



Item No. 12.2.d

# 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: Second Reading 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. The proposed revisions were accepted and recommended to move forward for second reading on April 27, 2011. Also, the recommendations of consulting planner Cecelia Ward were presented at the April 12, 2011 roundtable meeting. Those recommendations included adding mixed use development as a conditional use in the B-1 zoning district, and adding code provisions for the allocation of flexibility units to such developments. The ordinance has been revised to include those recommendations, which are highlighted in yellow.

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.)



## AGENDA ITEM REQUEST FORM

### 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. All changes following first reading are shown in double strikethrough or double underline font. 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 impact adjacent properties. The proposed use has been added to the attached Ordinance for your consideration.

Finally, based on staff's understanding of the issues in the Town, staff has added "parking garage" as a conditional use in both of the business districts.

Pursuant to Ms. Ward's recommendations, mixed use development has been added as a conditional use in the B-1 zoning district. Such mixed use developments must obtain an allocation of flexibility units as part of the conditional use process, and flexibility unit allocation procedures have been added to the ordinance.

**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



## AGENDA ITEM REQUEST FORM

Item No. \_\_\_\_\_

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: Approve on second reading.**

**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 CA

# Exhibit 1

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**ORDINANCE 2011-07**

**AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-  
THE-SEA, FLORIDA, AMENDING CHAPTER 30, UNIFIED  
LAND DEVELOPMENT REGULATIONS, OF THE CODE  
OF ORDINANCES, BY AMENDING SECTION 30-261, "B-1-  
A DISTRICT – BUSINESS" AND 30-271, "B-1 DISTRICT –  
BUSINESS" TO CORRECT SCRIVENER'S ERRORS AND  
TO PROVIDE CONDITIONAL USES IN THESE  
DISTRICTS; BY AMENDING CONDITIONAL USE  
PROCEDURES IN THE RM-25 DISTRICT; CREATING  
SECTION 30-56, CONDITIONAL USE REVIEW;  
PROVIDING FOR SEVERABILITY, CONFLICTS,  
CODIFICATION, AND AN EFFECTIVE DATE**

17           **WHEREAS**, the Town Commission recognizes that changes to the adopted Code of  
18 Ordinances are periodically necessary in order to ensure that the Town's land development  
19 regulations are current and consistent with the Town's planning and regulatory needs; and

20           **WHEREAS**, the Town Commission desires to provide for conditional uses within the B-  
21 1-A and B-1 Business Districts, of the Town's zoning regulations; and

22           **WHEREAS**, the Town's land development regulations identify several conditional uses  
23 throughout the code, but do not provide a uniform procedure for review and approval of those  
24 conditional uses; and

25           **WHEREAS**, the Town Commission desires to create a single set of procedures to  
26 provide for consistent review of conditional use requests; and

27           **WHEREAS**, Section 30-531 of the Code requires issuance of a Notice of Intent prior to  
28 the processing of any amendment to the land development regulations in Chapter 30 of the Code,  
29 and such notice was given of this amendment on January 25, 2011; and

30           **WHEREAS**, the Planning and Zoning Board, sitting as the Local Planning Agency, has  
31 reviewed the contents of this Ordinance at a duly noticed public hearing on February 16, 2011,  
and provided a recommendation of approval of the Ordinance with amendments; and



