



## Legislation Text

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**TO: Mayor and Commissioners**  
**FROM: Anthea Gianniotis, Development Services Director**  
**THROUGH: Neal de Jesus, Interim City Manager**  
**DATE: November 19, 2019**

ORDINANCE NO. 37-19. AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, ADOPTING A SMALL-SCALE FUTURE LAND USE MAP AMENDMENT FOR THREE (3) PARCELS OF LAND KNOWN AS BANYAN COURT, AND RE-DESIGNATING SAID LAND FROM PALM BEACH COUNTY MEDIUM DENSITY RESIDENTIAL 5 UNITS PER ACRE (MR-5) TO CITY OF DELRAY BEACH MEDIUM DENSITY RESIDENTIAL 5-12 DU/AC (MD), PURSUANT TO THE PROVISIONS OF THE "COMMUNITY PLANNING ACT", FLORIDA STATUTES SECTION 163.3187, SAID LAND IS LOCATED ON THE EAST SIDE OF BARWICK ROAD, AND IMMEDIATELY SOUTH OF LAKE WORTH DRAINAGE DISTRICT L-30 CANAL, AND WHICH MEASURES APPROXIMATELY 6.68± ACRES, AS MORE PARTICULARLY DESCRIBED HEREIN, PROVIDING A CONFLICTS CLAUSE, AND A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES (FIRST READING).

### **Recommended Action:**

Review and consider Ordinance No. 37-19, a privately initiated request for a future land use map (FLUM) amendment for 6.68± acres, from Palm Beach County Medium Residential, 5 du / acre (MR-5) to City of Delray Beach Medium Density Residential, 5-12 du / acre (MD).

### **Background:**

Banyan Court is the project formerly known as "Banyan Cove". Banyan Court is a proposed single-family residential development on 6.68± acres bordered to the north by Canal LWDD L-30; to the east by the Banyan Creek Elementary School; to the south by single family residences located in unincorporated Palm Beach County (the north side of Sabal Lakes Road); and to the west by Bexley Park, a Planned Residential Development (PRD) located within the City of Delray Beach; as well as a single family subdivision known as Golf Club Estates and a single family residence (located south of the L-30 Canal) all located within unincorporated Palm Beach County. The subject property encompasses three parcels: one single-family residence with two accessory structures is located on the northernmost parcel and the remaining two parcels are vacant.

In 2017, the applicant filed an application with Palm Beach County to amend the land use designation from MR-5 to 8 du/acre. During the review process, it was determined by the Delray Beach City Manager, City Attorney, and City Development Services Director that the applicant should file a petition to annex into the City of Delray Beach. In 2018, the applicant filed a petition for annexation into the City, a Future Land Use Map (FLUM) amendment to City MD - Medium Density, 5 -12 du/acre, and a Rezoning to City RM-8 - Multiple-Family Residential to allow 53 townhomes. On October 15, 2018, the Planning and Zoning Board considered the three actions and recommended

approval of the annexation (6-0), the FLUM amendment (6-0), and the rezoning (4-2).

On November 27, 2018, the City Commission approved Ordinance No. 27-18 (annexation) on first reading 3-2 (Johnson and Frankel dissenting).

At the December 12, 2018 City Commission meeting, the applicant requested postponement of the annexation (Ordinance No. 27-18), as well as of the first readings of the accompanying FLUM amendment (Ordinance No. 28-18) and Rezoning (Ordinance No. 29-19).

In early 2019, the applicant resubmitted the request for rezoning, but changed the requested zoning designation to Planned Residential Development, 6 du / acre (PRD-6). On October 21, 2019, the Planning and Zoning Board reviewed the request for rezoning to PRD-6 (as Ordinance No. 38-19) and recommended approval (7-0). The requested rezoning to PRD is accompanied by a Master Development Plan (MDP), which includes three waivers, for 40 zero-lot line single-family residences. The Planning and Zoning Board approved the MDP as a final action at its October 21, 2019 (7-0).

All three actions, annexation, FLUM amendment, and Rezoning are now brought forward for City Commission consideration as 2019 ordinances. This ordinance considers the FLUM amendment.

## Findings

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*. These findings relate to the Future Land Use Map (FLUM), Concurrency, Comprehensive Plan Consistency, and Compliance with the Land Development Regulations.

