

# **Item #3**

# Memo

To: Planning And Zoning Board Members

From: Susan Trevarthen, Town Attorney  
James E. White, Assistant Town Attorney

Cc: Jeff, Bowman, Director of Development Services

Date: September 1, 2010

Re: Proposed Section 30-22 "Zoning Relief Procedures"

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At the Commission meeting of July 27, 2010 the Commission authorized moving forward with amending Chapter 30 "Unified Land Development Regulations" of the Town Code of Ordinances by creating Section 30-22 "Zoning Relief Procedures" to provide for a zoning relief procedure to address possible unintended violations of federal and state laws in the application of the Code or its related rules, policies, and procedures. This proposed amendment provides a preventative procedure to protect the Town from legal challenges, and facilitates the resolution of disputes.

## **BACKGROUND**

From time to time, the Town Land Development Regulations (LDRs) are updated to conform with recent legal precedent. The Town's application of its Code and related rules, policies, and practices is governed by constantly-evolving case law decisions addressing the rights of applicants and affected parties under the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), the First Amendment to the U.S. Constitution, the Americans with Disabilities Act, the Fair Housing Act and other applicable state and federal laws. In order to encourage resolution of disputes and avoid costly litigation, it is recommended that the LDRs be amended to provide a general zoning relief procedure consistent with federal law.

An example of the application of the procedure is a request for a waiver from development regulations when a reasonable accommodation may be necessary to afford a disabled person the equal opportunity to use a dwelling under the Fair Housing Act. The Act makes it unlawful for the Town to refuse to make "reasonable accommodations" (modifications or exceptions) to rules, policies, practices, or services, when such accommodations may be necessary to allow a resident the equal right to housing. As an example, it may be a reasonable accommodation to waive a setback requirement so that a paved path can be provided to a resident who has impaired mobility.

Consistent with recent case law developments, the proposed zoning relief procedure expands the reasonable accommodation process to address additional types of alleged violations of state and

federal civil rights law, such as a claim that a municipal land development regulation imposes a “substantial burden” on religious exercise in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The proposed procedure provides a case-by-case review process by which Town staff and the Town Attorney will evaluate claims under federal or state statutes concerning the application of the LDRs or related policies, in accordance with the standards of the applicable legal precedent. The request will then be scheduled for a public hearing, with public notice, for consideration by the Town Commission.

The proposed zoning relief procedure supplements existing procedures within the LDRs, including the zoning variance procedure of Section 30-8, and the procedure for appeal of administrative decisions, as provided under Section 30-7(d) of the Town Code. It is intended to apply only when all other procedures have failed to provide legally required relief.

The zoning relief process will be implemented by Development Services staff. Staff will advise interested persons of the procedure and provide public information and forms.

ORDINANCE NO. 2010-\_\_

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**AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 30 "UNIFIED LAND DEVELOPMENT REGULATIONS" TO CREATE SECTION 30-22 "ZONING RELIEF PROCEDURES" TO ADDRESS POSSIBLE UNINTENDED VIOLATIONS OF FEDERAL AND STATE LAWS IN THE IMPLEMENTATION OF THIS CODE OR ITS RELATED RULES, POLICIES, AND PROCEDURES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

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

**WHEREAS**, the Town's application of its land development regulations and related rules, policies, and practices is governed by constantly-evolving case law decisions addressing the rights of applicants and affected parties under the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), the First and Fifth Amendments to the U.S. Constitution, the Americans with Disabilities Act and the Fair Housing Amendments Act, and other applicable state and federal laws; and

**WHEREAS**, the adoption of the proposed zoning relief procedure within the Code will create a reasonable accommodation procedure that will permit qualifying individuals or entities to request reasonable accommodation, and, where appropriate based on the facts and law, to receive relief from the Town's Code, rules, policies, practices and services, in accordance with state and federal law; and

**WHEREAS**, the proposed zoning relief procedure is consistent with applicable case law and the legislative history of the subject laws, which encourage local governments to provide an

31 accommodation procedure for claimants, and with the requirement that claimants exhaust  
32 administrative remedies prior to filing suit; and