65	<b>M.</b>	Catering businesses,
66	<b>N.</b>	Church and place of worship,
67	<b>O.</b>	Clothing,
68	<b>P.</b>	Coin-operated dry cleaning and laundry and/or pickup station,
69	<b>Q.</b>	Community theaters, dinner theaters and cultural centers,
70	<b>R.</b>	Computer/software store,
71	<b>S.</b>	Consignment
72	<b>T.</b>	Convenience store,
73	<b>U.</b>	Cooking schools,
74	<b>V.</b>	Copy center,
75	<b>W.</b>	Courier service,
76	<b>X.</b>	Delicatessen,
77	<b>Y.</b>	Dental laboratory,
78	<b>Z.</b>	Drug store/pharmacy (no on-site prescription writing for controlled substances
79		identified in Schedule II, III, or IV in F.S. §§ 893.03, 893.035, or 893.0355),
80	<b>AA.</b>	Fabric/needlework/yarn shop,
81	<b>BB.</b>	Fishing pier,
82	<b>CC.</b>	Florist shop,
83	<b>DD.</b>	Formal wear sales and rental,
84	<b>EE.</b>	Fruit and produce store,
85	<b>FF.</b>	Furniture, and home furnishings,
86	<b>GG.</b>	Gift shop,
87	<b>HH.</b>	Government administration,
88	<b>II.</b>	Grocery/food store/supermarket,
89	<b>JJ.</b>	Hardware,
90	<b>KK.</b>	Health and fitness center,
91	<b>LL.</b>	Household appliances store,
92	<b>MM.</b>	Ice cream/yogurt store,
93	<b>NN.</b>	Interior decorator,
94	<b>OO.</b>	Jewelry store,
95	<b>PP.</b>	Library branch,
96	<b>QQ.</b>	Linen/bath/bedding store,
97	<b>RR.</b>	Luggage/handbag/leather goods store,
98	<b>SS.</b>	Mail/postage/fax service,
99	<b>TT.</b>	Marine parts and supplies store,
100	<b>UU.</b>	Market,
101	<b>VV.</b>	Massage therapist (licensed therapist to be on premises at all times of
102		operation),
103	<b>WW.</b>	Meat and poultry store,
104	<b>XX.</b>	Medical supplies sales,
105	<b>YY.</b>	Motorized scooter sales or moped sales and rentals (indoor only, outdoor sales,
106		storage or display prohibited),
107	<b>ZZ.</b>	Museum,
108	<b>AAA.</b>	Music/musical instrument store,
109	<b>BBB.</b>	Office building,
110	<b>CCC.</b>	Optical store,
111	<b>DDD.</b>	Party supply store,
112	<b>EEE.</b>	Personnel services,
113	<b>FFF.</b>	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 **SSSRRR.** 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 (34) *Height.* No building shall be erected to a height greater than two stories on single 25-foot  
180 lots, nor greater than three stories on 50-foot lots.
- 181  
182 (45) *Areas.* No building which is used for residence purposes above the ground floor shall  
183 occupy an area greater than 70 percent of the entire lot. The required lot area per  
184 apartment or kitchen unit shall be 800 square feet. The required floor area for a kitchen  
185 unit shall be not less than 250 square feet minimum and the area for a hotel room with  
186 bath shall not be less than 200 square feet. Buildings not used for residential purposes  
187 shall not occupy more than 90 percent of the lot area.
- 188  
189 (56) ~~*Residences.* All residences constructed in B 1 A districts shall conform to requirements~~  
190 ~~for RS 5 districts hereinafter provided and all apartments, hotels, or rental units~~  
191 ~~constructed in B 1 A districts shall conform to requirements for RM 25 districts,~~  
192 ~~hereinafter provided.~~
- 193  
194 (67) *Design.* Construction shall be limited to one building on B-1-A lots that are 50 feet or less  
195 in width. All business buildings constructed in a business district shall be of C.B.S.  
196 construction and shall be designed with every practical consideration for appearance, fire  
197 protection, health, light, air. All plans and specifications of the building shall be approved  
198 by the Town Building Inspector. The Building Inspector need not approve design and use  
199 of a building and may ask the Town staff, Planning and Zoning Board or the Board of  
200 Adjustment for an official opinion or decision thereon. Open fronts are specifically  
201 prohibited in B-1-A districts and there shall be a maximum opening of ten feet by ten feet  
202 for doorways in each business building.  
203  
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 follows<sup>2</sup>:

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  
216 shall be erected or altered other than a building or premises arranged, intended,  
217 or designed for 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  
244 substances identified in Schedule II, III, or IV in F.S. §§ 893.03, 893.035,

<sup>2</sup> 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.

