



AGENDA ITEM REQUEST FORM

Development Services

Jeff Bowman

Department Submitting Request

Code & Zoning Supervisor *JB*

REGULAR
COMMISSION MTG
Meeting Dates - 7:00 PM

DEADLINE TO
Town Clerk

ROUNDTABLE
MEETING
Meeting Dates - 7:00 PM

DEADLINE TO
Town Clerk

April 27, 2011

(5:00 pm)

April 12, 2011

April 1 (5:00 pm)

SUBJECT TITLE: Ordinance 2011-07 (Exhibit 1) Conditional Uses within the Business Districts and Conditional Use Procedures.

Background

Following review and direction to delete check cashing store as a conditional use at the March 8, 2011 Commission Roundtable, this item was approved at the March 22, 2011 Commission meeting on first reading. The Commission directed staff to revise the conditional use modification procedure and place this item on the April 12, 2011 roundtable meeting for additional Commission review before second reading, which is scheduled for April 27, 2011.

This item was initiated at the July 14, 2010 Commission Roundtable meeting, when direction was given to staff to broaden the Code's lists of permitted business uses to become more business friendly. While amending the Code to expand uses within the Business Districts (Ordinance 2010-15), and through additional research and analysis, several uses were identified for possible inclusion in the Business Districts as "Conditional Uses." "Conditional Uses" were outside the scope of the Notice of Intent that governed Ordinance 2010-15, and staff was directed to bring back recommended "Conditional Uses" at a later time under the new Notice of Intent adopted in January (Resolution 2011-01). The proposed Conditional Uses would apply in both the B-1 and B-1-A business zoning districts.

Conditional Uses

Permitted uses are those uses that the Town believes are suitable under any circumstances in a particular zoning district. Conditional uses are uses that could be appropriate in the zoning district under some circumstances, but might not be appropriate in other circumstances. A conditional use permit is used to allow a use to locate in the zoning district only if the Town determines that criteria are met, and only with conditions necessary to minimize possible adverse impacts. Conditions may include such things as number, area, location, hours of operation, and compatibility with the neighborhood or impacted vicinity, and are designed to promote the public health, safety, welfare, order, comfort, convenience, appearance, or prosperity of the neighborhood. These uses can, with appropriate conditions, be permitted on specific sites where the proposed use may be adequately accommodated, without generating adverse impacts on properties and land uses within the immediate vicinity.

The Planning and Zoning Board reviewed the proposed conditional use amendments on February 16, 2011 and recommended one change, which is incorporated into the ordinance. (See description of their recommended change on below.)



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Conditional Use Procedures

There is currently no uniform approach to Conditional Use approvals and the concept is described in different ways in different parts of the Code. The attached Conditional Use procedures would apply to all conditional use approvals, with clear processes and criteria. This proposed amendment would provide clarity. The scope of the changes synthesize conditional use procedures referenced in various sections of Chapter 30 including 30-241 (addressing passive recreational rooftops), and provides one set of procedures in a centralized location. The procedures provide for application, criteria for review and approval, review by the Planning and Zoning Board and approval by the Town Commission.

Summary of Changes Subsequent To First Reading

As approved by the Planning and Zoning Board, the original language would have provided that the Town Manager would make a determination as to whether a conditional use modification was a level 1 (minor impact) or level 2 (major impact) modification based on the criteria in Section 30-54(m)(4) of the City Code. If it was a level 1 modification, the application could be approved administratively, similarly to a minor site plan amendment. If the application was a level 2 modification, it would be subject to the same procedures as a new application.

The attached Ordinance proposes language to address the Commission's direction on first reading. The Commission requested that the procedure be revised to require the Town Manager's approval of a level 1 (minor) modification be approved by the Town Commission.

Under the proposed revision, when an applicant applies to modify a conditional use, the Town Manager will determine if the modification is a level 1 (minor impact) or level 2 (major impact) modification. If Level 1, the item will be scheduled for the Town Commission agenda and the Town Commission may either approve, approve with modifications or conditions, deny, or find that the modification is a Level 2 modification. If the Town Commission finds that the request is a level 2 modification, then the application will be sent to the Planning and Zoning Board for review and recommendation and then returned to the Town Commission for final action. The procedure for evaluation of a level two modification was not changed. Level 2 modifications are processed like a new conditional use application, reviewed by the Planning and Zoning Board and approved or denied by the Town Commission.

In a related matter, staff received a request (**Exhibit 2**) from a business owner who would like to open a pet store on Commercial Boulevard. The use includes kenneling, which is not a permitted use in the B-1 or B-1-A districts and therefore a pet store would not be considered a similar use to any of the existing uses. However, the pet store use may be appropriate for a conditional use, where the Town could, through the conditional use process, ensure operational conditions that would not negatively impact adjacent properties. The proposed use has been added to the attached Ordinance for your consideration.

Finally, based on staff's understanding of the Commission's desires to encourage the private development of parking garages, staff has added "parking garage" as a conditional use in both of the business districts.



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PLANNING AND ZONING BOARD RECOMMENDATION: On February 16, 2011 the Board approved the amendments with one (1) recommended change. Their recommendation was to revise the level 1 and level 2 conditional use modification criteria to reflect the criteria for minor and major site plan modifications found in Section 30-54(m)(4)) (**Exhibit 3**). In other words, when a conditional use modification is initially reviewed to determine if it is a level 1 (minor impact) modification or a level 2 (major impact) modification, the Town Manager would use the criteria set out in Chapter 30-54(m)(4) to make the determination. (See Exhibit 2). The P&Z minutes are attached (**Exhibit 4**).

STAFF RECOMMENDATION: Review and discuss the revised ordinance.

EXHIBITS:

- Exhibit 1 – Ordinance**
- Exhibit 2 – Pet Store Request Letter**
- Exhibit 3 – Copy of Chapter 30 -54 (m) (4)**
- Exhibit 4 – Planning and Zoning Minutes**

Reviewed by Town Attorney

Yes No

Town Manager Initials CS

65	M.	Catering businesses,
66	N.	Church and place of worship,
67	O.	Clothing,
68	P.	Coin-operated dry cleaning and laundry and/or pickup station,
69	Q.	Community theaters, dinner theaters and cultural centers,
70	R.	Computer/software store,
71	S.	Consignment
72	T.	Convenience store,
73	U.	Cooking schools,
74	V.	Copy center,
75	W.	Courier service,
76	X.	Delicatessen,
77	Y.	Dental laboratory,
78	Z.	Drug store/pharmacy (no on-site prescription writing for controlled substances identified in Schedule II, III, or IV in F.S. §§ 893.03, 893.035, or 893.0355),
79		
80	AA.	Fabric/needlework/yarn shop,
81	BB.	Fishing pier,
82	CC.	Florist shop,
83	DD.	Formal wear sales and rental,
84	EE.	Fruit and produce store,
85	FF.	Furniture, and home furnishings,
86	GG.	Gift shop,
87	HH.	Government administration,
88	II.	Grocery/food store/supermarket,
89	JJ.	Hardware,
90	KK.	Health and fitness center,
91	LL.	Household appliances store,
92	MM.	Ice cream/yogurt store,
93	NN.	Interior decorator,
94	OO.	Jewelry store,
95	PP.	Library branch,
96	QQ.	Linen/bath/bedding store,
97	RR.	Luggage/handbag/leather goods store,
98	SS.	Mail/postage/fax service,
99	TT.	Marine parts and supplies store,
100	UU.	Market,
101	VV.	Massage therapist (licensed therapist to be on premises at all times of operation),
102		
103	WW.	Meat and poultry store,
104	XX.	Medical supplies sales,
105	YY.	Motorized scooter sales or moped sales and rentals (indoor only, outdoor sales, storage or display prohibited),
106		
107	ZZ.	Museum,
108	AAA.	Music/musical instrument store,
109	BBB.	Office building,
110	CCC.	Optical store,
111	DDD.	Party supply store,
112	EEE.	Personnel services,
113	FFF.	Photographic studio,

