NORTH MIAMI
FLORIDA
776 N.E. 125 Street, North Miami, Florida 33161

City Council Report

To: The Honorable Mayor and City Council

From: Tanya Wilson-Sejour, AICP, Planning Manager, Community Planning & Development

Date: December 9, 2014

Re: **Amendments to Section 3-409 and Section 3-410 of the City's LDRs.**

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 29 OF THE CITY OF NORTH MIAMI CODE OF ORDINANCES, ENTITLED "LAND DEVELOPMENT REGULATIONS", BY AMENDING ARTICLE 3, DIVISION 4, ENTITLED "CONDITIONAL USES", AT SECTION 3-409, ENTITLED "APPEALS" AND SECTION 3-410, ENTITLED "CHANGES TO CONDITIONAL USE APPROVALS", TO FURTHER CLARIFY CONDITIONAL USE REQUIREMENTS FOR MASTER PLANNED DEVELOPMENTS; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

RECOMMENDATION

That the Mayor and Council approve the proposed ordinance to amend Article 3, Division 4, Entitled "Conditional Uses", at Section 3-409, entitled "Appeals" and Section 3-410, entitled "Changes to Conditional Use Approvals" of the City's Land Development Regulations (LDRs) to further clarify conditional use requirements for master planned developments.

PLANNING COMMISSION RECOMMENDATION

At its meeting on December 2, 2014, the Planning Commission (attended by Commissioners Each, Ernst, Seifried, James and Prevatel) reviewed and discussed the proposed ordinance which seeks to clarify and differentiate what constitutes a minor versus substantial revision to a previously approved conditional use permit, in order to expedite the review process and minimize any unnecessary ambiguities moving forward. The applicant's agent Ms. Eileen Mehta, Esq. provided an overview of the proposed text amendment and stated that the applicant worked closely with staff in order to include appropriate language intended to streamline and improve the review process for all future Planned Developments. Ms Mehta further explained that the City's LDR currently allows for minor amendments to a previously approved Conditional Use Permit and that the proposed ordinance seeks to clarify the list of criteria outlined in Section 3-410 and also make reference to the appeal process that allows

an aggrieved party to challenge a final administrative decision by the DRC in an effort to ensure consistency with State Law. Although the Board generally agreed with the proposed amendments, Commissioner James expressed concerns with the provision listed under Section 3-410 A2 which would allow for minor alteration of any major road or walkway by less than ten (10) feet. Commissioner James suggested that such alteration be limited to one revision per year in order to limit cumulative alterations that would exceed 10 feet in the span of one year. As such, additional language was proposed that would add a time limit to the minor revision which would read "Does not alter the location of any major road or walkway by more than ~~five (5)~~ ten (10) feet, within a period of one (1) year." Commissioner Prevatel expressed his displeasure with the minor amendment process and felt it would encourage future developments to circumvent the regular approval process. The motion to approve was made by Commissioner Each and seconded by Commissioner James. The Planning Commission approved the proposed text amendment by a vote of 4-1 (the dissenting vote was made by Commissioner Prevatel).

BACKGROUND INFORMATION

Section 3-1001 of the City's LDR allows for applicant initiated text amendments, provided such requests satisfy the established criteria as outlined in Section 3-1004 of said regulations. As such, on November 7, 2014, Oleta Partners, LLC filed an application with the Community Planning & Development Department requesting an amendment to Chapter 29, Article 3, Section 3-409 and Section 3-410 of the City's LDRs. The proposed amendment under Section 3-410 seeks to clarify and differentiate what constitutes a minor versus substantial revision to a previously approved conditional use permit in order to expedite the review process and minimize any ambiguity that would cause unnecessary delays. It also cross references the current appeal process under Section 3-702 of the LDR which allows an applicant who disagrees with the decision of the Development Review Committee, to file an appeal with the Board of Adjustment. Additionally, the proposed text amendment also seeks to add language to Section 3-409 to make reference to the current appeal process which allows for an appeal of a final decision of the City Council to the appellate division of the circuit court. Below is a summary of the proposed text amendments:

- Section 3-409 allows an aggrieved party to appeal City Council decision (within 30 days) with the appellate division of Circuit Court.
- Section 3-410 A (2) Minor Revisions - proposes to amend the relocation of a major roadway from 5 feet to 10 feet.
- Section 3-410 A (7) Minor Revisions- proposes to permit the relocation of a structure within a previously approved use through Development Review Committee process or a previously issued Conditional Use permit.
- Section 3-410 A (10) Minor Revisions- proposes to include modifications only to that which was approved in a previously issued and approved Conditional Use permit.

