

TOWN OF LAUDERDALE-BY-THE-SEA
CHARTER REVIEW BOARD
MEETING MINUTES
 Jarvis Hall
4505 Ocean Drive
Wednesday, July 11, 2012
6:30 P.M.

1. CALL TO ORDER

Chairman Wessels called the meeting to order at 6:30 p.m.

2. ROLL CALL

Chairman David Wessels, Vice Chair Susan Delegal, Sandra Green, Charles Clark, and Jim Silverstone were present.

Ron Piersante and Yann Brandt were granted an excused absence.

3. PLEDGE OF ALLEGIANCE TO THE FLAG

4. APPROVAL OF MINUTES

a. June 13, 2012

Chairman Wessels requested that on page 7, third paragraph down the words "and still have back out parking" be struck from that sentence.

Town Clerk White stated she would verify the statement through the recording. If Chairman Wessels did not make that statement, she would make an amendment and strike those words from the minutes. Chairman Wessels agreed. There were no other comments regarding the minutes.

Mr. Silverstone made the motion to approve the minutes as stated. Mr. Clark seconded the motion. All voted in favor.

The statement was later verified by Town Clerk White that the statement was made as written and therefore would not be stricken from the minutes.

5. PUBLIC COMMENTS

There were no public comments.

6. REPORT

a. Follow-up Analysis of Section 7.1 of the Charter

Attorney Trevarthen gave a general overview of her analysis of Section 7.1 of the Charter. To make her analysis easy to follow, she separated the current text of the Charter (left column) from her proposed Plain English version (right column) and comments/issues (middle column). The eleven (11) page document is attached hereto as part of these minutes.

Subsection (1) contains two clauses: the "date clause", March 20, 2006 and the "all other buildings clause". She believed this section could be construed so that the first part of this section applied to buildings in existence on March 20, 2006 and the second part applied to buildings that were constructed after that date. In her plain English version she broke these out with the definition first, and separated each regulation with its own heading; 1) setting the height limits to 44 feet on buildings constructed on prior to March 20, 2006, and 2) setting the height limits to 33 feet to buildings constructed after March 20, 2006. She noted that height was also addressed in sections (8) and (9). For clarity she moved those provisions up to Subsection (1) in the Plain English version to address the topic in its entirety.

Subsection (2) limits use and parking for buildings over 3 stories or 33 feet, and the use of the first story. The plain English version addresses the uses in residential and business zoning districts individually, addresses provisions for underground stories, off-site parking and back-out parking, and addresses the prohibition on Town Commission granting variances or amending by ordinance (page 3).

Subsection (3) of the current Charter (page 4) became part of section (2)(e) of the Plain English version because it was topic related.

Sections (4) and (5) were combined with section (3) Non-conforming buildings of the Plain English version. The first part (3)(a) defines non-conforming and (3)(b) limitations on replacing non-conforming buildings defining "Habitable story", "Habitable square feet", "Replacement building", a term used to describe a redevelopment of a nonconforming building that does not fully conform to current code and charter. The Plain English version of this section also addresses eligibility regarding existing nonconforming buildings destroyed by fire, natural disaster or other act of God, and redevelopment of existing non-conforming building (page 5).

Subsection 6 overlaps with other sections of the current Charter and was not carried over into the Plain English version.

Subsection 7 contains some overlapping, but also talks about resident's standing to enforce the maximum building height limits and maximum allowable square footage, which was carried over into the Plain English version.

Subsection 8 relates back to Subsection 1 and was moved to that section in the Plain English version.

Subsection 9 contains many topics with several subsections addressing Town Commission power to amend land development regulations. The Plain English version addresses the Definition and clarifies when a referendum is required: 1) Changes to residential zoning height limits; 2) rezoning of districts to another use; 3) creation of new categories of zoning; and 4) addition of uses to a zoning category (page 9).

Subsection 10 contains many provisions that limit the power of the Commission. The first three statements of the current Charter are true as a matter of law and need not be included. The limitations on amendments to this section of the Charter by the voters have been incorporated into the Plain English version.

Subsection 11 addresses the preservation of stricter code provisions and were carried over in the Plain English version.

Mr. Silverstone questioned whether any changes to current zoning required voter approval.

Attorney Trevarthen said her interpretation was that you may not rezone from a residential category to a different category. The "zoning for any other use" is only applicable to residential zoning districts. You can rezone the B1 district, change the B1 district, but not the residential district. She suggested not adding uses to residential zoning districts because that would be similar to "re-zoning for another use." She added that voter approval was required to create new categories for zoning.

Under the replacement category for a building demolished by an act of God, Mr. Clark inquired as to whether the height could be increased to conform to the requirement to add a non-habitable first floor.

Attorney Trevarthen confirmed and referred to page 6, subsection (vi) "Height".

Mr. Clark inquired of a zoning map for the various zoning districts.

Planner Connors said it was available on the Town's website under Town Documents - Development Services, or Mr. Clark could stop by Development Services and get a hard copy.

Ms. Green asked whether changes could be made to increase or decrease density of the residential zoning districts without a referendum.

Attorney Trevarthen stated that the Charter was silent on density, setbacks, landscaping, etc. The Charter only addresses height and zoning issues.

Chairman Wessels understood that there were no zoning changes for residential districts, but there could be a zoning change for the business districts. If the overlay districts were repealed, could they be re-instituted without a vote? Attorney Trevarthen stated that the overlay districts were created and adopted by vote of the Town Commission prior to the addition of this provision to the Charter, and were later repealed by a vote of the Town Commission. Therefore, the question would be whether the overlay districts were a new zoning category.

Chairman Wessels asked whether the previous zoning of RM-50 classification of the Caribe Fountainheads, which were 15 story buildings, were automatically designated RM-50 when they were annexed, as well as the Sea Ranch Club. Planner Connors said they were in the process of researching that issue.