- 114 **GGG.** Police and fire substation,
 115 **HHH.** Retail electronic sales and repair,
 116 **III.** Restaurant, including sidewalk cafes which would be appurtenant to, and a part
 117 of, a restaurant,
 118 **JJJII.** Seafood store,
 119 **KKKJJJ.** Shoe sales and repair,
 120 **LLLKKK.** Shop for marking articles sold at retail on the premises,
 121 **MMMLLL.** Specialty shop,
 122 **NNNMMM.** Sporting goods store, including dive shops,
 123 **OOONNN.** Studios for artists, photographers, musicians (including recording
 124 studios), and dance,
 125 **PPPOOO.** Sundries,
 126 **QQQPPP.** Tailor/dressmaking store, direct to the customer,
 127 **RRRQQQ.** Tapes/videos/music CD stores,
 128 **SSRRR.** Tool rental (small tools and equipment, indoor display only),
 129 **TTTSSS.** Toy/game store,
 130 **UUUTTT.** Trade/business school,
 131 **VVVUUU.** Travel agency,
 132 **WWWVVV.** Veterinarian or animal grooming with all activities enclosed within the
 133 building with no outside noise,
 134 **XXXWWW.** Watch and jewelry repair, and
 135 ~~**XXX.** Drive-through services that are accessory to a use in this zoning district shall be~~
 136 ~~allowed only as a conditional use requiring Planning and Zoning Board review~~
 137 ~~and Town Commission approval, provided that any approval of the drive-through~~
 138 ~~use by the Town Commission shall specifically establish the location and traffic~~
 139 ~~flow pattern of the drive-through.~~
 140 **YYY.** Uses not listed. Any use not covered by the above list may be authorized in the
 141 B-1 district by the Town Manager or designee only if the proposed use is similar
 142 to a listed use; otherwise, an amendment to this chapter is required. The Town
 143 Manager or designee shall consult with the Town Commission on any proposal to
 144 find that a use is similar, prior to authorizing such use in the B-1 district.
 145
 146 (3) *Conditional Uses.* The following conditional uses may be permitted upon approval
 147 pursuant to the conditional use procedures of this Code:
 148
 149 **A.** Bicycle taxi (no outside storage or display)
 150
 151 **B.** Car wash/Outdoor hand wash
 152
 153 **C.** Charter and sightseeing boat
 154
 155 **D.** Child and adult day-care centers
 156
 157 **E.** Drive-through services that are accessory to a primary use, provided that any
 158 approval of the drive-through use by the Town Commission shall specifically
 159 establish the location and traffic flow pattern of the drive-through.
F. Dry cleaner
G. "Paid Private Parking" on parcels with a primary use, excluding stand alone
parking lots, in accordance with the following requirements:

- 160 i. During business operational hours, only non-required parking spaces
161 may be used as Paid Private Parking.
- 162 ii. After business hours, required parking may also be used for Paid Private
163 Parking.
- 164 H. Parking garage.
- 165 I. Pet store.
- 166 J. Pool supply store.
- 167 K. Outside seating for restaurants, on private property, that is accessory to the
168 primary use and that are not regulated under Chapter 17, Article VI.
- 169 L. Outside storage of propane tank cabinets for the storage of propane tanks sold
170 and rented at hardware stores and gas stations.
- 171 M. Water craft sales and rental (new or used)
- 172 N. Conditional Uses not listed. Permission to apply for conditional uses not covered
173 by the above list in the B-1-A district may be granted by the Town Manager or
174 designee only if the proposed conditional use is similar to a listed conditional use;
175 otherwise, an amendment to this chapter is required. The Town Manager or
176 designee shall consult with the Town Commission on any proposal to determine
177 that a conditional use is similar to those listed, prior to authorizing the filing of an
178 application to seek approval of that conditional use in the B-1-A district.
- 179
- 180 (34) *Height.* No building shall be erected to a height greater than two stories on single 25-foot
181 lots, nor greater than three stories on 50-foot lots.
- 182
- 183 (45) *Areas.* No building which is used for residence purposes above the ground floor shall
184 occupy an area greater than 70 percent of the entire lot. The required lot area per
185 apartment or kitchen unit shall be 800 square feet. The required floor area for a kitchen
186 unit shall be not less than 250 square feet minimum and the area for a hotel room with
187 bath shall not be less than 200 square feet. Buildings not used for residential purposes
188 shall not occupy more than 90 percent of the lot area.
- 189
- 190 (56) *Residences.* All residences constructed in B-1-A districts shall conform to requirements
191 for RS-5 districts hereinafter provided and all apartments, hotels, or rental units
192 constructed in B-1-A districts shall conform to requirements for RM-25 districts,
193 hereinafter provided.
- 194
- 195 (67) *Design.* Construction shall be limited to one building on B-1-A lots that are 50 feet or less
196 in width. All business buildings constructed in a business district shall be of C.B.S.
197 construction and shall be designed with every practical consideration for appearance, fire
198 protection, health, light, air. All plans and specifications of the building shall be approved
199 by the Town Building Inspector. The Building Inspector need not approve design and use
200 of a building and may ask the Town staff, Planning and Zoning Board or the Board of
201 Adjustment for an official opinion or decision thereon. Open fronts are specifically
202 prohibited in B-1-A districts and there shall be a maximum opening of ten feet by ten feet
203 for doorways in each business building.
- 204

205

206 **SECTION 3. Amendment.** Chapter 30, Unified Land Development Regulation of the

207 Code of Ordinances, Section 30-271, is hereby amended as follows²:

208 **Section 30-271. B-1 district—Business.**

209 * * *

210
211 (a) *Uses.*
212

213 * * *

214
215 (2) No building or premises shall be used and no building with the usual accessories shall be
216 erected or altered other than a building or premises arranged, intended, or designed for
217 any of the following uses:

- 218 A. Antiques store,
- 219 B. Art galleries,
- 220 C. Arts and crafts supply store,
- 221 D. Automobile rental or leasing agencies (no outdoor display),
- 222 E. Bait and tackle shop,
- 223 F. Bakery,
- 224 G. Beauty schools, barber shops and hair salons,
- 225 H. Bicycle rental shop with no outside storage,
- 226 I. Book store,
- 227 J. Business and professional employment agency,
- 228 K. Camera and photographic supply store,
- 229 L. Card and stationery store,
- 230 M. Catering businesses,
- 231 N. Church and place of worship,
- 232 O. Clothing,
- 233 P. Coin-operated dry cleaning and laundry and/or pickup station,
- 234 Q. Community theaters, dinner theaters and cultural centers,
- 235 R. Computer/software store,
- 236 S. Consignment
- 237 T. Convenience store,
- 238 U. Cooking schools,
- 239 V. Copy center,
- 240 W. Courier service,
- 241 X. Delicatessen,
- 242 Y. Dental laboratory,
- 243 Z. Drug store/pharmacy (no on-site prescription writing for controlled substances
244 identified in Schedule II, III, or IV in F.S. §§ 893.03, 893.035, or 893.0355),
- 245 AA. Fabric/needlework/yarn shop,
- 246 BB. Fishing pier,

² Additions to existing text are shown in underline. Deletions are shown in ~~strike through~~. Additions shown in double underline were added between first and second reading.

