Legislation Text

File #: 21-1061, **Version:** 1

TO: **Mayor and Commissioners**
FROM: **Anthea Gianniotes, Development Services Director**
THROUGH: **Terrence R. Moore, ICMA-CM**
DATE: **October 5, 2021**

ORDINANCE NO. 35-20: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, REZONING AND RE-DESIGNATING LAND APPROXIMATELY 0.57 ACRES IN SIZE PRESENTLY ZONED OLD SCHOOL SQUARE HISTORIC ARTS DISTRICT (OSSHAD) TO CENTRAL BUSINESS (CBD) DISTRICT, WITHIN THE WEST ATLANTIC NEIGHBORHOOD SUB-DISTRICT, FOR THE PROPERTIES LOCATED AT 37 WEST ATLANTIC AVENUE AND AN ABUTTING UNADDRESSED PARCEL TO THE EAST, AS MORE PARTICULARLY DESCRIBED HEREIN; AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES CHAPTER 4, "ZONING REGULATIONS," ARTICLE 4.4, "BASE ZONING DISTRICT," SECTION 4.4.13, "CENTRAL BUSINESS (CBD) DISTRICT," BY AMENDING SUBSECTION (B), "REGULATING PLANS," TO ESTABLISH COMPATIBLE TRANSITIONS TO HISTORIC DISTRICTS; BY AMENDING FIGURE 4.4.13-B-2, "WEST ATLANTIC NEIGHBORHOOD SUB-DISTRICT REGULATING PLAN," TO INCLUDE THE PROPERTIES IN THE WEST ATLANTIC NEIGHBORHOOD LIMITED HEIGHT AREA; BY AMENDING SUBSECTION (D), "CONFIGURATION OF BUILDINGS," AND TABLE 4.4.13(B), "BUILDING HEIGHT," TO DEFINE THE MAXIMUM BUILDING HEIGHT FOR PROPERTIES IN THE WEST ATLANTIC NEIGHBORHOOD LIMITED HEIGHT AREA; BY AMENDING SECTION 4.4.24, "OLD SCHOOL SQUARE HISTORIC ARTS DISTRICT (OSSHAD)," SUBSECTION (B), "PRINCIPAL USES AND STRUCTURES," SUBSECTION (C), "ACCESSORY USES AND STRUCTURES PERMITTED," AND SUBSECTION (F), "DEVELOPMENT STANDARDS," TO REMOVE THE PROPERTIES FROM THE OLD SCHOOL SQUARE HISTORIC ARTS DISTRICT ZONING DISTRICT REGULATIONS; PROVIDING A CONFLICTS CLAUSE AND A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES. (SECOND READING/PUBLIC HEARING)

Recommended Action:

Review and consider Ordinance No. 35-20, a privately initiated rezoning from Old School Square Historic Arts District (OSSHAD) to Central Business District (CBD) within the West Atlantic Neighborhood Sub-district, and associated amendments to the Land Development Regulations (LDR).

Background:

The request is to change the zoning of two properties from Old School Square Historic Arts District (OSSHAD) to Central Business District (CBD) within the West Atlantic Neighborhood Sub-district. The subject properties consist of an unaddressed parking lot located west of 10 North Swinton Avenue (Doc's All American) and 37 West Atlantic Avenue (Dunkin Donuts). The properties are located within the Old School Square Historic District; the structure at 37 West Atlantic Avenue is classified as non-contributing as it was constructed in 1980 (Church's Fried Chicken).

The properties have been zoned OSSHAD since 1991 when the zoning district was created to support the 1988 designation of the Old School Square Historic District by encouraging the adaptive reuse of existing structures and supporting historic preservation efforts by allowing a mix of "uses which promote preservation." Prior to 1991, the properties were zoned General Commercial (GC). In acknowledgement of this shift in zoning from GC to OSSHAD, the City also created a "CBD Overlay" for those properties previously zoned CBD or GC and located along Atlantic Avenue. The "CBD Overlay" was established through LDR Amendment by listing those properties zoned OSSHAD that were also able to utilize the principal and accessory uses, and development standards of the CBD. The conditional uses of the CBD are not an option for the "CBD Overlay" properties. Utilizing the CBD development standards allowed those OSSHAD properties located along commercial streets to have a built form that lines the sidewalk with storefronts and accommodates commercial and mixed uses, consistent with historic main street buildings.

The First Reading of Ordinance No. 35-20 occurred at the City Commission meeting of October 6, 2020; a motion to approve the item was passed on a vote of 3 to 2 (Mayor Petrolia and Commissioner Casale dissenting). The Second Reading of Ordinance No. 35-20 occurred at the City Commission meeting of December 8, 2020; a motion to deny the item passed on a vote of 5 to 0. At the City Commission meeting of January 5, 2021, a motion to reconsider the item at a future meeting with no time certain passed on a vote of 4 to 1 (Mayor Petrolia dissenting).