As a starting point from her observations, Vice Chair Delegal would like to establish heights town wide 4 stories not to exceed 44 feet for all properties, whether they were constructed before or after March 20, 2006. She would include "limitations of uses on the 1st story of non-habitable uses". She would also include / adopt the Town Attorney's comment on page 3 regarding "uses of the first stories are limited to whatever non-habitable uses are allowed in that zoning district", as opposed to specifically providing what they are, such as 50% had to be used for one purpose or another. Vice Chair Delegal would delete the detailed provisions to parking, back-out parking and off-site parking. This was something that should be legislatively dealt with in the Town code. Vice Chair Delegal generally favored adoption of the Plain English version, regardless of what the Board recommended to the Town Commission. Keep the nonconformity details and maintain 1st story limitations for non-habitable uses that are permissible with any given zoning district. She agreed with the observation that the limitations placed on the Town Commission were not necessary to repeat, as they were a matter of law and she would delete all the places in the Charter that say that. She would remove the limitations in the Charter regarding what could not be done with the zoning code, but would leave the following areas for Commission decision: uses to be applied in any zoning category; creation of new zoning categories; and assignments of change from a residential category to another category.

Mr. Silverstone agreed with Vice Chair Delegal, except for the intent the people voted for in 2006. He looked at this as more of a housekeeping issue and needed cleaning up. Any material changes should be taken out, unless it prevented the ability to redevelop.

Mr. Clark thought it might be useful to create a new section that spelled out all the issues that required a referendum, and be put in one place.

Attorney Trevarthen referred to page 8, Subsection 5 of the Plain English version. Those were the items that would have to go to referendum as related to the code. She stated that, the Town Commission was powerless to change everything in the Charter, as a matter of law, and required voter approval. She and Vice Chair Delegal suggested it was not necessary to state that repeatedly throughout the Charter.

Ms. Green viewed it as a housekeeping chore and would like to know the legality of it. She was a little uncomfortable with the leading provisions in the Charter but overall she thought an excellent job had been done.

Chairman Wessels agreed with Vice Chair Delegal, that most charters are more general. He also agreed that it was easier to understand the US Constitution than it was to understand the Town's Charter. He summarized "height" as the number one priority and "density" the second priority. Currently, if an existing building wanted to maximize their number of units, they would not have the parking. It was not clear whether those restrictions, on-site or adjacent parking, applied to just residential.

Attorney Trevarthen stated they had studied the issue, and her conclusion was parking restrictions applied to commercial and residential.

Chairman Wessels wanted to find a point where the Board could restore some flexibility that the Commission could use that was economically feasible to adjust to the market, or the market would adjust by going someplace else. He questioned how, with height and density restrictions, they can create reasonable flexibility to accommodate someone interested in spending \$4 or \$5 million to build or rebuild a property. He thought the Plain English version may need some tinkering, but was a step in the right direction. He also noted it is very clear that a change in the Charter required a vote of the people.

Vice Chair Delegal said one of the reasons a Charter Review Board was created every so often was to take a fresh look at the Charter for antiquity; whether the provisions were still workable and whether the will of the people had changed. The Board needed to be considerate in their approach and allow the public participation process to occur. The Board's duty was to look at the provisions, understand them better. In having a better understanding now, the Board needs to determine whether the changes should be made, and justify their determination in their recommendation to the Commission. The Board should look at flexibility regarding height, but allow the ability for the Town to continue to flourish by creating an environment that would allow people to refurbish their properties and encourage more attractive and useful beachfront properties. The restrictions in the Charter that did not allow changes should be removed.

Chairman Wessels expanded on the non-allowable uses for a habitable and non-habitable on 1st floor. Restrictions were put in place, such as: you could not put in a fitness gym on the first floor. He believed non-habitable use should have been put in place. Given the age of the properties, it was inevitable that updating will occur. He liked the idea of a zoning map. It would avoid confusion as to where people can build and what they could build there. More work was needed regarding what to adjust and what needed to be adjusted to make the Town user friendly. He suggested continuing this discussion at the next meeting; incorporate board members points and suggestions, and come up with something more definitive to give to the Commission.

Vice Chair Delegal indicated if the Board wanted a change, it needed to pass by a majority vote. Once the Board made their decision, the recommended language would be drafted by the Town Attorney and a justification statement could be drafted for the Commission.

Chairman Wessels requested members submit their proposed changes at the next meeting to narrow them down for input and justifications.

Attorney Trevarthen recapped the Board's suggestions. She identified those that had no change, or very little to existing law, and grouped them separately:

- 1) Place a plain English version of the Charter on the ballot
- 2) Take the listing of uses for 1st floor uses and change that to just the concept of non-habitable
- 3) Remove all the references that were already true as a matter of law.

The other changes were more substantive in nature.

- 1) Change height town wide to 4 stories, 44 feet for all properties whenever constructed
- 2) Delete the subject of parking regulations from the Charter; leave it in the Code
- 3) Delete the limitations on how the Town Commission can change the zoning code by dropping "zoning for any other use", the "creation of a new zoning category" or "add another use to a zoning district". Those items would no longer be subject to referendum.

Attorney Trevarthen stated the other proposal was to create a zoning map to depict height. If the Board decided the height for the whole town was 44 feet, or it was another simple rule, a map would not be necessary. If the rule varied across different parts of Town a map would then be desired as a useful interpretation tool, but would not added as part of the Charter.

Chairman Wessels agreed, in the case of variable zoning, the map would give better understanding.

In order to refine Article VII, Chairman Wessels asked the Board to give thought as to what they wanted and create a list of their suggestion for the next meeting. Attorney Trevarthen believed it would be useful if the Board members had something to provide to present it a week ahead of the meeting, so she and staff could come to the meeting prepared.

Chairman Wessels instructed the Board to send their suggestions to the Town Clerk who would forward them to Planner Connors.

b. Charter Case Study

Planner Linda Connors presented 2 scenarios of a vacant lot to be developed as was requested by the Board at the last meeting. Town owned property abutting A1A was selected for both scenarios. The parameters were RM-25, medium-high land use, lot size 125' x 150', (just shy of ½ acre). Scenario 1 was new construction on a vacant lot and scenario 2 was the replacement of an existing 5 story building, 20,500 sq. ft. ground floor units and back-out parking onto A1A. In scenario #1, the code would allow a three story building that did not exceed 33' in height. In the 2nd scenario, a six story building would be allowed to replace the five story building. This is because Charter Section 7.1 (5) (e) allowed additional height necessary to meet the parking requirements (1st floor parking) and still provide the same number of habitable stories that was contained in the non-conforming structure. Scenario examples 1 and 2 are hereby attached as part of these minutes.

Mr. Clark questioned the density on 2nd scenario. Attorney Trevarthen explained the Charter did not address that issue, so it did not apply. Density would be subject to the County's land use plan, the Town's land use plan and the code.