247	CC.	Florist shop,
248	DD.	Formal wear sales and rental,
249	EE.	Fruit and produce store,
250	FF.	Furniture, and home furnishings,
251	GG.	Gift shop,
252	HH.	Government administration,
253	II.	Grocery/food store/supermarket,
254	JJ.	Hardware,
255	KK.	Health and fitness center,
256	LL.	Household appliances store,
257	MM.	Ice cream/yogurt store,
258	NN.	Interior decorator,
259	OO.	Jewelry store,
260	PP.	Library branch,
261	QQ.	Linen/bath/bedding store,
262	RR.	Luggage/handbag/leather goods store,
263	SS.	Mail/postage/fax service,
264	TT.	Marine parts and supplies store,
265	UU.	Market,
266	VV.	Massage therapist (licensed therapist to be on premises at all times of operation),
267		
268	WW.	Meat and poultry store,
269	XX.	Medical supplies sales,
270	YY.	Motorized scooter sales or moped sales and rentals (indoor only, outdoor sales, storage or display prohibited),
271		
272	ZZ.	Museum,
273	AAA.	Music/musical instrument store,
274	BBB.	Office building,
275	CCC.	Optical store,
276	DDD.	Party supply store,
277	EEE.	Personnel services,
278	FFF.	Photographic studio,
279	GGG.	Police and fire substation,
280	HHH.	Retail electronic sales and repair,
281	<u>III.</u>	Restaurant, including sidewalk cafes which would be appurtenant to, and a part of, a restaurant,
282		
283	<u>JJJH.</u>	Seafood store,
284	<u>KKKJJ.</u>	Shoe sales and repair,
285	<u>LLLKKK.</u>	Shop for marking articles sold at retail on the premises,
286	<u>MMMLLL.</u>	Specialty shop,
287	<u>NNNMMM.</u>	Sporting goods store, including dive shops,
288	<u>OOONNN.</u>	Studios for artists, photographers, musicians (including recording studios), and dance,
289		
290	<u>PPPOOO.</u>	Sundries,
291	<u>QQQPPP.</u>	Tailor/dressmaking store, direct to the customer,
292	<u>RRRQQQ.</u>	Tapes/videos/music CD stores,
293	<u>SSRRR.</u>	Tool rental (small tools and equipment, indoor display only),
294	<u>TTTSSS.</u>	Toy/game store,
295	<u>UUUTTT.</u>	Trade/business school,

- 296 VVVUUU. Travel agency,
 297 WWWAAV. Veterinarian or animal grooming with all activities enclosed within the
 298 building with no outside noise,
 299 XXXWWW. Watch and jewelry repair, and
 300 ~~XXX.~~ ~~Drive-through services that are accessory to a use in this zoning district shall be~~
 301 ~~allowed only as a conditional use requiring Planning and Zoning Board review~~
 302 ~~and Town Commission approval, provided that any approval of the drive-through~~
 303 ~~use by the Town Commission shall specifically establish the location and traffic~~
 304 ~~flow pattern of the drive-through.~~
 305 YYY. Uses not listed. Any use not covered by the above list may be authorized in the
 306 B-1 district by the Town Manager or designee only if the proposed use is similar
 307 to a listed use; otherwise, an amendment to this chapter is required. The Town
 308 Manager or designee shall consult with the Town Commission on any proposal to
 309 find that a use is similar, prior to authorizing such use in the B-1 district.
 310

311 (b) Conditional Uses. The following conditional uses may be permitted upon approval pursuant to
 312 the conditional use procedures of this Code:
 313

- 314 (1) Bicycle taxi (no outside storage or display)
 315 (2) Car wash/Outdoor hand wash
 316 (3) Charter and sightseeing boat
 317 (4) Child and adult day-care centers
 318 (5) Drive-through services that are accessory to a primary use, provided that any approval of
 319 the drive-through use by the Town Commission shall specifically establish the location
 320 and traffic flow pattern of the drive-through.
 321 (6) Dry cleaner
 322 (7) "Paid Private Parking" on parcels with a primary use, excluding stand alone parking lots
 323 in accordance with the following requirements:
 324
 325 i. During business operational hours, only non-required parking spaces, may be
 326 used as Paid Private Parking.
 327 ii. After business hours, required parking may also be used for Paid Private
 328 Parking.
 329 (8) Parking garage.
 330 (9) Pet store.
 331 (10) Pool supply store.
 332 (11) Outside seating for restaurants, on private property, that is accessory to the primary use
 333 and that are not regulated under Chapter 17, Article VI.
 334 (12) Outside storage of propane tank cabinets for the storage of propane tanks sold and
 335 rented at hardware stores and gas stations.
 336 (13) Water craft sales and rental (new or used)

337 (14) Conditional Uses not listed. Permission to apply for conditional uses not covered by the
338 above list in the B-1 district may be granted by the Town Manager or designee only if the
339 proposed conditional use is similar to a listed conditional use; otherwise, an amendment
340 to this chapter is required. The Town Manager or designee shall consult with the Town
341 Commission on any proposal to determine that a conditional use is similar to those listed,
342 prior to authorizing the filing of an application to seek approval of that conditional use in
343 the B-1 district.

344 (bc) *Height.*
345 No building shall be erected to a height greater than two stories on single 25-foot lots
346 nor greater than three stories on 50-foot lots.

347 (ed) *Areas.*
348 No building which is used for residence purposes above the ground floor shall
349 occupy an area greater than 70 percent of the entire lot. The required lot area per apartment
350 or kitchen unit shall be 800 square feet. The required floor area for a kitchen unit shall not be
351 less than 250 square feet minimum and the area for a hotel room with bath shall not be less
352 than 200 square feet. Buildings not used for residential purposes shall not occupy more than
353 90 percent of the lot area.

354 (ee) *Residences.*
355 All residences constructed in B-1 or RD-10 districts shall conform to requirements for
356 RS-5 districts hereinafter provided and all apartments, hotels, or rental units constructed in
357 B-1 districts shall conform to requirements for RM-25 districts, hereinafter provided.

358 (ef) *Design.*
359 Construction shall be limited to one on B-1-A lots 50 feet or less in width. All
360 business buildings constructed in a business district shall be of C.B.S. construction and shall
361 be designed with every practical consideration for appearance, fire protection, health, light,
362 air. All plans and specifications of the building shall be approved by the Town Building
363 Inspector. The Building Inspector need not approve design and use of a building and may
364 ask the Town staff, Planning and Zoning Board or the Board of Adjustment for an official
365 opinion or decision thereon. Open fronts are specifically prohibited in B-1 districts and there
366 shall be a maximum opening of ten feet by ten feet for doorways in each business building.

367 **SECTION 4. Amendment.** Chapter 30, Unified Land Development Regulations, of the
368 Code of Ordinances is hereby amended as follows³:

369 **Sec. 30-241. - RM-25 district—Apartments.**

370
371 * * *
372
373 (d) *Height.*
374
375 * * *
376

³ Additions to existing text are shown in underline. Deletions are shown in ~~strike through~~.

