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**INTEROFFICE MEMORANDUM**

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**TO:** PLANNING AND ZONING MEMBERS  
**FROM:** JEFF BOWMAN, DEVELOPMENT SERVICES DIRECTOR  
**SUBJECT:** PROPOSED AMENDMENTS TO THE UNIFIED LAND DEVELOPMENT CODE  
(CONDITIONAL USE PROCEDURES)  
FEBRUARY 15, 2010 P&Z MEETING  
**DATE:** 2-9-11

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**Brief Synopsis of Agenda Item**

**New Business Item 2:** Amend Chapter 30, Unified Land Development Code to address Conditional Use procedures, and possibly to revise other development review 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 will eliminate redundancy and 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.

Additional development review procedures will also be reviewed to assist in streamlining development and separate ordinances may be brought forward within the timeframes of the NOI to address any other recommended changes.

Staff is recommending that the Board review the proposed amendments, and provide a recommendation/s.

Please contact me (954-776-3611) if you have any questions or if you prefer I would be happy to meet with you individually to answer any questions you may have. Thank you.

## CONDITIONAL USES

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### Sec. 30-241. - RM-25 district—Apartments.

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(d) Height.

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

i. **Transient Uses.** Upon approval, a conditional use permit for transient uses such as a hotel, motel, apartment building, condominium, or time share will be issued for the period of one year. This permit shall be administratively reviewed by Town staff annually, prior to re-issuance. The conditional use permit may be renewed if it is determined that the conditional use does not adversely impact neighboring properties and 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 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.

~~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.

## **The following Proposed Section is all new text.**

### Section XX-XXX. Conditional Uses is added as follows.

(a) **Generally.** The purpose of this Section is to ensure that a Conditional Use, a use that would not be appropriate without restriction throughout the land use district, but which, if controlled as to number, area, location, hours of operation, and relation to the neighborhood or impacted vicinity, would promote the public health, safety, welfare, order, comfort, convenience, appearance, or prosperity of the neighborhood, 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.

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This Section sets forth the procedures and criteria for approval of conditional uses on specific sites. In the event of conflict with any other provisions of this Code, this Section shall prevail. 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 generation;
  - iv. Square feet designated (indoors or out) for each specific use;
  - v. Estimated employment;
  - vi. Estimated number and type of service vehicles; and
  - vii. Any unique facilities or structures proposed as part of site improvements.
  - 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.
- (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 as provided in the quasi-judicial procedures.
- (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, 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

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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. Compatibility shall be measured based on 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 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.
- (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, intensity, site plan and any supplemental conditions approved. Modifications

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to a site plan or any of the specifics or conditions of the 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 use that affects density, intensity or minimum code requirements of the site development plan will require review and approval of a minor or major amendment by either the Development Services Director or Town Commission.

- (1) Level 1 Amendment: The Town Manager or designee may approve minor changes and deviations from the approved conditional use site plan that are in compliance with the provisions and intent of this article, and that do not depart from the principal concept of the approved use and any related site plan. All other requested changes and deviations shall be processed as a Level 2 Amendment.
  - (2) Level 2 Amendment: The Town Manager or designee may determine that requested changes and deviations from an approved site plan constitute a substantial alteration to the character of the development and thus require that the requested changes be subject to the same procedure as required for a new application. Substantial changes would include alteration of the intensities, density or modifications to minimum code requirements and approved conditions.
- (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, Level 1 and Level 2 Amendments shall be established by the Town Commission by resolution.