***Future Land Use Element Policy A-1.7 Amendments to the Future Land Use Map (FLUM) must be based upon the findings listed below, and must be supported by data and analysis that demonstrate compliance with these findings:***

***Demonstrated Need -- That there is a need for the requested land use. The need must be based upon circumstances such as shifts in demographic trends, changes in the availability of land, including but not limited to the minimum amount of land required to accommodate the medium population projections as published by the Office of Economic and Demographic Research for at least a 10-year planning period, changes in the existing character and FLUM designations of the surrounding area, fulfillment of a comprehensive plan objective or policy, annexation into the municipal boundaries, or similar circumstances. The need must be supported by data and analysis verifying the changing demographics or other circumstances. This requirement shall not apply to requests for the FLUM designations of Conservation or Recreation and Open Space; nor shall it apply to FLUM changes associated with annexations when the City's advisory FLUM designation is being applied, or when the requested designation is of a similar intensity to the advisory designation. However, the findings described in the remainder of this policy must be addressed with all FLUM amendments.***

The applicant is proposing the assignment of the City FLUM designation of MD, which is the Advisory Land Use; therefore, only the findings regarding Consistency, Concurrency, Compatibility, and Compliance with the Land Development Regulations need to be considered.

The City's MD FLUM designation as described in the Future Land Use Element states as follows:

*“Residential Land Uses: Medium Density - This designation is applied to land which is developed, or is to be developed, at a density between five and twelve units per acre. Residential density is limited to a maximum of 12 dwelling units per acre, except within the portion of the Southwest Neighborhood Area Overlay District lying between the commercial area along West Atlantic Avenue and SW 2nd Street (SW 3rd Street along SW 12th Avenue), from Swinton Avenue to Interstate 95, where the density may exceed 12 units per acre, up to a maximum of 24 units per acre subject to Conditional Use approval and the recommendations and strategies outlined in the Southwest Area Neighborhood Redevelopment Plan. Areas with this designation, located within a workforce housing overlay district, may also exceed 12 units per acre, up to a maximum of 24 units per acre within the Carver Estates Overlay District and 18 units per acre within other overlay districts by obtaining density bonuses through the provision of workforce housing units. Such land is usually developed in planned communities or exists in older areas where there are duplexes and condominiums. Home ownership is characteristic of this designation. Where this designation exists, uses other than those which are residential in character shall not be considered.”*

The subject property is **not** located within a workforce housing overlay district and, therefore, the maximum density allowed under the MD FLUM designation is 12 dwelling units per acre.

**Consistency** -- *The requested designation is consistent with goals, objectives, and policies of the most recently adopted Comprehensive Plan.* The following are applicable Objectives and Policies within the City of Delray Beach Comprehensive Plan.

**Future Land Use Element Objective A-1:** Property shall be developed or redeveloped, in a manner so that the future 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.

**Future Land Use Element Objective A-2:** To reduce, and eventually eliminate, uses which are inconsistent with predominant adjacent land uses, and to insure compatibility of future development, the following policies shall be applied.

**Future Land Use Element Policy A-2.3:** Development of remaining vacant properties shall occur in a manner which is consistent with and complementary to adjacent development regardless of zoning designations. This policy shall be implemented through the review process associated with platting and site plans.

The subject property does not have any unique environmental characteristics that would require mitigation measures. Nor does the site possess any specific characteristics that would be negatively impacted with a change to MD. The adjacent FLUM designations are:

**North:** Palm Beach County Low Residential, 3 du / acre (LR-3)

**South.** Palm Beach County Medium Density Residential (MR-5)

**East.** City of Delray Beach Community Facilities (CF)

**West.** City of Delray Beach Low Density Residential (LD)

With any Future Land Use Map amendment, 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. Any change to a FLUM designation requires that further analysis with respect to the resulting use of land or structures, and that such use must be allowed in a zoning district that is consistent with FLUM designation. While the request is consistent with the City's advisory MD FLUM, the Land Development Regulations, through the rezoning and Master Development Plan (MDP) will ensure that the development is appropriate and complimentary to the surrounding neighborhoods.