Mr. Silverstone asked if back out parking was not allowed would they be required to use the first floor for parking. Planner Connors stated that back-out parking would not be allowed, the first floor would be required to be non-habitable under scenario 2. It would be up to the creativity of the designer to determine where the parking would be.

Attorney Trevarthen explained the Charter currently states that at least one half of the square footage of the first story must be for parking. If there was not enough parking, adjacent offsite parking was required.

Chairman Wessels inquired of the square footage available for actual parking. Planner Connors said the standard parking size was 19' x 18'. She added that in scenario 2 the first floor envelope would be available for parking, but the total 2,989 sq. ft. setback area was required to be open and landscaped. The remaining area, just under 9,000 sq. ft. would be where the pool, parking spaces, or other non-structural purposes would be located.

Attorney Trevarthen stated for the record that this was a hypothetical exercise.

Chairman Wessels wanted to ensure that the parking spaces could be located under the building. He asked whether all of the 25' setback area was required to have landscaping.

Planner Connors said there were restrictions on vehicular use areas where landscaping was required. There was also requirement for landscaping in the parking lot. There were variables.

Chairman Wessels believed the number of units would be determined by the number of parking spaces; lower density and larger units. The map for 3 over 1 would be A1A. He asked if that was state law.

Attorney Trevarthen explained the Charter said, if for any reason under federal or state law additional space was needed to have the same amount of habitable square footage, it was allowable.

Chairman Wessels asked if an owner came in and asked what he could put on his particular piece of property, would he be able to obtain the information. Attorney Trevarthen said he would be given regulatory constraints. All development standards would have to be taken into consideration. They could be more or less efficient depending on the creativity. Despite the creativity, they could not exceed the density requirements.

Chairman Wessels said he was looking for a maximum number of units that a hotel/motel could ever possibly put on a lot. Attorney Trevarthen said it begins with the architectural designing of a particular property.

Ms. Green inquired if the smaller hotels with back-out parking were destroyed by a hurricane and wanted to rebuild based on their insurance, they would have to build a two story structure to accommodate the parking requirement and not back out onto A1A. How would they accommodate for that under their insurance claim? It appeared to be more difficult to rebuild as a two story with parking underneath, than rebuild the original structure.

Attorney Trevarthen agreed it would create restraints and be more demanding.

Chairman Wessels believed that to be an interesting point as it could create a financial hardship situation.

7. OLD BUSINESS

There was no old business for consideration.

8. NEW BUSINESS

a. Reschedule August 8 and September 12, 2012 Charter Review Board Meetings due to the following:

The Charter Review Board meeting scheduled for August 8, 2012 was re-scheduled for Wednesday, August 22, 2012 at 6:30 p.m., due to Jarvis Hall renovations.

The Charter Review Board meeting scheduled for September 12, 2012 will be re-scheduled at the August 22nd meeting.

Ms. Delegal believed the Board needed to only dedicate one more meeting to work on Article VII. The Town Attorney could be requested to draft the language for the Board to vote on the changes discussed, and then begin discussion on another aspect of the Charter.

Chairman Wessels placed Article VII on the August 22, 2012, under Old Business, to conclude the Board's discussion on that Article.

Chairman Wessels questioned whether the Commission wanted the Board to consider something specific in regards to Article VI, "Elections".

Attorney Trevarthen advised the Commission made a decision to re-adopt the existing boundary of residential electoral districts for the Commission. She said during their discussion, the Commissioner stated they wanted their discussion sent to the Charter Review Board, of which she believed one Commissioner stated he believed it would not be appropriate to make a change.

Ms. Delegal asked whether the Commissioner's statement, "status quo", meant that a change should not be considered by the Board because the Commission liked the way it currently was: two (2) Commissioners to reside in one district and two (2) Commissioners to reside in the other, and the Mayor can reside anywhere town wide.

Commissioner Wessels explained that Commissioner Brown has asked whether that statement would preclude the Charter Review Board from making recommendations, and it was noted that it did not.

Attorney Trevarthen believed the Commission recognized that this was within the Board's interpretation. She added there was not a lot of discussion on the issue and the "status quo" statement was made by one Commissioner.

Commissioner Wessels added the redistricting issue for discussion at the August 22nd meeting.

Attorney Trevarthen stated that the Board had previously spoken about considering an entire article; redistricting was within Article VI, Elections. She suggested the Board could have the information from their discussion this evening regarding Article VII, as well as discuss Article VI, the entire Elections article. The points related to Article VI from the Commission's worksheet were:

- *Consider modifying length of Mayor's term of office -Section 6.1(1).*
- *Determine whether to sunset residential electoral districts in Section 6.1 in 2018 as previously approved, or on another date. If not, address future redistricting needs to be addressed.*
- *Consider changing Section 6.1(5) requirement that university must be used.*
- *Consider not specifying that the Vice Mayor must be selected on a particular date per Section 6.2.*
- *Add a procedure for candidate withdrawal following qualification to Section 6.4, per statute.*
- *Clarify the meaning in Section 6.6(2) "forfeiture of office" with regards to ethics in light of Broward County ethics code.*

Vice Chair Delegal suggested completing Article VII and then work downward, beginning with Article VI. There were no comments or any objections from the Board.

Attorney Trevarthen questioned whether any backup was needed to consider Article VI.

Vice Chair Delegal asked whether there was anything in the Broward Ethics Code that might help the Board work together with that language, and the language contained in the Town Charter.

Attorney Trevarthen stated that the Charter deemed that any violation of any ethical standard would result in forfeiture of office. She said, potentially, the Board could remove that language or modify it.

Vice Chair Delegal believed the Board should spend time discussing that issue.

Attorney Trevarthen stated she would send that ordinance to Board in advance of the meeting.

Mr. Silverstone noted at the last election, other small cities put forth a referendum to have the ethics ordinance less restrictive for small towns, part time employees and part

time Commissioners in small towns. He requested the Town Attorney address easing the restrictions placed in the ethics ordinance. There was too much restriction under the Broward County ethics code.

Attorney Trevarthen believed the County set out to challenge those three Charter amendments, but did not. It was her understanding that the three cities created a charter amendment that said they would follow their own ethics code.

9. ADJOURNMENT

With no further business before the Board, Chairman Wessels adjourned the meeting at 8:00 p.m.