- 377 (2) All passive recreational rooftop use requires a conditional use permit.
 378
 379 i. Transient Uses. ~~Upon approval, a~~ A Conditional use permit for transient
 380 uses such as a hotel, motel, apartment building, condominium, or time
 381 share will be issued for the a period of one year. ~~This permit shall be~~
 382 ~~administratively reviewed by Town staff annually,~~ The transient use shall
 383 apply for renewal of the permit annually to the Town Manager, prior to re-
 384 issuance. The conditional use permit may be renewed if ~~it is~~ the Town
 385 ~~determines~~ d that (a) the conditional use does not adversely impact
 386 neighboring properties and (b) it complies with the conditions of site plan
 387 approval. ~~The conditional use permit is revocable, following notice to the~~
 388 ~~permit holder and opportunity to be heard by three members of the Town~~
 389 ~~Administration, designated by the Town Manager, when the use adversely~~
 390 ~~impacts adjacent property or the permit terms and conditions are violated.~~
 391 An administrative decision not to renew a rooftop use may be appealed to
 392 the Town Commission by the property owner. An administrative decision to
 393 renew a rooftop use may be appealed to the Town Commission by a
 394 neighboring property owner. The Town Commission's decision on appeal
 395 shall constitute a final development order.
 396
 397 ii. Non-Transient Uses. ~~A conditional passive recreational rooftop use permit~~
 398 ~~for a non-transient residential property, other than a hotel, motel, apartment~~
 399 ~~building, condominium, or time share, is exempt from the annual review~~
 400 ~~process heretofore set forth~~ for such roof tops for transient uses.
 401
 402 ~~Rooftop uses, as heretofore set forth, are permissible in RM-25 (south of Pine~~
 403 ~~Avenue) districts only when reviewed and approved by the Planning and Zoning~~
 404 ~~Board and Town Commission pursuant to site plan review and approval as a~~
 405 ~~conditional use.~~
 406
 407 For the purpose of this section, "apartment building" is defined as a residential
 408 rental property with four or more dwelling units.
 409

410 **SECTION 5.** Amendment. Section 30-56, Unified Land Development Regulations, of
 411 the Code of Ordinances is hereby created to read as follows⁴:

412 **Section 30-56. Conditional Uses Review.**

- 413 (a) **Generally.** A conditional use is a use that would not be appropriate without
 414 restriction throughout the land use district, but which, if controlled as to number,
 415 area, location, hours of operation, and relation to the neighborhood or impacted
 416 vicinity, would promote the public health, safety, welfare, order, comfort,
 417 convenience, appearance, or prosperity of the neighborhood. The purpose of
 418 this Section is to ensure that a conditional use shall only be permitted on specific
 419 sites as provided in a particular zoning district or as provided in this Code, where

⁴ All text in this section is new text. Additions in double underline were added between first and second reading. Deletions in ~~double strikethrough~~ were deleted between first and second reading.

420 the proposed use may be adequately accommodated without generating adverse
421 impacts on properties and land uses within the immediate vicinity.

422
423 This Section sets forth the procedures and criteria for approval of conditional
424 uses on specific sites. A conditional use shall be permitted only upon a finding
425 that the proposed use satisfies the specific review criteria of this Section and
426 other requirements of this Code.

427
428 An approval of a conditional use does not eliminate the need for other approvals,
429 which may be required under this Code, including but not limited to site plan
430 review. Site plan approvals shall be processed concurrently with the conditional
431 use application (and, if required, the site plan public hearing shall be held jointly
432 with the conditional use public hearing).

433
434 (b) **Application.** A conditional use application shall provide the following information
435 unless waived by the Development Services Director:

- 436 i. A copy of any existing approved site plan;
- 437 ii. If no previously approved site plan exists, a site plan, providing the
438 information required in Article IV of Chapter 30 of the Land
439 Development Code, except that the Development Services
440 Director may waive individual components of the site plan
441 requirements;
- 442 iii. Traffic impact study meeting the requirements of Section 30-
443 71(a)(4);
- 444 iv. Square feet designated (indoors or out) for each specific use;
- 445 v. Estimated employment;
- 446 vi. Estimated number and type of service vehicles;
- 447 vii. Any unique facilities or structures proposed as part of site
448 improvements; and
- 449 viii. A description of any mitigative techniques to abate any possible
450 adverse impacts of the proposed use on properties in the
451 immediate vicinity including smoke, odor, noise, and other
452 impacts.
- 453 ix. Application fee.

454
455 (c) **Review.** The Planning and Zoning Board shall review the application and
456 provide a recommendation for approval, modified approval, or denial to the Town
457 Commission. The Town Commission shall follow the quasi-judicial procedures in
458 the Code of Ordinances and shall, prior to taking action on a conditional use
459 application, hold a quasi-judicial public hearing. The Board and/or Commission
460 may impose conditions and safeguards, in addition to those prescribed in the
461 Code, as they determine are necessary for the protection of the surrounding area
462 and to preserve the spirit and intent of the Town Code and Comprehensive Plan.
463 Notice of the public hearing shall be given and the hearing shall be conducted as
464 provided in the quasi-judicial procedures.

465
466 (d) **Specific Criteria for Approving a Conditional Use.** A conditional use shall be
467 permitted upon a finding by the Town Commission that the proposed use, as
468 proposed or with additional conditions or modifications, satisfies the criteria

469 herein specified. A conditional use shall be denied if the Town Commission
470 determines that the proposed use does not meet the criteria herein provided or is
471 adverse to the public interest. The applicant shall demonstrate the following:
472

- 473 (1) *Land Use Compatibility.* The conditional use, including its proposed scale
474 and intensity, traffic generating characteristics, and off-site impacts shall
475 be compatible and harmonious with adjacent land uses and shall not
476 adversely impact land use activities and residential areas in the
477 immediate vicinity.
478

479 For purposes of a conditional use review, compatibility is defined as a
480 condition in which land uses or conditions can coexist in relative proximity
481 to each other in a stable fashion over time such that no use or condition is
482 unduly negatively impacted directly or indirectly by another use or
483 condition. Compatibility of land uses is dependent on numerous
484 development characteristics, which may impact adjacent or surrounding
485 uses. They include: type of use, density, intensity, height, general
486 appearance and aesthetics, odors, noise, smoke, vibration, traffic
487 generation and nuisances. The Town Manager shall recommend whether
488 the conditional use is compatible. Compatibility shall be measured based
489 on all of the following characteristics of the proposed use or development
490 in relationship to surrounding development in the immediate area:

- 491 i. Permitted uses, structures and activities allowed within the land
492 use category.
493 ii. Building location, dimensions, height, and floor area ratio.
494 iii. Location and extent of parking, access drives and service areas.
495 iv. Traffic generation, hours of operation, noise levels and outdoor
496 lighting.
497 v. Alteration of light and air.
498 vi. Setbacks and buffers such as fences, walls, landscaping and
499 open space treatment.
500 vii. The architectural and site design are compatible with the
501 character of the surrounding area.
502 viii. Any existing or proposed signs or lighting will not adversely affect
503 surrounding areas or vehicular traffic.
504

- 505 (2) *Sufficient Site Size, Site Specifications, and Infrastructure to*
506 *Accommodate the Proposed Use.* The size and shape of the site, the
507 proposed access and internal circulation, and the urban design must be
508 adequate to accommodate the proposed scale and intensity of the
509 conditional use requested. The site shall be of sufficient size to provide
510 adequate screening, buffers, landscaping, open space, off-street parking,
511 efficient internal traffic circulation, infrastructure and similar site plan
512 improvements needed to mitigate against potential adverse impacts of the
513 proposed use.
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- 515 (3) *Compliance with the Comprehensive Plan and Code of Ordinances.* The
516 conditional use shall comply with environmental, zoning, concurrency and

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other applicable regulations of this Code of Ordinances and shall be consistent with the Comprehensive Plan.

- (4) *Proper Use of Mitigative Techniques.* The conditional use and site plan shall incorporate mitigative techniques needed to prevent adverse impacts to adjacent land uses. In addition, the design scheme shall appropriately address off-site impacts to ensure that land use activities in the immediate vicinity, including community infrastructure, are not burdened with adverse impacts detrimental to the general public health, safety and welfare.