- 245 or 893.0355),
- 246 **AA.** Fabric/needlework/yarn shop,
- 247 **BB.** Fishing pier,
- 248 **CC.** Florist shop,
- 249 **DD.** Formal wear sales and rental,
- 250 **EE.** Fruit and produce store,
- 251 **FF.** Furniture, and home furnishings,
- 252 **GG.** Gift shop,
- 253 **HH.** Government administration,
- 254 **II.** Grocery/food store/supermarket,
- 255 **JJ.** Hardware,
- 256 **KK.** Health and fitness center,
- 257 **LL.** Household appliances store,
- 258 **MM.** Ice cream/yogurt store,
- 259 **NN.** Interior decorator,
- 260 **OO.** Jewelry store,
- 261 **PP.** Library branch,
- 262 **QQ.** Linen/bath/bedding store,
- 263 **RR.** Luggage/handbag/leather goods store,
- 264 **SS.** Mail/postage/fax service,
- 265 **TT.** Marine parts and supplies store,
- 266 **UU.** Market,
- 267 **VV.** Massage therapist (licensed therapist to be on premises at all times of
- 268 operation),
- 269 **WW.** Meat and poultry store,
- 270 **XX.** Medical supplies sales,
- 271 **YY.** Motorized scooter sales or moped sales and rentals (indoor only, outdoor
- 272 sales, storage or display prohibited),
- 273 **ZZ.** Museum,
- 274 **AAA.** Music/musical instrument store,
- 275 **BBB.** Office building,
- 276 **CCC.** Optical store,
- 277 **DDD.** Party supply store,
- 278 **EEE.** Personnel services,
- 279 **FFF.** Photographic studio,
- 280 **GGG.** Police and fire substation,
- 281 **HHH.** Retail electronic sales and repair,
- 282 **III.** Restaurant, including sidewalk cafes which would be appurtenant to, and
- 283 a part of, a restaurant,
- 284 **JJJIIII.** Seafood store,
- 285 **KKKJJJ.** Shoe sales and repair,
- 286 **LLLKKK.** Shop for marking articles sold at retail on the premises,
- 287 **MMMLLL.** Specialty shop,
- 288 **NNNMMM.** Sporting goods store, including dive shops,
- 289 **OOONNN.** Studios for artists, photographers, musicians (including recording

- 290 studios), and dance,  
 291 **PPPOOO.** Sundries,  
 292 **QQQPPP.** Tailor/dressmaking store, direct to the customer,  
 293 **RRRQQQ.** Tapes/videos/music CD stores,  
 294 **SSRRRR.** Tool rental (small tools and equipment, indoor display only),  
 295 **TTTSSS.** Toy/game store,  
 296 **UUUFTT.** Trade/business school,  
 297 **VVVUUU.** Travel agency,  
 298 **WWWVVV.** Veterinarian or animal grooming with all activities enclosed within  
 299 the building with no outside noise,  
 300 **XXXWWW.** Watch and jewelry repair, and  
 301 ~~**XXX.** Drive through services that are accessory to a use in this zoning district~~  
 302 ~~shall be allowed only as a conditional use requiring Planning and Zoning~~  
 303 ~~Board review and Town Commission approval, provided that any~~  
 304 ~~approval of the drive through use by the Town Commission shall~~  
 305 ~~specifically establish the location and traffic flow pattern of the drive-~~  
 306 ~~through.~~  
 307 **YYY.** Uses not listed. Any use not covered by the above list may be authorized  
 308 in the B-1 district by the Town Manager or designee only if the proposed  
 309 use is similar to a listed use; otherwise, an amendment to this chapter is  
 310 required. The Town Manager or designee shall consult with the Town  
 311 Commission on any proposal to find that a use is similar, prior to  
 312 authorizing such use in the B-1 district.  
 313

314 (b) Conditional Uses. The following conditional uses may be permitted upon approval  
 315 pursuant to the conditional use procedures of this Code:  
 316

- 317 (1) Bicycle taxi (no outside storage or display)  
 318 (2) Car wash/Outdoor hand wash  
 319 (3) Charter and sightseeing boat  
 320 (4) Child and adult day-care centers  
 321 (5) Drive-through services that are accessory to a primary use, provided that any  
 322 approval of the drive-through use by the Town Commission shall specifically  
 323 establish the location and traffic flow pattern of the drive-through.  
 324 (6) Dry cleaner  
 325 (7) Mixed use, in accordance with the requirements of subsection (e)  
 326 (8) "Paid Private Parking" on parcels with a primary use, excluding stand alone  
 327 parking lots in accordance with the following requirements:  
 328  
 329 i. During business operational hours, only non-required parking spaces,  
 330 may be used as Paid Private Parking.