Chairman David Wessels

ATTEST:

Town Clerk, June White, CMC

Date

Exhibit 1

Example #1 – Vacant Lot fronting Ocean Drive

Lot Characteristics

Zoning	RM25
Land Use	Medium High 25 units/acre
Lot Size	150 x 125 or 18,750 square feet or .43 acres
Flood Zone	X

Development Characteristics

Vacant Lot
New Construction
Hotel
Height 33'

Code Requirements:

Height [Sec. 30-241 (d)]

Maximum Height 33'		
Ground floor elevation	Zone -1 and V-2	8'
	Zone A-1	6'

Setback [Sec. 30-241 (j)]

Front	25' but not more than 35'; can be equal to neighboring property)
Side	15.5' (10' + 1' for every 2' exceeding 22' in height)
Rear	12.75' (10' + 1' for every 4' exceeding 22' in height)
Total Setback Area	8,367.25 square feet
Max. Building Envelope	10,382.75 square feet (3 floors = 31,148 sq. ft)

Open Area – Total Setback Area [Sec. 30-241 (l)]

25% or 2,091.81 square feet	Open and not occupied by any roof structure. Area shall be landscaped with shrubs, hedges and flower beds and grass.
75% or 6,275.44 square feet	May be used for pools, aprons, recreation, parking and other open uses. Shall be suitably landscaped

Density [Sec. 30-241 (m)]

Required lot area shall be at least 871 square feet per hotel room. Net density cannot exceed 25 kitchen dwellings or 50 hotel rooms per acre of site
Maximum rooms per this site is 22 hotel rooms [(.43 acres x 50 hotel units) and (31,148/871) whichever is less]

Parking [Sec. 30-317 (h) and 30-318 (c)]

Backout parking is prohibited on AIA	
Hotel	One parking space for each rentable unit
Maximum # of units on lot	22
Minimum Parking Spaces	22 car spaces or 17 car parking spaces and 20 bicycle spaces

EXHIBIT 2

Example #2 – Redevelopment of 5 Story Building Fronting Ocean Drive

Lot Characteristics

Zoning	RM25
Lot Size	150 x 125 or 18,750 square feet or .43 acres
Flood Zone	X

Development Characteristics

Prior building (hotel) destroyed by hurricane
Height 56', 20,500 square feet and 30 hotel units (no kitchens)
Original building had backout parking and ground floor units
Height required that allows parking on first floor - 11'

Requirements:

Height [Charter 7.1]

Maximum Height	66' (original height plus additional height for parking @ 1 st floor)
Ground floor elevation	Flood Zone -1 and V-2 8'
	Flood Zone A-1 6'

Setback [Sec. 30-241 (j)]

Front	25' but not more than 35'; can be equal to neighboring property)
Side	32' (10' + 1' for every 2' exceeding 22' in height)
Rear	21' (10' + 1' for every 4' exceeding 22' in height)
Max. Building Envelope	6,794 square feet
Total Setback Area	11,956 square feet

Open Area – Total Setback Area [Sec. 30-241 (l)]

25% or 2,989 square feet	Open and not occupied by any roof structure. Area shall be landscaped with shrubs, hedges and flower beds and grass.
75% or 8,967 square feet	May be used for pools, aprons, recreation, parking and other open uses. Shall be suitably landscaped

Density [Sec. 30-241 (m)]

Required lot area shall be at least 871 square feet per hotel room. Net density cannot exceed 25 kitchen dwellings or 50 hotel rooms per acre of site. Town Attorney is reviewing.

Parking [Sec. 30-317 (h) and 30-318 (c)]

Backout parking is prohibited on AIA	
Hotel	One parking space for each rentable unit
Minimum Parking Spaces	22 car spaces or 17 car parking spaces and 20 bicycle spaces

Analysis of Town of Lauderdale-By-The-Sea Charter for Charter Review Board

ARTICLE VII. - PLANNING AND ZONING.

Sec. 7.1. - Maximum height for buildings established; referendum vote required for increases in zoned residential-district height limits.

Current Text	Comments re Bolded Language in Current Text	Plain English version
<p>(1) No building within the jurisdictional boundaries of the Town, as they existed on March 20, 2006, shall have more than four (4) stories above grade, and the maximum height of buildings within the Town that have four (4) stories above grade shall be forty-four (44) feet above grade, as defined in the Florida Building Code, or above a horizontal plane eighteen inches above the crown of the roadway at the highest point adjoining the property on which the building is located, whichever of those two levels is higher. The maximum height for all other buildings within the Town shall be thirty-three (33) feet</p> <p>(a) Above grade, as defined in the Florida Building Code, or</p> <p>(b) Above a horizontal plane eighteen inches above the crown if the roadway at the highest point adjoining the property on which the building is located, or</p> <p>(c) Above the minimum elevation for a habitable, finished floor permitted under applicable federal or Florida state regulations,</p> <p>Whichever of those three levels is highest. Height shall be measured from the applicable base level specified above to the highest point on a flat roof, or to the median elevation between the peak of a sloped roof and the lowest edge of the sloped roof. In accordance with the Florida Building Code, bulkheads and penthouses used solely to enclose stairways, tanks, elevator machinery or shafts or ventilation or air conditioning apparatus shall not be included in determining building height; all other</p>	<p>A grammatically correct reading of the first sentence of (1) would construe the date to apply to the Town boundaries and not to a building, because the clause incorporating the date uses the plural form as does the reference to boundaries. However, such an interpretation would not be meaningful. The Town boundaries have not changed since 2006; they are the current Town limits. Moreover, no annexation areas are adjacent to the Town, so it is not readily apparent how such a distinction could ever matter, unless the Town were somehow to merge with an adjacent municipality and still remain a Town. Also, such an interpretation essentially nullifies the second part of (1) referring to "all other buildings," because there are no buildings within the control of the Town's charter which are not in the Town boundaries. This violates a principle of statutory construction: that the interpretation should give effect to every part of the language if possible.</p> <p>Therefore, it appears that this section could be construed so that the first part applies to buildings in existence on March 20, 2006, and the second part applies to buildings that are constructed after that date. This interpretation is reflected in the Plain English</p>	<p>(1) <i>Limit on height and number of stories of buildings.</i></p> <p>(a) <i>Definition.</i> For purposes of this section, "roofline" is defined as follows:</p> <ul style="list-style-type: none"> (i) the highest point on a flat roof, or (ii) the median elevation between the peak of a sloped roof and the lowest edge of the sloped roof. <p>(b) <i>Limits applicable to buildings constructed on or prior to March 20, 2006.</i> All buildings shall have no more than four stories and shall not exceed 44 feet. The number of stories and the height shall be measured from grade to the roofline. As used in this subsection (1)(b), "grade" is defined as the higher of the following two alternatives:</p> <ul style="list-style-type: none"> (i) grade as defined in the Florida Building Code, or (ii) the level of the crown of the adjacent road plus eighteen inches. <p>(c) <i>Limits applicable to buildings constructed after March 20, 2006.</i> All buildings shall not exceed 33 feet in height. The height shall be measured from the highest of the following locations to the roofline:</p> <ul style="list-style-type: none"> (i) grade as defined in the Florida Building Code, or (ii) the level of the crown of the adjacent road plus eighteen inches, or (iii) the minimum elevation for a habitable, finished floor permitted under applicable federal or Florida state regulations. <p>(d) <i>Measurement of height of roof structures.</i> The following are</p>