- (e) **Conditional Use Approval Amendments.** A conditional use approval is specific to the density and intensity of the proposed use, the particular site plan and any supplemental conditions approved. Unauthorized modification to a site plan or any of the specifics or conditions of the conditional use approval is a violation of the Town Code and subject to code enforcement action and/or revocation of the conditional use approved. Any proposed modification to the conditional use that affects density, intensity or minimum code requirements of the site development plan will require review and approval by the Town Commission.

- (1) The Town Manager shall determine if the request is a Level 1 Amendment or a Level Two Amendment. In deciding whether an application is a Level 1 or Level 2 Amendment, the Town Manager shall consider the requirements of Section 30-54(m)(4)c. of the Code.

- (12) ~~Level 1 Amendment: The Town Manager or his or her designee may approve m~~Minor changes and deviations to ~~the an~~ approved conditional use ~~may be approved, approved with conditions or modifications, denied, or re-classified as a Level 2 Amendment, by the Town Commission, without Planning and Zoning Board Review. If the Town Commission determines the modification is a Level 2 Amendment, it shall be processed pursuant to Subsection (2) below.~~ A change or deviation shall be classified as a Level 1 Amendment, if it meets the criteria of Section 30-54(m)(4)a. of the Code. All other requested changes and deviations shall be processed as a Level 2 Amendment.

- (23) *Level 2 Amendment:* Changes and deviations to an approved conditional use meeting the criteria of Section 30-54(m)(4)b. of the Code, shall constitute a Level 2 Amendment and shall require that the requested changes be subject to the same procedure as required for a new application.

- ~~(3) In deciding whether an application is a Level 1 or Level 2 Amendment, the Town Manager shall consider the requirements of Section 30-54(m)(4)c. of the Code.~~

- (f) **Continuing Jurisdiction.** The Town Commission hereby reserves to itself the jurisdiction and authority to review and revoke conditional use permits where the use or the continuation of the use:

- 568 (1) Violates the conditions set forth by the Town Commission as a
569 requirement for the granting of the use;
570
571 (2) Is injurious to the health, safety or welfare of the community or of the
572 public;
573
574 (3) Tends to attract vagrants, loiterers or habitually intoxicated persons; or
575
576 (4) Has a history of repeated Code violations.
577
578 (g) **Application Fees.** Fees for conditional use permits, and for Level 1 and Level 2
579 Amendments shall be established by the Town Commission by resolution.
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581

582 **SECTION 6. Severability.** If any section, sentence, clause or phrase of this Ordinance is
583 held to be invalid or unconditional by any court of competent jurisdiction, then said holding shall in
584 no way affect the validity of the remaining portions of this Ordinance.

585 **SECTION 7. Conflicts.** All ordinances or parts of Ordinances and all Resolutions or
586 parts of Resolutions in conflict with the provisions of this Ordinance are hereby repealed.

587 **SECTION 8. Codification.** This Ordinance shall be codified.

588 **SECTION 9. Effective Date.** This Ordinance shall become effective immediately upon
589 adoption on second reading.

590 **SECTION 10. Adoption.** Passed on the first reading, this ___ day of _____, 2011.
591 Passed and adopted on the second reading, this ___ day of _____, 2011.

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Mayor Roseann Minnet

	First Reading	Second Reading
_____ Mayor Minnet	_____	_____
_____ Vice-Mayor Dodd	_____	_____
_____ Commissioner Clotney	_____	_____
_____ Commissioner Sasser	_____	_____
_____ Commissioner Vincent	_____	_____

Attest:

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Town Clerk, June White, CMC

(CORPORATE SEAL)

Approved as to form:

Susan L. Trevarthen, Town Attorney

Exhibit 2

TO THE ZONING AND COMMISSION MEMBERS OF LAUDERDALE BY THE SEA.

RE: DIAMONDS AND DOGGIES LLC.

WE WOULD APPRECIATE YOU TAKING THE TIME TO TRY TO ALLOW US TO OPEN ANOTHER AWARD WINNING PUPPY STORE AND PET BOUTIQUE AT 111 COMMERCIAL BLVD .OWNED BY ATHENA RESTAURANT OWNERS AS OUR LANDLORD..WE HAVE A CURRENT FAMILY OWNED OPERATION IN MIAMI ON WASHINGTON AVE FOR 5 YEARS WWW.LESPETITSPUPPIES.COM . WE LIVE HERE LOCALLY IN FT.LAUDERDALE BEACH AREA....ATTACHED IS OUR MAGAZINE ARTICLES FOR REFERENCE.

{PLEASE READ }

WE WOULD SELL ONLY TEACUPS AND TOY DOGGIE BREEDS, ON AND AVERAGE OF ONE TO FOUR LB BABIES AT BIRTH THAT ARE A MINIMUM OF EIGHT WEEKS OLD TO TWELVE WEEKS OLD , MAX TO TEN LBS AND ALL FROM PRIVATE REGISTERED AKC BREEDERS. AND NO PUPPY MILLS. THEY VERY RARELY BARK LOUD AT THAT AGE.WE NO FROM EXPERIENCE... WE HAVE AROUND TWELVE TO 15 BABY PUPS AT ONE TIME NORMALLY IN THE FRONT WINDOW SHOWCASES ALL SEPERATED MAINLY AGAIN ALL AIR CONDITIONED AND VENTED ..BUT WE WOULD LIKE TO HOUSE THEM AT NITE IN THE STORES ENCLOSED SOUND PROOF SLEEP ROOM WITH ALL AC AND VENTED HOUSES AGAIN ALL IN AN INSULATED QUIET ENVIROMENT GUARANTEED .. NO ONE WILL EVER NO THEY ARE THERE AT NITE. AND BECAUSE OF THE STRESS OF MOVING THEM DAILY TO AN OUTSIDE KENNEL ,IT COULD POSSIBLY INJURE THEM OR MAKE THEM HYPOGLYCEMIC WHICH IS SERIOUS....THERE WILL BE NO KENNEL STORAGE OR BOARDING FROM ANY OUTSIDERS... OUR CLEANING LADY WILL BE THERE AT SIX THIRTY AM AND LEAVE AT 2 PM SO THERE WILL ALWAYS BE SOMEONE THERE TO MONITOR , EXCEPT FOR THE PERIOD OF CLOSING TEN PM TILL SIX AM. OUR STORE IS THE CLEANEST PUPPY STORE IN ALL OF SOUTH FLORIDA VOTED BY THE HEALTH DEPT AND THE CH 4 NEWS AS IN OUR ARTICLE ATTACHED ... ALL THE BABIES USUALLY SLEEP THRU THE NITE BECAUSE OF ALL THE EXERCISE WE DO WITH THEM DURING THE DAY SHOWING CUSTOMERS AND IN OUR PLAY AREAS EVERY 2 HRS FOR EXERCISE ..THEY ARE LOVED LIKE ONE OF THE FAMILY!! BECAUSE THEY ARE! WE WILL CARRY DIAMONDS AND JEWELRY FOR PUPPIES AS WELL AS PEOPLE JEWELRY TOO! PLUS ALL REPAIRS DONE ON PREMISES ..

WE THANK YOU FOR TAKING THE TIME TO SEE OUR APPLICATION AND WOULD LIKE TO

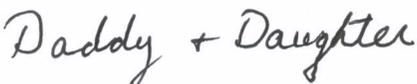
THANK YOU ALL VERY MUCH!

BEST REGARDS,



DIAMONDS AND DOGGIES LLC

DOMINICK AND DOMINIQUE CASALE.