LDR Amendments

As part of the rezoning, the City must amend the Zoning Map, the West Atlantic Neighborhood Sub-district Regulating Plan in Figure 4.4.13-B-2 in LDR Section 4.4.13, Central Business (CBD) District, and remove the subject properties from those listed in Section 4.4.24, Old School Square Historic Arts District (OSSHAD) as part of the "CBD Overlay." The applicant proposes to further amend the LDR for the purpose of limiting building height to three stories and 38 feet, which is consistent with the height limit adopted for East Atlantic Avenue. At first reading, the draft included a limitation on FAR for the parcels; however, this type of regulation is not currently used in the CBD regulations and has been removed from the final draft due to Staff's concerns that the proposed regulations were too project specific for zoning regulations. To achieve a certain amount of compatibility in building scale with the surrounding historic district, the ordinance includes provisions limiting the building height to three stories and 38 feet for any OSSHAD properties that rezone to CBD.

The proposed rezoning request is accompanied by a request for a change of land use designation from Historic Mixed Use (HMU) to Commercial Core (CC) in Ordinance No. 34-20. The land use designation change must be approved prior to the rezoning request.

Valid reasons for approving a change in zoning, pursuant to **LDR Section 2.4.5(D)(2)** are:

- *That the zoning had previously been changed, or was originally established, in error;*
- *That there has been a change in circumstance which makes the current zoning inappropriate;*
- *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 suggests considering the requested rezoning under the third criteria and indicates the following:

The parcels currently have a CBD Overlay in the OSSHAD zoning. There is a concurrent application for a FLUM amendment from HMU to CC to accommodate a FAR that is more consistent with the CBD uses, character and intensity along Atlantic Ave. This zone change will also support a continuous downtown pedestrian experience to the West Atlantic corridor while still preserving the nostalgic local icon "Docs" on Lot 16 (which is to remain the same zoning). To accommodate the mixed use with needed Class "A" office above the continuous 1st floor retail and associated parking, the amended FLUM use and zoning need to be compatible."

The change in zoning is due to the requested change in land use designation from HMU to CC. OSSHAD is the implementing zoning district for HMU land use and is not identified as a compatible zoning district with the CC land use designation. OSSHAD properties with CBD Overlay are limited by the maximum intensity of 1.0 FAR by the HMU land use designation. CC allows an FAR of 3.0. The current OSSHAD zoning with CBD Overlay allows the same uses that are proposed for the property. Further, OSSHAD zoning with CBD Overlay also provides for the form of development to create the desired continuous downtown pedestrian experience, including streetscape and site design requirements.

The main difference in rezoning to CBD from OSSHAD with CBD Overlay is the increase in FAR on the property that results primarily from the land use change. It is important to note, the density for the CBD West Atlantic Neighborhood Sub-district is 12 dwelling units per acre; the workforce housing incentive allowing up to 30 dwelling units per acre is not available to properties within a historic district.

Pursuant to **LDR Section 3.2.2, Standards for Rezoning Actions,** rezoning requests must meet five standards, which are described below as they relate to the proposed rezoning under consideration.

(A) 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 rezonings to a different zoning designation, other than Community Facilities, Open Space, Open Space and Recreation, or Conservation shall be denied.

Not applicable.

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

Not applicable.

(C) 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.

The proposed CBD zoning is a form-based code and does not permit strip-type commercial development. Further, the requirements applicable to properties located within a historic district would also not support strip commercial development as it is not consistent with the historic development

pattern of the Old School Square Historic District.

(D) 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.

Under the proposed CC future land use designation, the proposed CBD zoning district will be compatible for the subject properties - if the land use designation change is approved. The allowed uses with the existing and proposed zoning will not significantly change except for the allowed conditional uses; therefore, an incompatibility with respect to uses is not anticipated. However, the increased floor area ratio resulting from the new land use designation will allow a more intense and larger scale development than possible under the HMU land use designation. The accompanying LDR amendments propose to limit building height to three stories and 38 feet to provide compatibility with the adjoining OSSHAD district, which allows up to 35 feet in height. In addition, LDR Section 4.5.1 provides regulations that intend to mitigate impacts on the historic district from new development through both qualitative and quantitative standards.

The existing uses and zoning surrounding the proposed development are as follows:

Location	Zoning	Land Use Designation	Use
North	OSSHAD	HMU	CRA Office / Parking Lot
South	OSSHAD w/CBD Overlay	HMU	Mixed-Use (existing and approved new development)
East	OSSHAD w/CBD Overlay	HMU	Doc's All-American
West	CF	CF	Tennis Center

(E) 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.

Not applicable. The proposed development is not within the coastal planning area.

The **Historic Preservation Board** reviewed the request at its July 1, 2020 meeting; a recommendation of denial on a vote of 7 to 0 was provided. The Board's concerns focused on Doc's, a non-contributing structure in the Old School Square Historic District located at 10 North Swinton Avenue; the Board supported designation or reclassification of the site to "contributing", given that the structure was included as part of the applicant's presentation. Note: The property located at 10 North Swinton Avenue is not part of the subject LUMA and rezoning requests.

The **Downtown Development Authority (DDA)** reviewed the request at its July 13, 2020 meeting; a recommendation of approval on a vote of 4 to 3 was provided with comments. The DDA's decision letter is included as an attachment.

The **Planning and Zoning Board** reviewed the request at its August 17, 2020 meeting; a recommendation of approval on a vote of 6 to 1 was provided.

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City Attorney Review:
Approved as to form and legal sufficiency.

Funding Source/Financial Impact:
Not Applicable

Timing of Request:
Ordinance No. 35-20 must be adopted subsequent to the adoption of Ordinance No. 34-20.