholly or partly, or may modify the order, requirement, or decision, or determination ~~appealed from under appeal, and may make such order, requirements, decision, or determination as ought to be made,~~ and to that end shall have

the same powers of the Chief Building Official ~~from whom the appeal is taken.~~

- (3) The Board has the authority to take action on duly filed appeals ~~with respect to the action of the Chief Building Official concerning~~ of an interpretation, administration-administrative decision, or enforcement action of the following by the Chief Building Official related to the following regulations:
- (a) Building Code, Article 7.1, except Sections 7.1.5 through 7.1.7;
 - (b) Electrical Code, Article 7.2;
 - (c) Gas Code, Article 7.3;
 - (d) Housing eCode, Article 7.4;
 - (e) Mechanical Code, Article 7.5;
 - (f) Plumbing eCode, Article 7.6;
 - (g) ~~Elimination or Repair of Unsafe Buildings or Structures,~~ Article 7.8;
 - (h) Moving of Building, Article 7.10.
- (4) The Board hereby has the authority to grant variances and hear appeals from the following provisions of:
- (a) ~~The General Development Standards set forth in Section 4.3. Base district development standards, Section 4.3.4, unless otherwise stated.~~
 - (b) ~~Regulations found in the Flood Damage Control Overlay Districts and Coastal Construction, Chapter 10.~~
 - (c) ~~The sSupplemental dDistrict rRegulations, (Article 4.6), except where said authority is expressly prohibited, or granted to others, or relief is available through another process.~~
 - (d) Fire Prevention Codes, Chapter 96 of The City Code of Ordinances, per Section 96.06.
 - (e) ~~"District Regulations and Incentives" in Section I, "District Regulations and Incentives,"~~ of the Beach Property Owners Design Manual for the North Beach and Seagate Neighborhoods as set forth in Section 4.5.13.

- (5) ~~The Board has the authority to grant variances to the Noise Code pursuant to City Code Section 99.30.~~
- (65) The Board shall be prohibited from considering variances for the following:
- (a) ~~Uses~~ variances;
 - (b) ~~a~~ Architectural elevations;
 - (c) ~~H~~ Landscaping plans;
 - (d) ~~Variances for s~~ Signs and signage;
 - (e) ~~Any variance action within a designated Historic Preservation District or upon a Historic Site. Any property under the purview of the Historic Preservation Board; and~~
 - (f) ~~Variances to~~ Density and height regulations; and
 - (g) Comprehensive Plan requirements.
- (76) To provide "good offices" and assistance to other governmental boards, commissions, and committees in the fulfillment of goals, objectives, and policies of the Comprehensive Plan.
- (87) All decisions of the Board of Adjustment are final. Any person or persons, or any Board, Taxpayer, Department, ~~Board~~, or Bureau of the City may aggrieve any decision of the Board of Adjustment and may seek review of such decision in the Circuit Court of Palm Beach County.

Section 3. All ordinances or parts of ordinances in conflict herewith be, and the same are hereby, repealed.

Section 4. Specific authority and direction is hereby given to the City Clerk to codify this Ordinance.

Section 5. 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 6. This Ordinance shall become effective immediately upon its passage 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

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney

First Reading _____

Second Reading _____