⚠ Attachments can contain viruses that may harm your computer. Attachments may not display correctly.

Jeff Bowman

From: CASALEJEWELERS@aol.com [CASALEJEWELERS@aol.com] **Sent:** Tue 4/5/2011 12:49 PM
To: Jeff Bowman
Cc:
Subject: south beach pictures
Attachments: [les petits 1 front.jpg\(1MB\)](#) [les petits 2 cage acc.jpg\(1MB\)](#) [les petits 3 back view.jpg\(1MB\)](#)

JEFF, OUR LEASE IS ALL SIGNED AT 111 COMMERCIAL AND I WOULD LIKE TO ASK YOU SOME OTHER QUESTIONS IF YOU HAVE TIME?? ..
FOR NOW I AM SENDING YOU THE PICTURES OF OUR OTHER STORE VIA EMAIL IN MIAMI BEACH WHICH CLEARLY SHOWS WHAT WE DO AND HOW IMMACULATE ITS KEPT. WE ALSO WILL NOT HAVE GROOMING HERE SO WHERE THE TUBS ARE IN THIS PHOTOS WE WILL HAVE JEWELRY SHOWCASES ,ACCESSORIES,AND PET COUTOURE PET JEWELRY ETC.... PLEASE LET THE COMMISSIONERS KNOW THAT WE ARE NOT A PET SHOP. WE ARE A PUPPY AND JEWELRY BOUTIQUE WHO DOES NOT BUY FROM ANY PUPPY MILLS. ONLY AKC AND CKC REGISTERED BREEDERS ,, WE NEED THE PUPPIES IN THE WINDOWS TO GET THE KIDS AND FAMILIES INTO THE STORE. THEY WILL BE TREATED AS OUR OWN FAMILIES. ALL SHOW CASES ARE VENTED AND AIR CONDITIONED SO THE BABIES ARE COMFORTABLE. THIS WILL BE A BIG TOURIST SPOT FOR THE VISITORS OF LAUDERDALE BY THE SEA AS IT IS IN SOUTH BEACH .WE GET OVER 500 PEOPLE A DAY THERE TO PLAY AND HOLD OUR DOGS.WITH NOTHING BUT RAVE REVIEWS,, BECAUSE MOST PEOPLE MISS THERE DOGGIES ON VACATION ,THEY NEED A FIX AND WILL COME AND VISIT OUR PUPPIES AS THEY DO KILWINS.. THERE IS NEVER AND ODOR IN OUR STORES.. IT WON THE AWARD FOR CLEANEST STORE IN DADE COUNTY,, OUR NEW STORE WILL BE DESIGNED DIFFERENTLY BUT IN THE UTMOST CHARECTERISTIC OF THE OTHER STORE.. IF YOU HAVE ANY OTHER QUESTIONS PLEASE FEEL FREE TO CALL ME.. THANK YOU AGAIN.

DOM CASALE

DOMINICK CASALE -GIA CERTIFIED

VIP JEWELRY BUYERS

PO BOX 23879

FORT LAUDERDALE FLA

33307

954-439-2023 PH

DOM@VIPJEWELRYBUYERS.COM

WWW.VIPJEWELRYBUYERS.COM







Exhibit 3

1/23/10

Modification of approved site plan.

a.

Minor: A non-impacting modification which will have no adverse effect on the approved site and development plan and no impact upon adjacent and nearby properties, and no adverse aesthetic impact when viewed from a public right-of-way as determined by the Town Manager and/or his designee(s).

b.

Major: A modification which presents a significant change in intensity of use which, in turn, may have a significant impact upon facilities, concurrency; upon nearby and adjacent properties, or upon findings made at the time of approval of the site and development plan as determined by the Town Manager and/or his designee(s).

c.

In making a minor/major modification determination, the Town Manager and/or his designee(s) shall consider the following:

1.

Does the modification increase the buildable square footage of the development.

2.

Does the modification reduce the provided number of parking space below the required number of parking spaces.

3.

Does the modification cause the development to be below the development standards for the zoning districts in which it is located or other applicable standards in the land development regulations.

4.

Does the modification have an adverse effect on adjacent or nearby property or reduce required physical buffers, such as fences, trees, or hedges.

5.

Does the modification adversely affect the elevation design of the structure or reduce the overall design of the structure below the standards stated in the community design plan.

6.

Does the modified development meet the concurrency requirements of the Town of Lauderdale-By-The-Sea Comprehensive Plan.

7.

Does the modification alter the site layout so that the modified site plan does not resemble the approved site plan.

Exhibit 4

February 16, 2011 P&Z Minutes

Item #1: Proposed Amendments to the Unified Land Development Code (Conditional Uses Within the Business Districts)

Jeff Bowman, Director of Development Services, reminded the Board staff had been working on business uses since 2010, and the Code had been amended and expanded. Conditional uses were discussed, though they were not part of the original notice of intent, and staff did a new notice of intent to add conditional uses, advising the Board they would be presented to those uses for a recommendation to the Commission. He reviewed the information on conditional uses located on the last two pages of the backup, items A through J, and a memo staff handed out to the Board with two additional recommended conditional uses: K, a pool supply store, and L, outside storage of propane tank cabinets for hardware stores and gas stations.

Mr. Wick sought clarification as to item I, primary use, asking if it pertained to such practices as a bank that rented out its parking lot after business hours.

Mr. Bowman affirmed this to be the case, noting the structure could also be a business building, an office, etc. that closed at 5:00 p.m. and whose parking spaces were unused during the evening hours.

Vice Chair Brandt remarked not being particularly comfortable with the last paragraph of the attached memo pertaining to conditional uses not listed. He wondered if by the language staff meant the Town's administration could, potentially, recommend allowing a new use and the Town Commission would have to approve the use.

Mr. Bowman responded the language in the last paragraph stated if the use being requested was similar to that of other allowed conditional uses, the use could be administratively approved if the Town Commission deemed it appropriate.

Town Attorney Kathryn Mehaffey explained it would be a two-step process; if a requested conditional use appeared similar to existing conditional uses, the Town Manager could take the request to the Commission. If the latter made the determination and the requested use was similar to existing conditional uses, the Town Manager could authorize the applicant to apply for the conditional use. At that point, the application would proceed through the standard procedure to the Town Commission for approval.

Vice Chair Brandt suggested the Board recommend changing the word "consult" to "with the approval of the Commission," as the word consult could be somewhat vague. He sought clarification as to paid private parking, querying if hotel parking qualified; and how staff determined business hours in order to identify what business could become a potential private parking vendor.

Mr. Bowman replied, for example, if a hotel with 130 spaces required the use of 100 spaces, the additional 30 spaces could be leased, though the 100 spaces could not, as hotels tended to be 24-hour businesses. An office building on Commercial Blvd., for instance, that provided its own parking and the entire building shuts down at 5:00 p.m., could elect to lease all their parking spaces after business hours. Business hours were determined by the time the particular business closed each day.

Vice Chair Brandt wished to know if there was any language in the Code that classified hotels as 24-hour businesses. He repeated his question as to what staff was using to determine when a business was considered closed for the day and whether the situation was completely subjective?

Mr. Wick felt the situation was subjective, as the hours of operation depended on the type of business. Though some banking was available 24 hours, the bank closed at a set time and the banking staff was no longer on the property; the bank was then free to rent the parking spaces after the staff left. Despite the process being subjective, he did not foresee a major problem; all hotels were open 24 hours a day as long as they had at least one patron.