- Section 3-410 C Applicability- identifies and states the requirement to define what constitutes a substantial revision and what constitutes a minor revision pursuant to subsection A Minor Revisions.
- Section 3-410 D Appeal – allows an aggrieved party to appeal an administrative decision by the Community Planning and Development Manager and/or Development Review Committee to the Board of Adjustment (BOA).

ANALYSIS

Section 3-1004 of the City's Land Development Regulations requires that all text amendments to the LDR must meet the following minimum criteria:

1. Promotes the public health, safety and welfare;

The proposed text amendments promotes the public health, safety and welfare by ensuring that an aggrieved party is made aware of their right to appeal a City Council decision (within 30 days) with the appellate division of Circuit Court; Additionally Section 3-410 clarifies and defines what types of changes are considered substantial versus minor changes. Such clarification is necessary in order to streamline and expedite the development review process which helps to support developments that indirectly enhance the public health, safety and welfare.

2. Does not permit uses the Comprehensive Land Use Plan prohibits in the area affected by the zoning map change or text amendment

The proposed text amendment does not alter or affect any uses but merely clarifies the provisions outlined in Sections 3-409 and 3-410 of the LDRs.

3. Does not allow densities or intensities in excess of the densities and intensities which are permitted by the future land use categories of the affected property;

The proposed text amendment does not include recommendations for any increase in density or intensity

4. Will not cause a decline in the level of service for public infrastructure which is the subject of a concurrency requirement to a level of service which is less than the minimum requirements of the Comprehensive Land Use Plan;

Again, as stated earlier, the proposed request to amend Sections 3-409 and 3-410 does not change or increase the amount of permitted development nor does it seek to modify any of the applicable development standards. Furthermore all future developments are subject to the requirements of Policy 11.2.7 of the City's Comprehensive Plan which stipulates that all decisions regarding land use planning and the issuance of development orders and permits shall

consider the availability of public facilities and services necessary to support such development at the adopted LOS standards concurrent with the associated impacts. As such all future uses associated with the proposed text amendment shall comply with all concurrency requirements. If it is determined that any proposed development may potentially cause adverse impacts on the City's current or future infrastructure, the applicant will be required to mitigate the impacts that exceed the established level of service..

5. Does not directly conflict with any goal, objective or policy of the Comprehensive Land Use Plan; and

The proposed text amendment does not conflict with any goals objective policy of the Comprehensive Plan. In fact the proposed amendment is in harmony with the spirit and intent of the City's Comprehensive Plan. Particularly Policy 1.3.1 which states that the Land Development Regulations shall allow for a clear and easy-to-follow development review process. Additionally, Policy 3.B.1.1 requires that "the City should work closely with the development community so it may proceed through administrative requirements in a timely fashion." Given the foregoing staff believes the proposed text amendment further advances the vision of the Comprehensive Plan.

6. The proposed amendment furthers the orderly development of the City of North Miami.

The Proposed text amendment seeks to clarify the current regulations and in turn strengthens the development review process. As such, the approval of the proposed ordinance furthers the orderly development of the City, encourages future economic growth and does not directly conflict with any goal, objective or policy of the City's Comprehensive Plan.

CONCLUSION

Based on our analysis staff is of the opinion that the proposed amendment to Section 3-409 and 3-410 of the Land Development Regulations satisfies the criteria outlined in Section 3-1004 of the City's Land Development Regulations and is compatible with the future land use goals, objectives and policies identified in the City's adopted Comprehensive Plan, specifically Policy 1.3.1 which states that "the Land Development Regulations shall allow for a clear and easy-to-follow development review process." As such, staff requests that the City Council adopt the proposed ordinance.

TWS/bp

Attachments

1. Ordinance

ORDINANCE NO: _____

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 29 OF THE CITY OF NORTH MIAMI CODE OF ORDINANCES, ENTITLED "LAND DEVELOPMENT REGULATIONS", BY AMENDING ARTICLE 3, DIVISION 4, ENTITLED "CONDITIONAL USES", AT SECTION 3-409, ENTITLED "APPEALS" AND SECTION 3-410, ENTITLED "CHANGES TO CONDITIONAL USE APPROVALS", TO FURTHER CLARIFY CONDITIONAL USE REQUIREMENTS FOR MASTER PLANNED DEVELOPMENTS; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, on April 28, 2009, the Mayor and City Council of the City of North Miami ("City"), passed and adopted the City's Land Development Regulations codified under Chapter 29, City Code of Ordinances ("LDRs"); and

WHEREAS, the City is desirous of amending Sections 3-409 and 3-410 of the LDRs to allow for a more expeditious development review process for developments requiring conditional use permits; and