Current Text	Comments re Bolded Language in Current Text	Plain English version
<p>roofs structures, including parapet walls, shall not exceed four feet in height above the maximum allowed building height.</p>	<p>version of this section.</p> <p>The heights in (1) are addressed further in (8)-(9). For clarity, those provisions have been added to (1), so all related matters are in the same subsection.</p> <p>Redevelopment of certain legal nonconforming structures is addressed in greater detail in subsection (3). The height limit of three stories or 33 feet was first created by the voters in 1973 and the majority of the more detailed height, use and parking restrictions were created in 1998. Further limits were added in 2006. Therefore, an individualized analysis of a particular structure would be necessary in order to determine whether it or its use are legally non-conforming, based on the date of construction, the nature of the nonconformity and whether or not it is located in the annexation area.</p> <p>The section (9) limitations on the Town Commission's powers to change these provisions are already applicable as a matter of law. Only a vote of the people can change the charter, so (f) of the Plain English version could be omitted.</p>	<p>excluded from the measurements of height under subsections (b) and (c):</p> <ul style="list-style-type: none"> (i) bulkheads and penthouses used solely to enclose stairways, (ii) tanks, (iii) elevator machinery or shafts, and (iv) ventilation or air conditioning apparatus. <p>All other roof structures, including parapet walls, are permitted to exceed the applicable height limit by up to four feet.</p> <p><i>(e) Preservation of more restrictive Code provisions.</i> The height limits established herein supersede any existing zoning ordinance or land development regulation to the extent that it establishes any greater maximum building height limit. This section shall not be construed to affect any existing zoning ordinance or land development regulation that establishes any lower maximum building height limit.</p> <p><i>(f) Prohibition on Town Commission granting variances or amending by ordinance.</i> The Town Commission may not increase, by ordinance or by variance, the height limits established herein.</p>
<p>(2) In any building within the Town that has more than three (3) stories above grade, the first story shall be at grade level and shall be used for parking, either with or without toll collection booths. The first story may also be used for storage, refuse, security,</p>	<p>This section refers to "any building." Below in this section it talks about "proposed buildings." A later section addresses existing nonconforming buildings that are redeveloped.</p>	<p><i>(2) Limits on use of stories and parking for buildings over three stories or 33 feet in height.</i> Buildings over three stories or 33 feet in height are subject to the following limitations.</p> <p><i>(a) Level of first story.</i> The first story shall be at grade. "At</p>

Current Text	Comments re Bolded Language in Current Text	Plain English version
<p>registration, maintenance, and/or access, either with or without a lobby, provided that at least one-half (½) of the square footage of the first story is used for parking. Only within districts of the Town zoned for business ("B") use, the first story of buildings having more than three (3) stories above grade may also be devoted to non-residential commercial uses, provided that dedicated parking required by Town ordinance or code for the proposed buildings is provided off-street at a location on or adjacent to the property on which the buildings are situate, and designed so as to enable the parked vehicles to egress the parking space without having to back out into traffic. In any building within the Town that has more than three (3) stories above grade, the first story shall be restricted to the above enumerated uses, and may be used for no other purpose whatsoever. For the purposes of this provision of the Charter, a story is at grade level if its floor is at or below grade and its ceiling is above grade; a story that is at grade level is also above grade. Nothing in this paragraph shall be construed so as to prohibit any building within the Town that has more than three (3) stories above grade from also having one (1) or more subterranean stories below grade, provided, however, that in any building within the Town that has more than three (3) stories above grade, all subterranean stories shall be subject to the same restrictions on use as are established in this paragraph for the first story.</p>	<p>The scope is unclear. For the Plain English version, the interpretation that this section applies to "any building" is utilized.</p> <p>This section contains details that are usually found in a Code.</p> <p>This section could be greatly simplified by stating that uses of first stories are limited to whatever non-habitable uses are allowed by the zoning district. But that clarification would broaden the scope of the listed uses for residential zoning districts.</p> <p>The section (9) limitations on the Town Commission's powers to change these provisions are already applicable as a matter of law. Only a vote of the people can change the charter, so (g) of the Plain English version could be omitted.</p>	<p>grade" means that the floor is at or below grade and the ceiling is above grade, or that the floor and ceiling are both above grade.</p> <p>(b) <i>Use in residential zoning districts.</i> At least one half of the square footage of the first story must be used for parking. The remainder of the first story may only be used for one or more of the following uses:</p> <ol style="list-style-type: none"> 1. parking, either with or without toll collection booths, 2. storage, 3. refuse, 4. security, 5. registration, 6. maintenance, 7. access, either with or without a lobby. <p>(c) <i>Use in business zoning districts.</i> The first story may be used for any of the uses listed in (b). It may also be used for commercial uses if the Code-required off-street parking is provided on or adjacent to the property.</p> <p>(d) <i>Underground stories.</i> Underground stories are allowed, but their uses are limited in accordance with the applicable zoning district, as detailed above in (b) and (c).</p> <p>(e) <i>Off-site parking.</i> If the Code required parking is not provided on the property, the building must have dedicated off-street parking adjacent to the property.</p> <p>(f) <i>Back-out parking.</i> All parking must be designed to allow parked vehicles to leave the parking space without having to back out into traffic.</p> <p>(g) <i>Prohibition on Town Commission granting variances or amending by ordinance.</i> The Town Commission may not increase, by ordinance or by variance, the use and parking requirements</p>