**Future Land Use Element Policy B-2.3:** Prior to recommending approval of any land use application which comes before it, the Local Planning Agency, or appropriate approving body, must make a finding of consistency with this objective and its supporting policies. If such a finding cannot be made, either conditions shall be made which provide for concurrency or the land use request shall be denied.

**Future Land Use Element Policy B-3.3** addresses unincorporated parcels which are located within the City's Planning Area and states: *"Within the Delray Beach Planning Area, the City's FLUM designation shall be in effect immediately upon annexation of a specific parcel. Following any annexation, the Future Land Use Map, and appropriate portions of the Comprehensive Plan, shall be amended to reflect the change in the City's boundaries."*

**Future Land Use Element Policy B-3.4** states "For purposes of implementing Policy B-3.3, the Future Land Use Map designations as initially contained on the City's Future Land Use Map upon adoption in November, 1989, (and as formally amended subsequently) are hereby deemed to be the Future Land Use Map designations for the territory subject to provisions of the interlocal agreement."

If the annexation is approved by the City Commission, a City FLUM designation will be applied to the subject property. Pursuant to F.S. 163.3187 (5)b(2)(c) small scale development amendments may not become effective until 31 days after adoption.

**Housing Element Objective A-3:** For those areas identified as "stable residential" on the Residential Neighborhood Categorization Map, the City shall implement the following policies to ensure that they remain "stable residential" and do not decline.

**Housing Element Policy A-3.1:** Each area of the City that is identified as "stable residential" shall be included within a neighborhood association which has an official representation. The purpose and implementation of this policy is as provided in Objective A-1 and its related policies.

**Housing Element Policy A-3.2:** The most restrictive residential zoning district that is applicable given existing development patterns and typical lot sizes shall be applied to these neighborhoods and affixed to the zoning map. Requests for rezonings to a different zoning designation, other than Community Facilities, Open Space, Open Space and Recreation, or Conservation shall be denied.

The subject property is located within an area designated as “stable” on the Residential Neighborhood Categorization Map. Based on Policy A-3.2, the assignment of a City zoning shall comply with the most restrictive residential zoning district that is applicable given existing development patterns and typical lot sizes.

**Conservation Element Policy B-2.1:** The submission of a biological survey and a habitat analysis shall accompany land use requests for plan amendments, rezonings, and site plan approval. However, the requirement shall not apply to small parcels, developed parcels, or where it is apparent that there are no such resources.

**Conservation Element Policy B-2.2:** Whenever and wherever significant or sensitive flora and fauna communities are identified, plans shall be required to preserve the habitat to the extent feasible, or provide for mitigation if preservation is infeasible or inappropriate.

A field review was conducted of the subject property to determine whether Policy B-2.1 and/or B-2.2 of the Comprehensive Plan were an issue. The property has a number of mature trees, in excess of four (4) inches DBH (Diameter at Breast Height). Even though the property includes a number of mature trees, it does not constitute a total and complete ecosystem. A biological survey and a habitat analysis are not required based upon the existing conditions of the properties. However, conformance with respect to preservation of trees will be addressed during the site plan review process.

q **Concurrency:** Development at the highest intensity possible under the requested designation can meet the adopted concurrency standards. Concurrency with respect to traffic, water and sewer, drainage, parks and recreation and school capacity determination are evaluated below:

Streets and Traffic: The property can be accessed via Barwick Road. Barwick Road extends from West Atlantic Avenue on the south and terminates at Coconut Lane in the City of Boynton Beach to the north. The segment of Barwick Road that is located within the City’s Planning Area is under the jurisdiction of the City of Delray Beach for associated maintenance responsibility and will not change upon annexation. Barwick Road extending from the LWDD L-30 Canal to Lake Ida Road accommodates two-lanes (with turn lanes at intersections). The right-of-way of Barwick Road that abuts the subject property is 80 feet wide.

Based on the traffic study (dated May 2, 2019) submitted by the applicant, the trips generated by the proposed 40 units would be 400 tpd, with 30 AM peak hour trips and 42 peak hour trips. The traffic study concludes that the estimated trips per day and AM / PM peak hour trips at project build-out in 2023 meets the requirements of Palm Beach County Traffic Performance Standards (TPS). The TPS approval letter from the Palm Beach County Traffic Division, dated July 18, 2019, confirms that the proposed development meets Palm Beach County Traffic Performance Standards.