Vice Chair Brandt questioned when a hotel was not fully occupied, could the unused parking spaces be rented. There appeared to be a lot of room for interpretation. The Board previously discussed the Town's budget shortfalls for the Town's taxpayer-owned parking lots being in the region of \$60,000 to \$70,000 range, and he wondered if the Town was potentially losing volume on Town parking lots if private parking lots would be competing by making spaces available.

Bud Bentley, Assistant Town Manager, commented first as to the interpretation of business hours and how hotels were seen, noting at a prior staff debate, he took the position that hotels should be included, and an hour selected, such as eight o'clock, by

which if a room remained vacant, a hotel could consider the dedicated parking space an excess spot. As this was such a day-to-day issue for hotels, staff was unsure how to effectively include this in the conditional use section of the Code; the dilemma applied to any 24-hour business with fluctuating parking space usage. On the issue of employees staying after hours, etc., such as a bank, he understood in some buildings the bank was on the first floor and other businesses were housed on the floors above; thus, the hours of operation could vary. He pointed out the conditional use for renting unused parking spaces after business hours was site and condition specific, and the process was fairly manageable and could be reviewed by Town staff on an ongoing basis. On the second matter of the effect on the Town's revenue from its taxpayer parking lots by permitting the renting out private parking spaces, he understood there were drivers parking in areas after business hours without the business owner's permission. For example, it was common practice to park at the SunTrust bank parking lot. However, when the bank began charging to use their parking lot, he expected people to make an economic market decision on how much they would pay to park at SunTrust versus what the Town charged, and if the Town's parking lot was closer to their destination, they would decide where to park accordingly.

Mr. Wick asked if parking permits could be issued to open up more spaces in Town parking lots, such as on A1A, to make employee parking available at a discounted rate.

Mr. Bentley believed, at present, a parking permit in the employee parking area was approximately \$22 per month; the last time the Commission visited the matter in 2010, they provided for permit parking in the A1A lot for \$25. Thus, if someone worked east of A1A and for about \$3 a day they did not have to walk the extra three blocks, this seemed a great value. He commented not many people had availed themselves of the service, but that it had more to do with the Town not marketing the service and less to do with the economics of it. The Town Commission was holding a workshop on the coming Tuesday at five o'clock on the parking exempt program and, as staff collected data that might be useful in the Commission discussion. The data included a full parking inventory of the paid spaces, employee parking, the non-metered spaces, etc. Staff also did some utilization counts in the past week and a half and would continue doing those through to the weekend, and so be able to share with the Commission some rough data on the utilization of Town parking in certain areas. He remarked there would at least be a baseline for them to look at to examine the impact of certain future actions.

Vice Chair Brandt inquired if the conditional use application included pricing.

Mr. Bentley did not think pricing was specifically asked for on any of the applications in the procedures he recalled.

Town Attorney Mehaffey confirmed pricing was not presently included in the procedures.

Vice Chair Brandt questioned if staff expected any franchises use taxes to be imposed by the Commission.

Mr. Bentley was unaware of any franchise, though there might be some with regard to a retail sale, and there would be sales tax responsibilities. He stated this was not an area in which he was an expert and preferred not to offer an opinion.

Vice Chair Brandt reiterated his concern that the changes could create less flow to the Town's parking lots and thus harming the revenue coming to the taxpayers, as the Town had an internal debt service from its parking lots to the General Fund. He supported the concept of private spaces, but even at the Town's current rate of \$1.25 or \$1.50 an hour, it was possible a patron would prefer to play a flat fee of \$5 or \$10 to park at a private lot, or feed quarters into a parking meter. Until the Commission chose to act on something that increased the stimulus of the flow of parking, opening all the possible parking lots, it was important to protect the taxpayer from losing revenue, and it seemed the recommended reduction of 15 spaces could harm taxpayers' revenue from the Town's parking lots.

Mr. Hunsaker believed the Commission's directive to staff was to broaden the Code to become more business friendly, to increase the possibility for businesses to rent out their parking lots. He had no wish, therefore, to become involved with devising restrictions that were so great it was not economically feasible for businesses to try to rent out their unused parking spaces.

Vice Chair Brandt clarified he was not against conditional uses as a whole, but he would hold off removing exceeding the minimum parking requirements by 15 or more spaces.

Mr. Yankwitt thought the Town received a certain percentage of the sales tax revenue.

Mr. Bowman affirmed this to be the case.

Mr. Yankwitt observed, as the Town increased the number of available parking spaces, paid or nonpaid, more people would be encouraged to visit the Town. In theory, this would increase revenue to the Town.

Mr. Bentley remarked sales tax was distributed in the state of Florida per capita within a county. Thus, the Town would not get the exact amount in sales tax that occurred in Lauderdale-By-The-Sea. He mentioned the SunTrust building was available to serve both east and west of their location, though his whole focus had been on the waterfront area. Staff recently prepared a map to illustrate the relative distances, and SunTrust was about 550 feet to the A1A intersection; the A1A lot was about 290 feet to A1A intersection; El Prado was 800 feet to the A1A intersection; and from Tradewinds to Sea Grape, the whole stretch of Commercial Blvd. was around 1,500 feet. Thus, there were very different walking distances for which the various parking lots would provide. He said the employees would park at such distances, and people attending special events would park at greater distances, but someone going to dinner tended to park closer to their destination. The aim of the present recommendations was to widen the range of parking options to better serve the Town.

Mr. Wick made a motion, seconded by Mr. Yankwitt, to pass Item #1 Proposed Amendments to the Unified Land Development Code for conditional uses within the business district to the Town Commission for approval.

Mr. Wick made a motion to amend the main motion, seconded by Mr. Yankwitt, to include in the conditional uses as recommended by Town staff:

- K. Pool Supply store
- L. Outside storage of propane tank cabinets for hardware stores and gas stations

Mr. Hunsaker observed staff's recommendation included exceeding minimum required parking and striking 15 or more spaces. He wished to clarify Mr. Wick's motion was not to approve this recommendation, it was only to add items K and L noted in the memo to the list of conditional uses.

Mr. Wick affirmed this to be the case.

In a roll call vote for the amendment to the main motion, the motion carried 3 – 1. Vice Chair Brandt voted in the negative.

Mr. Hunsaker requested a second amendment to the main motion, seconded by Mr. Wick, to strike the verbiage "fifteen or more spaces" in Conditional Use I pertaining to "Paid Private Parking."

In a roll call vote for the second amendment to the main motion, the motion carried 3 – 1. Vice Chair Brandt voted in the negative.

Mr. Bowman asked about the conditional uses not listed.

Vice Chair Brandt remarked no amendment had been forwarded in this regard as yet. Specifically, staff was referring to the paragraph that gave the administration the ability to consult with the Commission on conditional use requests for uses that were similar to existing conditional uses in the Code for their approval.

Mr. Hunsaker requested a third amendment to the main motion, seconded by Mr. Wick, to accept the verbiage for conditional uses not listed as written by staff which states, " Any conditional use not covered by the above list may be authorized by the B-1 district by the Town Manager or designee only if the proposed use is similar to a listed conditional use; otherwise, an amendment to this chapter is required. The Town Manager or designee shall consult with the Town Commission on any proposal to find that a conditional use is similar, prior to authorizing such conditional use in the B-1 district."

In a roll call vote for the third amendment to the main motion, the motion carried 3 – 1. Vice Chair Brandt voted in the negative.

There being no further amendments to the main motion, a roll call vote was taken to approve the main motion to pass Item #1 Proposed Amendments to the Unified Land Development Code for conditional uses within the business district to the Town Commission for approval to include amendments 1, 2 and 3 as stated above. The motion carried 4 – 0.