Current Text	Comments re Bolded Language in Current Text	Plain English version
<p>(3) Buildings which exceed thirty three (33) feet above grade, and which exceed thirty three (33) feet above the horizontal plane eighteen inches above the crown of the roadway at the highest point adjoining the property on which the building is located, but which are nevertheless allowed under subparagraph (1)(c) of this Section, and which do not include a non-habitable first floor with ample parking as required by Town ordinance or code, in accordance with the number and type of units in those buildings, must have dedicated off-street parking at a location on or adjacent to the property on which the buildings are situate. Parking for buildings in this category must be designed so as to enable the parked vehicles to egress the parking space without having to back out into traffic.</p>	<p>This has been combined into (2) in the plain English version.</p> <p>As noted in (1) above, (1)(c) is part of a section that may be interpreted to apply to buildings constructed after March 20, 2006. (2) applies to any building, without a date restriction. So what buildings are not "any building" that can be affected by this sentence?</p> <p>The reference to "units" suggests that this provision is intended to apply to residential buildings, but it nowhere states this explicitly. It has been added as (2)(e) and (f) and applies to both residential and non-residential uses.</p>	<p>established herein.</p> <p>See (2)(e) above.</p>
<p>(4) All existing buildings within the Town that were legally in compliance with existing height and use restrictions on March 20, 2006, or were grandfathered on that date, but that either exceed the maximum building height limit established in paragraph (1), above, of this section of the Charter, or that fail to comply, where applicable, with the restrictions on use established in paragraph (2), above, of this section of the Charter, (hereinafter referred to as "Non-conforming Buildings") shall be considered legal, but non-conforming.</p>	<p>(4) is just a definition, and the related regulations are in the following sections. All of the related provisions of (4) and (5) have been combined into (3) of the Plain English version.</p>	<p>(3) <i>Nonconforming buildings.</i></p> <p>(a) <i>Definition.</i> For purposes of this section, nonconforming buildings means all buildings within the Town that were legally in existence on March 20, 2006, and that either:</p> <ul style="list-style-type: none"> (i) exceed the applicable height limit established in (1) or (ii) fail to comply with the use requirements of (2).
<p>(5) Notwithstanding the maximum building height limit established in paragraph (1), above, of this section of the Charter, an existing non-conforming building may be replaced by a new nonconforming building when, and only when:</p>	<p>The explicit statements about being able to build less than the maximum are not necessary because the charter provides for a maximum allowable amount, not a maximum required amount.</p>	<p>(b) <i>Limitation on replacement of nonconforming buildings.</i></p> <p>(i) <i>Definitions.</i></p> <p>A. "Habitable story" means any story or part thereof that is used as a home or place of abode, either permanent or</p>

Current Text	Comments re Bolded Language in Current Text	Plain English version
<p>(a) The existing non-conforming building has:</p> <p>(i) Been destroyed by fire, natural disaster, or other act of God; and</p> <p>(ii) The property owner has submitted and received Town approval of a site plan depicting the replacement building; and</p> <p>(iii) Construction of the replacement building is commenced within twelve (12) months of the date of destruction; or</p> <p>(b) The existing non-conforming building is:</p> <p>(i) Demolished as part of a Town approved redevelopment of the property; and</p> <p>(ii) Prior to demolition, the property owner has submitted and received Town approval of a site plan depicting the replacement building; and</p> <p>(iii) Construction of the replacement building is commenced within six (6) months of the date of site plan approval.</p> <p>(c) The Town Commission may grant one (1) or more six (6) month extensions to the time periods for commencement of construction established in paragraphs (5)(a)(iii) and (5)(b)(iii), above, provided a written request for extension is filed with the Town Clerk prior to (in the case of a first request for extension) the expiration of the initial applicable time period for commencement of construction or prior to (in the case of a subsequent request for extension) the expiration of the most recent extension of the applicable time period for commencement of construction.</p> <p>(d) All new non-conforming buildings constructed pursuant to the provisions of either paragraph (5)(a) or (5)(b), above, shall comply, where applicable, with the restrictions on use established in paragraph (2), above, and the</p>	<p>The section (9) limitations on the Town Commission's powers to change these provisions are already applicable as a matter of law. Only a vote of the people can change the charter, so those parts of (vi) and (vii) of the Plain English version could be omitted.</p> <p>The phrase "Town approved redevelopment of the property" is not defined. Standing alone, subsection (i) could indicate that basic site plan approval for redeveloping an existing non-conforming building is all that is required. However, subsection (ii) specifically addresses site plan approval. This may mean that (a) the redevelopment approval referenced in subsection (i) is in addition to site plan; or, (b) based on the phrasing, subsection (ii) may simply be intended to establish the required timing of site plan approval in order to qualify for redevelopment under this section - prior to demolition of the existing non-conforming building. The second interpretation is applied in the "Plain English" version; the reference to Town approved redevelopment of the property is construed as an application, prior to demolition of the existing structure, for a site plan to redevelop the property, and not to a different form of approval.</p> <p>Under either interpretation, if site plan approval is obtained after demolition, the site would be treated as a vacant lot required to conform to all the requirements of the code and charter.</p>	<p>temporary, by one (1) or more persons.</p> <p>B. "Habitable square feet" means any square footage that is used as a home or place of abode, either permanent or temporary, by one (1) or more persons.</p> <p>C. "Replacement building" means a new building that is allowed to be constructed without full compliance with this section, as provided herein.</p> <p>(ii) <i>Eligibility.</i> Nonconforming buildings generally must come into compliance with this section if replaced. However, a nonconforming building may be replaced with a replacement building if either:</p> <p>A. <i>Destruction.</i> The existing non-conforming building has been destroyed by fire, natural disaster, or other act of God, and construction of the replacement building is commenced within twelve (12) months of the date of destruction; or</p> <p>B. <i>Redevelopment.</i> The existing non-conforming building is demolished as part of a Town approved redevelopment of the property; and construction of the replacement building is commenced within six (6) months of the date of site plan approval.</p> <p>(iii) <i>Procedure.</i> The property owner must apply for and receive Town approval of a site plan depicting the replacement building (prior to planned demolition, if any).</p> <p>(iv) <i>Use and parking.</i> The replacement building must comply, where applicable, with the restrictions on use and parking of subsection (2).</p> <p>(v) <i>Extensions of time.</i> The applicant may seek one (1) or more six (6) month extensions to the time periods for commencement of construction of a replacement building from the Town Commission by submitting a written application to the Town Clerk prior to the expiration of the original (or extended) timeframe.</p>