331                   ii.     After business hours, required parking may also be used for Paid Private  
332                                 Parking.

333           (9)    Parking garage.

334           (10) Pet store.

335           (11) Pool supply store.

336           (12) Outside seating for restaurants, on private property, that is accessory to the  
337                                 primary use and that are not regulated under Chapter 17, Article VI.

338           (13) Outside storage of propane tank cabinets for the storage of propane tanks sold  
339                                 and rented at hardware stores and gas stations.

340           (14) Water craft sales and rental (new or used)

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

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

350  
351 (ed) *Areas.* No building which is used for residence purposes above the ground floor shall  
352 occupy an area greater than 70 percent of the entire lot. The required lot area per apartment or  
353 kitchen unit shall be 800 square feet. The required floor area for a kitchen unit shall not be less  
354 than 250 square feet minimum and the area for a hotel room with bath shall not be less than  
355 200 square feet. Buildings not used for residential purposes shall not occupy more than 90  
356 percent of the lot area.

357  
358 ~~(de) *Residences.* All residences constructed in B-1 or RD-10 districts shall conform to~~  
359 ~~requirements for RS-5 districts hereinafter provided and all apartments, hotels, or rental units~~  
360 ~~constructed in B-1 districts shall conform to requirements for RM-25 districts, hereinafter~~  
361 ~~provided.~~

362           Mixed use development. The following provisions govern applications for the conditional  
363 use of "mixed use," a vertical mix of neighborhood-serving B-1 uses and residential uses within  
364 the same building, in locations fronting on Commercial Boulevard and west of State Road AIA.

365  
366           A. Purpose. The purpose of encouraging mixed use development on Commercial  
367 Boulevard is to:

368  
369                   (1) Accommodate mixed-use buildings with neighborhood-serving retail, service, and  
370                                 other commercial uses on the ground floor, and residential units above the  
371                                 nonresidential space;

- 372 (2) Encourage development that exhibits the physical design characteristics of  
373 pedestrian-oriented, storefront-style shopping streets; and  
374 (3) Promote the health and well-being of residents by encouraging physical activity,  
375 alternative transportation, and greater social interaction.  
376

377 B. Definitions. For purposes of this section, the following definitions shall apply.  
378

379 (1) "Live/work units" means a type of mixed use development that combines non-  
380 residential uses in the same structure as a dwelling unit occupied by the business  
381 owner, which reduces trip generation, provides for affordable and diverse housing  
382 options in the Town, incubates new businesses and provides for the needs of unique  
383 businesses such as art galleries and studios.

384 (2) "Live/work space" means the residential dwelling unit and related non-residential  
385 uses conducted above the ground floor of a live/work unit.

386 (2) "Mixed-use building" means a building that contains at least one floor devoted to  
387 non-residential use and at least one devoted to allowed residential uses.

388 (3) "Non-residential use" means neighborhood-serving retail, service, commercial or  
389 other uses allowed in the B-1 zoning district, excluding residential uses.

390 (4) "Work/sales space" means the non-residential uses on the ground floor of a  
391 live/work unit.  
392

393 C. Mixed use development on commercially designated parcels. The Town may  
394 approve a conditional use for mixed use development on B-1 zoned property when the  
395 property has a commercial land use designation in the Broward County Land Use Plan,  
396 if all of the following requirements are met:  
397

398 (1) Approval is obtained of an allocation of available flexibility units, in accordance  
399 with Section 30-56(h). Flexibility rules;

400 (2) The number of units and floor area limitations of this section are satisfied for the  
401 residential uses;

402 (3) Non-residential uses, as defined herein, are limited to the floor(s) below the  
403 residential uses;

404 (4) The property fronts on Commercial Boulevard, and is located west of State Road  
405 AIA;

406 (5) A major site plan modification or a site plan approval is obtained; and

407 (6) A conditional use approval is obtained.  
408

409 D. Permitted uses.  
410

411 (1) On the ground floor:

412 (a) Work/sales space in a live/work unit

413 (b) Non-residential use  
414

415 (2) Above the ground floor:

416 (a) Live/work space in a live/work unit

417 (b) Dwelling units  
418

419 E. Limitations on residential uses.  
420

421 (1) Maximum number of units. No mixed use development may be assigned more  
422 than ten percent (10%) of the flexibility units in its flexibility zone. If ten percent of the  
423 units is not a whole number, it shall be rounded up to the next whole number.

