



## Legislation Details (With Text)

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**Title:** ORDINANCE NO. 06-19: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, REZONING AND RE-DESIGNATING LAND PRESENTLY ZONED COMMUNITY FACILITIES (CF) DISTRICT TO CENTRAL BUSINESS (CBD) DISTRICT, WITHIN THE CENTRAL CORE SUB-DISTRICT; SAID LAND IS LOCATED AT THE SOUTHWEST CORNER OF EAST ATLANTIC AVENUE AND SE 3RD AVENUE, AS MORE PARTICULARLY DESCRIBED HEREIN; AMENDING "CITY OF DELRAY BEACH, ZONING MAP, JUNE 29, 2017" AND FURTHER AMENDING THE CENTRAL CORE SUB-DISTRICT AND REGULATING MAPS IN SECTION 4.4.13, LAND DEVELOPMENT REGULATIONS ACCORDINGLY; PROVIDING A CONFLICTS CLAUSE, AND A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES. (SECOND READING/PUBLIC HEARING)

**Sponsors:** Development Services Department

**Indexes:**

**Code sections:**

**Attachments:** 1. Agenda Cover Report, 2. Current Zoning Map, 3. Proposed Zoning Map, 4. PZB Staff Report, 5. Public Notice Provided with PZB action, 6. Ord 06-19, 7. Iplic Ltr to Delray 4.26.19, 8. Porten Companies letter of support, 9. Tin Roof letter of support

| Date      | Ver. | Action By       | Action   | Result |
|-----------|------|-----------------|----------|--------|
| 5/21/2019 | 1    | City Commission | approved |        |

**TO:** Mayor and Commissioners  
**FROM:** Timothy Stillings, Development Services Director  
**THROUGH:** Neal de Jesus, City Manager  
**DATE:** May 21, 2019

ORDINANCE NO. 06-19: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, REZONING AND RE-DESIGNATING LAND PRESENTLY ZONED COMMUNITY FACILITIES (CF) DISTRICT TO CENTRAL BUSINESS (CBD) DISTRICT, WITHIN THE CENTRAL CORE SUB-DISTRICT; SAID LAND IS LOCATED AT THE SOUTHWEST CORNER OF EAST ATLANTIC AVENUE AND SE 3<sup>RD</sup> AVENUE, AS MORE PARTICULARLY DESCRIBED HEREIN; AMENDING "CITY OF DELRAY BEACH, ZONING MAP, JUNE 29, 2017" AND FURTHER AMENDING THE CENTRAL CORE SUB-DISTRICT AND REGULATING MAPS IN SECTION 4.4.13, LAND DEVELOPMENT REGULATIONS ACCORDINGLY; PROVIDING A CONFLICTS CLAUSE, AND A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES. (SECOND READING/PUBLIC HEARING)

### Recommended Action:

Consider Ordinance No. 06-19, rezoning from Community Facilities (CF) to Central Business (CBD) District a 0.433± acre parcel of land located at the southwest corner of East Atlantic Avenue and SE 3<sup>rd</sup> Avenue.

### **Background:**

On February 12, 2019, a motion to approve Ordinance No. 05-19 failed 1-4, with Deputy Vice Mayor Johnson, Mayor Petrolia, Vice Mayor Frankel, and Commissioner Bathurst dissenting. On March 12, 2019, Vice Mayor Frankel moved to reconsider this item. The motion carried with a vote of 4-1, Mayor Petrolia dissenting.

The subject property measures approximately 0.433± acres. The rezoning request is in conjunction with a future land use map amendment request from Community Facilities (CF) to Commercial Core (CC).

Prior to 1990, the subject property was zoned CBD and was rezoned to CF with the citywide rezoning in October 1990. City records shows that the parcel was previously designated Community Facilities-Recreation (CF-R) on the Future Land Use Map. In 2004 the "Recreation" suffix was removed, and the parcel has remained CF.

In November 2010, the City commission approved a conditional use to allow the establishment of a commercial "for pay" parking lot to be operated jointly for utilization for SunTrust Bank customers and paying patrons.