February 16, 2011 P&Z Minutes

Item #2: Proposed Amendments to the Unified Land Development Code (Conditional Use Procedures)

Mr. Bowman reviewed the backup material, noting with abovementioned conditional uses the Board recommended for approval to the Commission, along with other conditional uses in the Code of Ordinance, there was no central or specific location in the Code addressing procedures for conditional uses. Hence, staff was recommending the Code be amended for procedures for conditional uses.

Vice Chair Brandt questioned the last page, item E, subparagraph 1, the "level one" amendment.

Mr. Bowman elaborated there was a level one and a level two: Level one pertained to minor changes or deviations from a conditional use permit that could be approved by the Town Manager or designee; Level two was implemented if the change was considered major, and the applicant had to go through the entire application process again and get Commission approval.

Vice Chair Brandt felt the terms minor and major were very subjective and wished staff to explain what was considered minor versus major changes. For instance, would a five-foot setback be considered a minor change?

Mr. Bowman responded if the applicant was requesting going from a ten-foot setback to a five-foot setback, that would be considered a major change.

Vice Chair Brandt thought, as it pertained to items related to density, setbacks, etc., the language should be more specific; before deciding on whether to recommend approval or not to the Commission, the Board should consider including language in the amendment that classified changes to setbacks and density as "major" rather than "minor" in the conditional use site plan application procedure.

Mr. Wick believed density could not be changed, though setbacks could.

Vice Chair Brandt indicated he was referring to the conditional use site plan; any changes to that portion of a site plan. Thus, if something passed, even if it was within the Code, level one allowed the Town Manager or designee to make a decision of approval at their own discretion. What might be considered minor to one person could be considered as major to another, particularly with regard to site plan changes.

Mr. Yankwitt wondered if it were possible to include a definitions page or a key for clarification, as the size of property varied.

Mr. Hunsaker stated conditional uses were created due to it being impossible to be specific about all issues. It seemed unnecessary to discuss the matter in greater detail, as staff tended to send matters for a Commission decision in error rather than to approve them in error. Therefore, he felt it unnecessary for the Board to include in the language definitions of what was considered minor or major changes, as staff tended to make most changes a level two and seek guidance from the Commission.

Vice Chair Brandt suggested making level two require a new application, and level one should reflect the change(s) and must receive Commission approval. If the minor change had staff's consensus, it could be placed on the Commission's consent agenda and passed with little or no discussion. If a problem was foreseen, a Commissioner could pull the item for further discussion.

Mr. Hunsaker disagreed, stating one of the reasons for having a Town Manager was to maintain a degree of professionalism. Vice Chair Brandt's suggestion, essentially, stripped the Town Manager of his/her authority by having even minor changes going before the Commission.

Mr. Wick inquired if having minor changes go before the Commission for approval made any difference other than a possible delay in the process.

Town Attorney Mehaffey replied, as well as the delay, there was added expense associated with the delay.

Mr. Wick felt the goal was to work with the Town to help attract new businesses and keep existing businesses by reducing their expenses.

Vice Chair Brandt supported an expeditious procedure; however, he claimed an admitted lack of trust in Town Manager approvals, intending no disrespect or contempt to the current administration. Until that trust was reestablished, he preferred to rely on the elected body he and his fellow citizens voted for to make such decisions. If no fellow members of the Board wished such an amendment to be made, he would entertain a motion to approve item #2 amendments as presented by staff.

Mr. Wick made a motion, seconded by Mr. Hunsaker, to pass Item #2 Proposed Amendments to the Unified Land Development Code conditional use procedures to the Town Commission for approval.

In a roll call vote for the main motion, the motion failed 2 – 2. Vice Chair Brandt and Mr. Yankwiitt voted in the negative.

Vice Chair Brandt wondered if a motion to not recommend Item #2 was in order.

Mr. Wick recalled some four or five years previous, the Town Commission requested the Board not make negative motions.

Town Attorney Mehaffey confirmed there was language to the effect that the action in a motion should only be taken in the affirmative. This meant a failed motion was not necessarily a recommendation, versus an affirmative vote contrary to that or to implement a failed vote would be an affirmative vote to deny. However, the Board could entertain either proposed revisions or recommendations to revise certain portions of the proposed amendments that might be more favorable and considered differently. She pointed out, in boards the size of the P&Z Board, under Robert's Rules, the chairperson could act as any other board member, including making motions and seconding.

Vice Chair Brandt observed the Commission act similarly at times, but he usually refrained from doing so as a matter of courtesy.

Vice Chair Brandt made a motion, seconded by Mr. Wick, to pass Item #2 Proposed Amendments to the Unified Land Development Code conditional use procedures to the Town Commission for approval.

Vice Chair Brandt made a motion to amend item #2 Proposed Amendments to add level one amendments must be approved by the Town Commission, seconded by Mr. Wick.

Mr. Yankwiitt thought some language should be included that gave direction to the Town Manager. There should be some parameters established, particularly for future administrations, and they should include some definition as to what was considered level one and level two changes. If the decision was passed onto the Commission, then there was little need to develop a formal definition, though it would delay the process. He supported the inclusion of a decision table for attachment to level one and two in whatever manner staff could devise it; extreme cases were easier to categorize as minor or major, but it was the middle ground changes that were less easy to classify.

Mr. Hunsaker opined the subject procedure was an attempt by Town staff to establish a unified policy and procedure on conditional uses. If the suggested revisions by Board members were not included by the Commission, the latter still retained the authority to approve conditional uses; there was just no standard for that purpose. He reiterated Item #2 was an attempt to codify the conditional use approval process.

Vice Chair Brandt remarked that though a conditional use was approved by the Commission, an amendment to that conditional use could be requested; if it were minor, it would not have to come back to the Commission for approval, rather the change could be approved by the Town Manager at his/her discretion if they thought the change minor. He then withdrew his motion to amend and recommended tabling item #2 until there was an odd number of Board members present to vote.

Mr. Wick withdrew his second and made a motion to table item #2 to a date certain.

Mr. Bowman explained the Town's Code contained a section in the site plan procedures that addressed the issue of major and minor changes. Staff could include language in the proposed amendments, reverting to existing definitions under site plan procedures in the Code if this would gain the Board's confidence in moving forward with a recommendation for approval to the Commission on item #2.

Mr. Wick withdrew his motion to table.

Mr. Bowman went on to read the definitions of major and minor changes as reflected in the existing Site Plan Procedures under Chapter 30, section 54, subsection M.4 A, B and C.

Vice Chair Brandt maintained the interpretation of the language pertaining to minor and major changes was still too subjective.

Mr. Yankwitt observed if the Board passed item #2 with the amendments as stated, the Board could discuss the language at a later date.

Vice Chair Brandt pointed out if the Board passed staff's recommendations for item #2 going forward to the Commission for approval, the Board would not see the matter again before the Commission voted.

Mr. Wick made a motion to amend the main motion, seconded by Mr. Yankwitt, to include referrals to Chapter 30 Section 54, Subsection M.4 A, B and C that pertains to Site Plan Procedures for minor and major modifications.

In a roll call vote for the amendment to the main motion, the motion carried 3 – 1. Vice Chair Brandt voted in the negative.

There being no further amendments to the main motion, a roll call vote was taken to approve the main motion to pass Item #2 Proposed Amendments to the Unified Land Development Code Conditional Use Procedures to the Town Commission for approval with an amendment to include referrals to Chapter 30 Section 54 Subsection M.4 A, B and C that pertains to Site Plan Procedures for minor and major modifications. The motion carried 3 – 1. Vice Chair Brandt voted in the negative.