424 (2) Floor area. The residential floor area of the mixed use development does not  
425 exceed fifty percent (50%) of the gross floor area of the building  
426

427 F. Parking requirements. The total number of required off-street parking spaces for a  
428 mixed use development shall be equal to the sum of the required parking for each use  
429 as if provided separately. For live/work mixed use development, the total required  
430 parking will be equal to the parking required for the nonresidential use only. See  
431 Sections 30-314 through 324 regarding off-street parking.  
432

433 F. Landscaping and open space requirements. Mixed use developments shall be  
434 required to meet the vehicular use area requirements as provided in Article VII.  
435 Landscape Code of Chapter 30 Unified Land Development Regulations, for the non-  
436 residential use only.  
437

438 G. Town approvals required for mixed use development.  
439

440 (1) Conditional use. A conditional use shall be obtained in accordance with the  
441 requirements of Section 30-56. As part of the conditional use review, the Town  
442 Commission shall verify that Section 30-56(h) *Flexibility rules* has been satisfied for  
443 the allocation of flexibility units.

444 (2) Site plan. Either a major site plan modification shall be obtained in accordance  
445 with Section 30-54(m)(4), or a site plan approval shall be obtained pursuant to Article  
446 IV. Site Plan Procedures and Requirements of Chapter 30 Unified Land  
447 Development Regulations.  
448

449 (ef) *Design.*

450 Construction shall be limited to one building on B-1~~A~~ lots 50 feet or less in width.  
451 All business buildings constructed in a business district shall be of C.B.S. construction  
452 and shall be designed with every practical consideration for appearance, fire protection,  
453 health, light, air. All plans and specifications of the building shall be approved by the  
454 Town Building Inspector. The Building Inspector need not approve design and use of a  
455 building and may ask the Town staff, Planning and Zoning Board or the Board of  
456 Adjustment for an official opinion or decision thereon. Open fronts are specifically  
457 prohibited in B-1 districts and there shall be a maximum opening of ten feet by ten feet  
458 for doorways in each business building.

459 **SECTION 4. Amendment.** Chapter 30, Unified Land Development Regulations, of the

460 Code of Ordinances is hereby amended as follows<sup>3</sup>:

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

462 \* \* \*

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<sup>3</sup> Additions to existing text are shown in underline. Deletions are shown in ~~strikethrough~~.

465 (d) Height.

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469 (2) All passive recreational rooftop use requires a conditional use permit.

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i. Transient Uses. ~~Upon approval, a~~ A Conditional use permit for transient uses such as a hotel, motel, apartment building, condominium, or time share will be issued for the a period of one year. This permit shall be administratively reviewed by Town staff annually, The transient use shall apply for renewal of the permit annually to the Town Manager, prior to re-issuance. The conditional use permit may be renewed if it is the Town ~~determines~~ that (a) the conditional use does not adversely impact neighboring properties and (b) it complies with the conditions of site plan approval. The conditional use permit is revocable, following notice to the permit holder and opportunity to be heard by three members of the Town Administration, designated by the Town Manager, when the use adversely impacts adjacent property or the permit terms and conditions are violated. An administrative decision not to renew a rooftop use may be appealed to the Town Commission by the property owner. An administrative decision to renew a rooftop use may be appealed to the Town Commission by a neighboring property owner. The Town Commission's decision on appeal shall constitute a final development order.

ii. Non-Transient Uses. ~~A conditional passive recreational rooftop use permit for a non-transient residential property, other than a hotel, motel, apartment building, condominium, or time share, is exempt from the annual review process heretofore set forth for such roof tops for transient uses.~~

~~Rooftop uses, as heretofore set forth, are permissible in RM-25 (south of Pine Avenue) districts only when reviewed and approved by the Planning and Zoning Board and Town Commission pursuant to site plan review and approval as a conditional use.~~

For the purpose of this section, "apartment building" is defined as a residential rental property with four or more dwelling units.