Public Utility Services:

The Comprehensive Plan Future Land Use Element, Policy B-3.2, indicates water and sewer facilities may be provided to unincorporated areas by the City, upon demand, in a manner

consistent with policies of the City. The provision of water facilities shall be accompanied by an agreement to voluntarily annex upon eligibility unless the property is already eligible in which case, annexation shall precede the provision of services.

Water: The subject property is located within the City of Delray Beach Utility Service Area for the provision of water and sewer services. The service area coincides with the City's Planning Area plus service provided through contract to Highland Beach and the Town of Gulf Stream.

A water service agreement was approved for the northernmost parcel for the purpose of serving the existing single family residence.

Municipal water service is available via connection to an eight inch water main located along Barwick Road. However, development of the property will require the property owner to extend the City's eight inch water main, north along the project frontage from its current terminus at Highgate Drive approximately 400 feet to the project's northern boundary line. The connection to the City's water system shall be at the north end of the annexed property. The Public Utilities Department has determined that sufficient water capacity is available to serve this site.

Sewer: Pursuant to the Comprehensive Plan, treatment capacity is available at the South Central County Waste Water Treatment Plant for the City at build-out. The extension of the City's sewer system will be required to provide sewer service to the subject property. The property owner must perform an engineering study to determine if a gravity connection to the system is feasible at the City's manhole at the Sabal Lakes Road and Barwick Road intersection. If a gravity connection is not feasible, a lift station and force main will be required. The applicant may construct a public or private lift station on their property with a public force main extended to the City's force main in the Sabal Lakes Road and Barwick Road intersection. If the applicant desires to have a public lift station, it will have to be designed and built to City Standards in a lift station easement. The force main shall be constructed in an easement when not in public right of way.

In addition to these specific items, any proposed project must comply with all pertinent City requirements similar to any other proposed project.

Drainage: Drainage is usually accommodated on-site via exfiltration trench systems or swale retention areas. While no problems are anticipated with obtaining South Florida Water Management District permits, technical comments and issues pertaining to the drainage will be addressed during future development process.

Parks and Recreation: The City has approximately 629.59 acres of parks and open space. Approximately 309.56 acres are activity-based recreation facilities such as tennis, baseball, basketball, soft ball and other similar sports and recreational activities. An additional 320.03 acres are considered resource-based, including the municipal beach, conservation parcels, and the golf courses. Two parks, Lake Ida Park and Delray Oaks Preserve, are both owned and operated by Palm Beach County and specialty facilities, such as nature centers, cultural facilities, and schools whose recreation facilities are available to the community under joint use agreements are also included in the total inventory.

Within recreation areas, amenities and facilities are provided to meet the demand for recreational and leisure opportunities for all segments of the community. The City of Delray Beach provides a ratio of 9.8 acres of parkland and recreational facilities per 1,000 people and accommodate any

additional increase in the number of residents anticipated from this subject property. Within the North Barwick Road Area, two City-owned parks are located approximately one-half mile from the subject property. In terms of personnel and capital improvements of the Parks and Recreation Department, there will not be an impact after annexation of the subject property.

Education (School Capacity Determination): The proposed change from MR-5 to MD will result in an increase in density. A school capacity availability determination was issued by Palm Beach County School (dated April 17, 2019). The School District found that the development proposal would generate seven new students at the Banyan Creek Elementary School, four students at Carver Middle School and five students at Atlantic High School.

Solid Waste: The subject property currently contains a single family residence and accessory structures. A single family residence generates 1.99 tons of waste per year; the proposed 40-unit, single family Banyan Court development will generate 79.6 tons of waste per year. Based on population projections, waste generation rate projections, waste reduction, and recycling, the Solid Waste Authority forecasts that capacity will be available at the existing landfill through approximately 2047. The service provider will not change with annexation.

**Compliance** -- *Development under the requested designation will comply with the provisions and requirements of the Land Development Regulations.*

Any proposed development of the subject property will be required to meet the criteria set forth by the Land Development Regulations.

**City Attorney Review:**

Ordinance No. 37-19 was approved to form and legal sufficiency.

**Funding Source/Financial Impact:**

NA

**Timing of Request:**

NA