WHEREAS, Policy 9.4.6 of the City's Comprehensive Plan ("Comprehensive Plan") requires that the City "create land use designations and zoning regulations that encourage the retention, attraction and expansion of business and industry"; and

WHEREAS, the proposed amendment is consistent with the Comprehensive Plan and promotes the public health, safety and welfare of the City; and

WHEREAS, the proposed amendment furthers the orderly development of the City, encourages future economic growth and does not directly conflict with any goal, objective or policy of the Comprehensive Plan; and

WHEREAS, the Planning Commission, after a duly noticed public hearing held on December 2, 2014, reviewed the proposed amendment and found it in harmony with the goals, objectives and policies of the Comprehensive Plan, and recommended approval to the Mayor and City Council; and

WHEREAS, the Mayor and City Council, find that the proposed amendment to the Land Development Regulations is consistent with the Comprehensive Plan, and is in the best interest of the City.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, THAT:

Section 1. Amendment to Chapter 29 Code of Ordinances. The Mayor and City Council of the City of North Miami, Florida, hereby amend Chapter 29 of the North Miami Code of Ordinances entitled "Land Development Regulations", by amending Article 3, Division 4, entitled "Conditional Uses", at Section 3-409, entitled "Appeals" and Section 3-410, entitled "Changes to Conditional Use Approvals", to read as follows:

CHAPTER 29. LAND DEVELOPMENT REGULATIONS

****

ARTICLE 3. DEVELOPMENT REVIEW

DIVISION 4. CONDITIONAL USES

Sec. 3-409. - Appeals.

An appeal from a decision of the city council regarding a conditional use may be taken ~~in accordance with the provisions of section 3-704~~ by filing a petition for writ of certiorari with the appellate division of the circuit court in accordance with the Florida Rules of Appellate Procedure within thirty (30) days of rendering of the decision.

Section 3-410. Changes to conditional use approvals.

A. *Minor revisions.* The ~~director~~ manager of community planning and development is authorized to allow minor revisions to an approved conditional use permit after receipt of comments from the development review committee. A minor revision is one which:

1. Does not affect the conditional use criteria applicable to the conditional use.
2. Does not alter the location of any major road or walkway by more than ~~five (5)~~ ten (10) feet, within a period of one (1) year.
3. Does not change the use.
4. Does not change a condition of approval.
5. Does not increase the density or intensity of the development.
6. Does not result in a reduction of setback or previously required landscaping.

7. Does not result in a substantial change to the location of a structure within a previously approved use by the development review committee or by a previously issued and approved conditional use permit.

8. Does not add property to the parcel proposed for development.

9. Does not increase the height of the buildings.

10. Does not include any modifications not reflected in a previously approved conditional use permit.

B. *Substantial revisions.* Any proposed change that does not meet the above criteria is not minor and must be reviewed in accordance with the procedures for an original approval, including new application materials and payment of fees.

C. *Applicability.* A previously approved and issued conditional use permit shall clearly define within its terms what constitutes a minor or substantial revision under subsection A.

D. *Appeal.* An appeal from any decision of the manager of community planning and development or the development review committee, shall be taken by an aggrieved party to the board of adjustment as provided for in section 3-702 of these LDRs.

****

Section 1. **Conflicts**. All ordinances or parts of ordinances in conflict or inconsistent with the provisions of this Ordinance are hereby repealed.

Section 2. **Severability**. The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance which shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 3. **Codification**. The provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of North Miami, Florida. The Sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions and the word "ordinance" may be changed to "section", "article" or any other appropriate word as may be required.

Section 4. **Effective Date**. This Ordinance shall become effective immediately upon adoption on second reading.

PASSED AND ADOPTED by a ___vote of the Mayor and City Council of the City of North Miami, Florida, on first reading this ___day of_____, 2014.

PASSED AND ADOPTED by a ___vote of the Mayor and City Council of the City of North Miami, Florida, on second reading this ___ day of_____, 2014.

_____
DR. SMITH JOSEPH
MAYOR

ATTEST:

_____
MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

_____
REGINE M. MONESTIME
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: _____

Seconded by: _____

Vote:

Mayor Dr. Smith Joseph	_____ (Yes)	_____ (No)
Vice Mayor Philippe Bien-Aime	_____ (Yes)	_____ (No)
Councilperson Scott Galvin	_____ (Yes)	_____ (No)
Councilperson Carol Keys, Esq.	_____ (Yes)	_____ (No)
Councilperson Marie Erlande Steril	_____ (Yes)	_____ (No)

Additions shown by underlining. Deletions shown by ~~overstriking~~.