### **ZONING ANALYSIS:**

Pursuant to LDR Section 2.4.5(D) Change of Zoning District Designation (1): Rule. The City Commission, by ordinance, after review and recommendation for approval by the Planning and Zoning Board may amend the Official Zoning Map; and, (2) Required Information, a statement of the reasons for the requested zoning change are included in the application. Valid reasons for approving a change in zoning include

- A. That the zoning had previously been changed, or was originally established, in error;
- B. That there has been a change in circumstance which makes the current zoning inappropriate;
- C. 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 applicant has cited criteria (C) as the reason for the requested rezoning. Once the FLUM amendment is approved, the requested zoning will be of a similar intensity as allowed under the Future Land Use Map and the proposed CBD zoning designation is more appropriate for the property based upon circumstances particular to the site and neighborhood.

In addition to criteria (C), staff finds that criteria (B) also applies to this parcel. As indicated previously, prior to 1990 the site was zoned CBD; the CF designation was applied to the property with the 1990 citywide rezoning. Further, the property was identified in the Delray Beach Downtown Master Plan as a potential site for a train/transit station. With the recent approval of the Delray Beach Tri-Rail Coastal Link Transit-Oriented Development Master Plan for properties north of East Atlantic Avenue, a CF zoning is no longer warranted.

The Purpose and Intent of the CBD Zoning District states "The Central Business District (CBD) is established to preserve and protect the cultural and historic aspects of downtown Delray Beach and simultaneously provide for the stimulation and enhancement of the vitality and economic growth of this special area. The CBD is generally applied to the land areas

designated as Commercial Core on the Future Land Use Map.”

The subject property is located within the Central Core. The LDR states: “The Central Core Sub-district regulations are intended to result in development that preserves the downtown's historic moderate scale, while promoting a balanced mix of uses that will help the area evolve into a traditional, self-sufficient downtown. Residential development is permitted at a density which fosters compact, pedestrian oriented growth that will support downtown businesses”

The requested zoning is more appropriate for the property, given its location within the center of the CBD Central Core Sub-district. The requested rezoning will allow for development that meets the purpose and intent of the CBD with a mix of uses that will promote a self-sufficient downtown.

Pursuant to LDR Section 2.4.5(D) Change of Zoning Designation. (5), Findings., in addition to provisions of Chapter Three, the City Commission must make a finding that the rezoning fulfills at least one of the reasons listed under Subsection (2). A review of Subsection (2) is provided above.

Pursuant to LDR Section 3.1.1, Required Findings, *prior to approval of Land Use applications, certain findings must be made in a form which is 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. These findings relate to the Future Land Use Map (FLUM), Concurrency, Comprehensive Plan Consistency, and Compliance with the Land Development Regulations.*

(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 proposed CBD zoning designation is consistent with the proposed CC FLUM designation which will permit the commercial uses planned for the subject site. Therefore, positive findings are made with respect to Future Land Use Map consistency if the proposed FLUM designation is approved.

B) Concurrency: *Development at the highest intensity possible under the requested designation can meet the adopted concurrency standards.*

For Concurrency, development at the highest intensity possible under the requested designation were reviewed with respect to traffic, water and sewer, drainage, parks and recreation, solid waste, and school capacity determination are evaluated below.

Sufficient capacity exists to meet water and sewer service demands for the subject property. However, the extension of an eight inch water main is required along SE 3<sup>rd</sup> Avenue.

For streets and traffic, the property will be accessed via a new driveway from SE 3<sup>rd</sup> Avenue. The traffic study indicates 541 net new external trips, 41 net new AM peak hour trips and 43 net new PM peak hour trips. The subject property is located within the TCEA (Traffic Concurrency Area of Exception); and while exempt from traffic concurrency requirements, the

Palm Beach County Traffic Division has issued a traffic performance standards approval letter for the proposed 16,726 sq. ft. of general office and 5,239 sq. ft. of commercial retail.

No anticipated problems are identified with drainage. Concurrency with respect to parks and recreation and school capacity determination is not required. The generation of solid waste is based on specific land use and building area and such determination will be made once a specific development proposal has been submitted.

Based on the above, positive findings are made with regard to Concurrency for all services and facilities.

*(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.*

LDR Section 3.2.2, Standards for Rezoning Actions provides five standards that must be considered for rezoning of property, listed as follows:

- ❑ 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 rezoning to a different zoning designation, other than Community Facilities, Open Space, Open Space and Recreation, or Conservation shall be denied.