Current Text	Comments re Bolded Language in Current Text	Plain English version
<p>provisions for parking availability established in paragraph (3), above, of this section of the Charter.</p> <p>(e) The maximum allowable height of any new non-conforming building constructed pursuant to the provisions of either paragraph (5)(a) or (5)(b), above, shall not exceed the original height of the non-conforming building which it replaces, plus any additional height which (because of the requirements of state or federal law, or because of the restrictions on use established in paragraph (2), above, of this section of the charter) may be necessary to obtain the same number of habitable stories as was contained in the original non-conforming building. Nothing in this section of the Charter shall be construed to prevent a new non-conforming building from being constructed to a lesser height or from containing fewer habitable stories than that of the original non-conforming building which it replaces. For the purposes of this provision of the Charter, the term "habitable story" means any story or part thereof that is used as a home or place of abode, either permanent or temporary, by one (1) or more persons.</p> <p>(f) The maximum allowable square footage of any new nonconforming building constructed pursuant to the provisions of either paragraph (5)(a) or (5)(b), above, shall not exceed the original square footage of the non-conforming building which it replaces, plus any additional square footage which (because of the requirements of state or federal law, or because of the restrictions on use established in paragraph (2), above, of this section of the Charter) may be necessary to obtain the same number of habitable square feet as was contained in the original non-</p>		<p>(vi) <i>Height.</i> The maximum allowable height of any replacement building shall not exceed the original height of the non-conforming building which it replaces, plus any additional height which (because of the requirements of state or federal law, or because of the restrictions on use established in paragraph (2)) may be necessary to obtain the same number of habitable stories as was contained in the original non-conforming building. The Town Commission may not increase, by ordinance or by variance, the height limits established herein.</p> <p>(vii) <i>Square footage.</i> The maximum allowable square footage of any replacement building shall not exceed the original square footage of the non-conforming building which it replaces, plus any additional square footage which (because of the requirements of state or federal law, or because of the restrictions on use established in paragraph (2)) may be necessary to obtain the same number of habitable square feet as was contained in the original non-conforming building. The Town Commission may not increase, by ordinance or by variance, the square footage limits established herein.</p> <p>(viii) <i>Reductions in size.</i> A replacement building may be shorter or have fewer square feet than the original nonconforming building without coming fully into compliance with this section.</p>

Current Text	Comments re Bolded Language in Current Text	Plain English version
<p>conforming building. Nothing in this section of the Charter shall be construed to prevent a new nonconforming building from being constructed either with less total square footage or with less habitable square footage than that of the original non-conforming building which it replaces. For the purposes of this section of the Charter, the term "habitable square footage" means the square footage of that portion of a building that is used as a home or place of abode, either permanent or temporary, by one (1) or more persons.</p>		
<p>(6) The maximum building height limits, the restrictions on use and the maximum allowable square footage, and the provisions governing parking established in paragraphs (1), (2), (3) and (5), above, of this section of the Charter, shall be applicable to all real property located within the boundaries of the Town as the boundaries exist on March 20, 2006.</p>	<p>Again, a distinction is drawn based on the Town boundaries, which have not changed. Therefore, the language applies to the entire Town ("all real property"). This section seems to support the alternative interpretation of (1), that the date applies to the boundaries and not to the buildings. However, if that interpretation applies, the 33 foot provisions are nullified.</p> <p>Because the language does not add anything to the previous sections, it is not carried over into the Plain English version.</p>	
<p>(7) Every resident of the Town shall have the standing to enforce the maximum building height limits and the maximum allowable square footage established in paragraphs (1), (2) and (5), above, of this section of the Charter, by means of a suit in equity seeking either mandamus; prohibition; or any combination thereof, but nothing in this provision of the Charter shall be construed to either create a cause of action at law for money damages, or to authorize a court of equity to award money damages as an incident to equitable relief, or to authorize an award of attorney's fees to the prevailing party or to any other party.</p>	<p>Paragraph (2) contains several use and parking restrictions, yet this language only refers to the height and square footage limits.</p>	<p>(4) <i>Resident standing to enforce.</i> Every resident of the Town shall have the standing to enforce the maximum building height limits and the maximum allowable square footage established in this section of the Charter by bringing a lawsuit in equity seeking mandamus and prohibition. This section shall not be construed to:</p> <p>(a) create a cause of action at law for money damages, or</p> <p>(b) authorize a court of equity to award money damages as an incident to equitable relief, or</p> <p>(c) authorize an award of attorney's fees to the prevailing</p>

Current Text	Comments re Bolded Language in Current Text	Plain English version
<p>(8) The maximum building height limit established in paragraph (1), above, of this section of the Charter, supersedes any existing zoning ordinance or land development regulation to the extent that said zoning ordinance or land development regulation establishes anywhere within the Town a maximum building height limit greater than that established in paragraph (1), above, of this section of the Charter, but nothing in this section of the Charter shall be construed to supersede, modify or repeal any existing zoning ordinance or land development regulation that establishes anywhere within the Town a maximum building height limit lower than that established in paragraph (1), above, of this section of the Charter.</p>	<p>Because this relates to (1), it has been moved to (1).</p>	<p>party or to any other party.</p>
<p>(9) The Town Commission may not increase, by ordinance or by variance, the maximum building height limits established in paragraphs (1) and (5), above, of this section of the Charter, nor may the Town Commission modify, amend or repeal, by ordinance or by variance, the restrictions on use established in paragraph (2), above, or the provisions for parking availability established in paragraphs (2), (3) or (5), above, of this section of the Charter, nor may the Town Commission increase, by ordinance or by variance, the maximum allowable square footage established in paragraph (5), above, of this section of the Charter. The maximum height limits established for residential zoning districts including, but not limited to, R-5, RS-4, RS-5, RD-10, RM-15, RM-16, RM-25 and PUD in the Town's land development code as of March 20, 2006, may be increased, or such districts re-zoned for any other use whatsoever, only by a referendum vote of the</p>	<p>The limitations on the Town Commission's power to change provisions of this charter have been placed where each of those limitations are established in the Plain English version for clarity. However, as noted above, they are not necessary because as a matter of law the Town Commission does not have this power.</p> <p>The limitations on the Town Commission's ability to change the land development regulations are quite different. The Commission does have this power, and these provisions limit that power. They are placed in section (5) of the Plain English version.</p> <p>"Rezoned for any other use whatsoever" can be interpreted in different ways. It modifies the word districts, not properties. The phrase</p>	<p>(5) <i>Limit on Town Commission power to amend land development regulations.</i></p> <p>(a) <i>Definition.</i> "Residential zoning districts" shall include but not be limited to, R-5, RS-4, RS-5, RD-10, RM-15, RM-16, RM-25 and PUD in the Town's land development code as of March 20, 2006.</p> <p>(b) <i>Referendum required.</i> A referendum vote, in the manner established in Article IV, Section 4.7 of this Charter for the repeal or amendment of initiated ordinances, is required to make the following changes to the Town's land development regulations:</p> <p>(i) <i>Residential zoning district height limits.</i> The maximum height limits established for residential zoning districts may be increased only by a referendum.</p> <p>(ii) <i>Rezoning of districts to another use.</i> A property in a residential zoning district may be rezoned to a different</p>