502 **SECTION 5. Amendment.** Section 30-56, Unified Land Development Regulations, of

503 the Code of Ordinances is hereby created to read as follows<sup>4</sup>:

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

505 (a) **Generally.** A conditional use is a use that would not be appropriate without  
 506 restriction throughout the land use district, but which, if controlled as to number,  
 507 area, location, hours of operation, and relation to the neighborhood or impacted

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<sup>4</sup> 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.

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vicinity, would promote the public health, safety, welfare, order, comfort, convenience, appearance, or prosperity of the neighborhood. The purpose of this Section is to ensure that a conditional use shall only be permitted on specific sites as provided in a particular zoning district or as provided in this Code, where the proposed use may be adequately accommodated without generating adverse impacts on properties and land uses within the immediate vicinity.

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

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

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

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

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

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(d)

**Specific Criteria for Approving a Conditional Use.** A conditional use shall be permitted upon a finding by the Town Commission that the proposed use, as proposed or with additional conditions or modifications, satisfies the criteria herein specified. A conditional use shall be denied if the Town Commission determines that the proposed use does not meet the criteria herein provided or is adverse to the public interest. The applicant shall demonstrate the following:

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

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

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

(2) *Sufficient Site Size, Site Specifications, and Infrastructure to Accommodate the Proposed Use.* The size and shape of the site, the proposed access and internal circulation, and the urban design must be adequate to accommodate the proposed scale and intensity of the conditional use requested. The site shall be of sufficient size to provide adequate screening, buffers, landscaping, open space, off-street parking, efficient internal traffic circulation, infrastructure and similar site plan improvements needed to mitigate against potential adverse impacts of the proposed use.

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(3) *Compliance with the Comprehensive Plan and Code of Ordinances.* The conditional use shall comply with environmental, zoning, concurrency and 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 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.~~

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- (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:
  - (1) Violates the conditions set forth by the Town Commission as a requirement for the granting of the use;
  - (2) Is injurious to the health, safety or welfare of the community or of the public;
  - (3) Tends to attract vagrants, loiterers or habitually intoxicated persons; or
  - (4) Has a history of repeated Code violations.
- (g) **Application Fees.** Fees for conditional use permits, and for Level 1 and Level 2 Amendments shall be established by the Town Commission by resolution.
- (h) **Flexibility rules.** Flexibility rules allow the Town to revise and rearrange land uses within a flexibility zone and allow the development of residential dwelling units on properties designated for commercial land use in the Broward County Land Use Plan, without requiring an amendment to that designation.

(1) Definitions.

i. Flexibility zones: Flexibility zones are fixed geographic areas within the Town, designated on the Broward County Land Use Plan, which provide limits on the number of additional dwelling units and additional commercial acreage which may be permitted by the Town's comprehensive plan.

ii. Flexibility units: Flexibility units are the total number of additional residential dwelling units permitted by the Broward County Land Use Plan above the total number of dwelling units allowed within the same flexibility zone by the Town's comprehensive plan.

(2) Determination of available flexibility units. The Town Manager or designee shall maintain a log of the number of available flexibility units in each flexibility zone, the number of flexibility units assigned to parcels within each zone and within the Town, and the reason for assigning flexibility units to a parcel.

(3) Assignment of flexibility units. If a sufficient number of flexibility units are available, the Town may allocate flexibility units for mixed use development in the B-1 zoning district, as provided in Section 30-271(e) Mixed Use Development, provided that the County's flexibility rules and regulations are met and all other applicable requirements of Chapter 30 of the Code are met.

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

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

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

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

710           **SECTION 10. Adoption.** Passed on the first reading, this \_\_\_ day of \_\_\_\_\_, 2011.

711           Passed and adopted on the second reading, this \_\_\_ day of \_\_\_\_\_, 2011.

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Mayor Roseann Minnet

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First Reading

Second Reading

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Mayor Minnet

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Vice-Mayor Dodd

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Commissioner Clotey

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725 Attest:

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Town Clerk June White, CMC

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(CORPORATE SEAL)

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Approved as to form:

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Susan L. Trevarthen, Town Attorney

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## 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](http://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

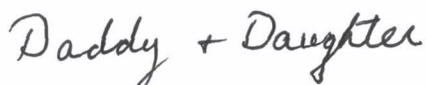
THANK YOU ALL VERY MUCH!

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](http://WWW.VIPJEWELRYBUYERS.COM)







## Exhibit 3

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.