This standard is not applicable as the subject property does not lie within a “stable” or “stabilization” area as identified on the Residential Neighborhood Categorization Map.

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

This standard is not applicable.

- ❑ 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.

This standard is not applicable as the CBD standards do not allow strip commercial development.

- ❑ 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 following table identifies the zoning designations and uses that are adjacent to the subject property:

|                     |     |                                 |
|---------------------|-----|---------------------------------|
| Zoning Designation: |     | Use:                            |
| North:              | CBD | Restaurants: Browns & Luigi's C |
|                     | CBD | Retail: Wings                   |
| South:              | CF  | Parking Lot                     |
| East:               | CBD | Bank (SunTrust)                 |
| West:               | CBD | Restaurant: Vic Angelo's        |

The proposed zoning district will be compatible with the surrounding CBD properties and provide continuity of the retail streetscape and shopping experience along Atlantic Avenue. The proposed change will reduce the large surface parking area which interrupts the retail fabric of the streetscape and detracts from the pedestrian activity. The following is a comparison of the base district regulations for the CF and CBD zoning district.

| Development Standards                      | Current: CF | Proposed: CBD                                    |
|--------------------------------------------|-------------|--------------------------------------------------|
| Lot Size (minimum sq. ft.)                 | 0 sq. ft.   | 2000 sq. ft.                                     |
| Lot Width (minimum)                        | 0'          | 20'                                              |
| Lot Depth (minimum)                        | 0'          | n/a                                              |
| Lot Frontage (minimum)                     | 0'          | n/a                                              |
| Open Space/ Civic Open Space (min)         | 25%         | 0% for sites smaller than 20,000 sq. ft.         |
| Lot Coverage (maximum)                     | n/a         | n/a                                              |
| Front Setback (minimum)                    | 10'         | 10' min/15' max                                  |
| Side Street Setback (minimum)              | 10'         | 10' <sup>1</sup>                                 |
| Side Interior Setback (minimum)            | 10'         | 0' or 5' <sup>2</sup>                            |
| Rear Setback (minimum)                     | 10'         | 10'                                              |
| Front Setbacks Above 3 <sup>rd</sup> Story | --          | 20' n/a in the limited height area               |
| Maximum Height                             | 48'         | 38' for a depth of 125' south of Atlantic Avenue |

<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>Buildings with openings, including doors, windows, and glass wall materials, facing an interior side property line must setback a minimum of five feet from the property line

Within the CBD, Atlantic Avenue is designated as a primary street. The LDR states "Primary streets are intended to develop overtime as superior pedestrian environments and, as such, are held to higher standards in the regulations regarding building placement, building frontage, and the location of parking and service uses."

Additionally, certain primary streets within the CBD (including Atlantic Avenue) are intended to be

lively, highly active pedestrian environments that support businesses and reinforce local character and as such, are designated as “required retail frontage” streets.

Parking lots are not allowed to front on a primary street. The vision for this area is to encourage uses that promote a lively, highly active pedestrian environment. The existing CF zoning and parking lot hinders the potential for this environment along this block.

Streets designated with required retail frontage are held to stricter standards regarding allowable frontage types and uses located within sidewalk level stories. The CF zoning and the uses allowed therein are contrary to the uses required for properties that are designated as “required retail frontage”.

The subject property is located within the Atlantic Avenue Limited Height Area with a maximum building height of 38 feet for a depth of 125’ south of East Atlantic Avenue.

Proposed development shall comply with the requirement of the CBD with respect to allowed uses, development standards and architectural guidelines. The resulting impact will be in keeping with the Delray Beach Downtown Master Plan as the zoning change will allow for the replacement of a large surface parking lot with a mixed-use development.

- ❑ 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.

This Standard is not applicable.

The attached Planning and Zoning Board Staff Report of December 17, 2018, includes the applicant’s justification and the staff analysis for the requested action.

Review by Others:

Planning and Zoning Board:

On December 17, 2018, on a vote of 5 to 0, the Planning and Zoning Board recommended approval.

City Attorney Review:

Approved as to form and legal sufficiency.

Funding Source/Financial Impact:

N/A

Timing of Request:

N/A