Current Text	Comments re Bolded Language in Current Text	Plain English version
<p>registered voters of the Town in the manner established in Article IV, Section 4.7 of this Charter for the repeal or amendment of initiated ordinances. The Town may not create new categories of zoning without approval of such categories by a similar referendum vote; and all provisions of such new categories of zoning must be submitted to the voters for approval.</p>	<p>could refer to a complete rezoning of an entire zoning district, or to a rezoning of a property or multiple properties located in one district to another district. For example, this could mean that the RM-25 district as a whole could not be changed to the B-1 district without a referendum. Or it could mean that a particular property that is shown on the zoning map as RM-25 could not be rezoned to B-1 without a referendum. For purposes of this analysis, the plain English version applies the interpretation that it restricts the rezoning of individual properties to another zoning district.</p> <p>“Rezoned for any other use whatsoever” may also be interpreted to mean any change to the text of the regulations for a zoning district which adds a use not currently listed or removes a listed use, because either type of change would result in a different set of uses being available in that zoning district. However, the language is expansive rather than restrictive -- “any other” (as in additional) use.” Therefore, the Plain English version applies the interpretation that the charter restricts the addition of uses to, but does not restrict the removal of uses from, a residential zoning district.</p> <p>“New categories of zoning” is also open to interpretation. It is not limited to the residential zoning districts, as the other phrases are. There are two kinds of zoning districts: overlay and regular. A property can only have one regular zoning district; they are</p>	<p>zoning district only by a referendum.</p> <p>(iii) <i>Creation of new categories of zoning.</i> New zoning districts, including all the regulations related to those districts, may be adopted only by a referendum.</p> <p>(iv) <i>Addition of uses to a zoning category.</i> New uses may be added to existing residential zoning districts only by a referendum.</p>

Current Text	Comments re Bolded Language in Current Text	Plain English version
	<p>mutually exclusive. Overlay districts, in contrast, are designed to preserve the regular underlying zoning district but modify certain aspects of it for certain properties in ways that are not suitable to the entire zoning district. For purposes of this analysis, the Plain English version applies the interpretation that a new category is a regular zoning district and not an overlay district.</p>	
<p>(10) The maximum building height limits established in paragraphs (1) and (5), above, of this section of the Charter, may be increased only by an amendment to or by repeal of this section of the Charter. The restrictions on use established in paragraph (2), above, and the provisions governing parking availability established in paragraphs (2), (3) and (5), above, of this section of the Charter, may be modified, amended or repealed only by an amendment to or by repeal of this section of the Charter. The maximum allowable square footage established in paragraph (5), above, of this provision of the Charter, may be increased only by an amendment to, or by repeal of this section of the Charter. Except as expressly provided below, this section of the Charter may be amended or repealed only by means of a majority vote of the registered voters of the Town at a referendum election held either on the same day as a regularly scheduled November general election or on the same day as a regularly scheduled March municipal general election. The amendment or repeal of this section of the Charter at a special election held on a day other than a regularly scheduled November general election or on a day other than a regularly scheduled March municipal general election is expressly prohibited, except that a special election or special election by mail may be held to correct, to</p>	<p>The first three statements are true as a matter of law and need not be included.</p> <p>The limitations on how this section may be amended by the voters are meaningful, and are incorporated in the Plain English version.</p>	<p>(6) <i>Limitation on amendments to this section of the Charter by the voters.</i> This section of the Charter may be amended or repealed only by a majority vote of the registered voters of the Town at a referendum election held either on the same day as a regularly scheduled November general election or a March municipal general election. If a provision of this section of the Charter is finally adjudged by a court of competent jurisdiction, after all appeals have been exhausted, to violate the State or Federal Constitution or any valid state or federal law, then a special election may be held for the sole purpose of correcting, to the minimum practicable extent, such violation. Such special election may be held on a different day, or may be conducted by mail.</p>

Current Text	Comments re Bolded Language in Current Text	Plain English version
<p>the minimum practicable extent, a provision adjudged by a court of competent jurisdiction to violate the State or Federal Constitution or any valid state or federal law, but only after such adjudication is affirmed on appeal. Amendments approved at a special election may include no elements not directly related to such court adjudication.</p>		
<p>(11) These provisions of the Charter shall be effective immediately upon adoption by a majority of the registered voters of the Town voting in a referendum to amend the Charter so as to include these provisions. Upon adoption, the maximum building height limits, the restrictions on use, the maximum allowable square footage and the provisions governing parking availability established in paragraphs (1), (2), (3) and (5), above, of this section of the Charter, shall immediately apply to all real property located within the boundaries of the entire Town. Upon adoption of these provisions, and pending amendment of any portion or portions of the Town's Code of Ordinances inconsistent with this section of the Charter, the more stringent provisions of this section shall apply.</p>	<p>This language is an effective date clause from the charter amendment in which these changes were adopted. It no longer has applicability because the current charter already became effective.</p> <p>The final sentence is still meaningful because it addresses conflicting provisions of the Town Code.</p>	<p><i>(7) Preservation of stricter Code provisions.</i> Pending amendment of any portion or portions of the Town's Code of Ordinances inconsistent with this section of the Charter, the more stringent provisions of this section shall apply.</p>