33 **WHEREAS**, the proposed zoning relief procedure will provide the Town with the  
34 opportunity to resolve claims related to possible unintended violations of federal and state laws,  
35 to avoid costly litigation; and

36 **WHEREAS**, the Town’s Planning and Zoning Board held a public hearing to review this  
37 Ordinance, and made a recommendation to the Town Commission; and

38 **WHEREAS**, the Town Commission has held a properly advertised public hearing  
39 pursuant to Chapter 166, Florida Statutes, and finds that the regulation is consistent with its  
40 comprehensive plan; and

41 **WHEREAS**, the Town Commission of the Town of Lauderdale-By-The-Sea, Florida,  
42 finds that it is in the best interest of the Town’s citizens and residents to approve the proposed  
43 amendments to the Code of Ordinances.

44 **NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE**  
45 **TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AS FOLLOWS:**

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47 **SECTION 1: Recitals.** The foregoing “WHEREAS” clauses are ratified and confirmed  
48 as being true and correct, and are made a specific part of this Ordinance.

49 **SECTION 2: Amendment.** Chapter 30, entitled “Unified Land Development  
50 Regulations” of the Code of Ordinances of the Town of Lauderdale-By-The-Sea, Florida, is  
51 hereby amended to create Section 30-22 “Zoning Relief Procedures,” as follows:

52 Sec. 30-22. Zoning relief procedures.

53 (a) Purpose and applicability. In order to address possible unintended violations  
54 of federal and state laws, subsequent to implementation of this Code or its related

55 rules, policies, and procedures in advance of costly litigation, zoning relief may  
56 be granted pursuant to this section.

57 (b) Application. A person or entity shall request relief under this section prior to  
58 filing a lawsuit, by completing a Zoning Relief Request form, which is available  
59 from the Town's Department of Development Services. The form shall contain  
60 such questions and requests for information as are necessary for evaluating the  
61 relief requested.

62 (c) Notice. The Town shall display a notice on the Town's public notice bulletin  
63 board and shall maintain copies available for review in the Department of  
64 Development Services and the Town Clerk's Office. The notice shall advise the  
65 public that a request for zoning relief under a federal or state law is pending. The  
66 location, date and time of the applicable public hearing shall be included in the  
67 notice. Mailed notice shall also be provided to property owners within 300 feet, if  
68 the request for relief is site specific, in accordance with the procedure provided in  
69 Section 30-13(d)(2)(b).

70 (d) Application and hearing. The Town Commission shall have the authority to  
71 consider and act on requests for zoning relief submitted to the Department of  
72 Development Services. A public hearing shall be held within seventy five (75)  
73 days of receipt by the Town of the request for relief at a Town Commission  
74 meeting. A written determination shall be issued by resolution no later than seven  
75 (7) days after the conclusion of the public hearing. The determination may: (i)  
76 grant the relief requested, (ii) grant a portion of the request and deny a portion of  
77 the request, or impose conditions upon the grant of the request, or (iii) deny the

78 request. Any determination denying the requested relief shall be final, in writing,  
79 and shall state the reasons the relief was denied. The final written determination  
80 shall be sent to the requesting party by certified mail, return receipt requested.

81 (e) Additional information. If necessary, prior to the public hearing, the Town  
82 may request additional information from the requesting party, specifying in  
83 sufficient detail what information is required. In the event a request for additional  
84 information is made to the requesting party by the Town, the seventy-five (75)  
85 day time period to schedule a public hearing shall be extended to ninety (90) days  
86 to include the time necessary to seek and review the additional information. The  
87 requesting party shall have fifteen (15) days after the date the information is  
88 requested to provide the needed information. If the requesting party fails to timely  
89 respond with the requested additional information, the Town shall notify the  
90 requesting party and proceed with scheduling a public hearing and issuing its final  
91 written determination regarding the relief requested as required in subsection (d).

92 (f) Criteria. In determining whether the zoning relief request shall be granted or  
93 denied, the applicant shall be required to establish:

- 94 (1) The applicant is a potential claimant under a federal or state law; and
- 95 (2) The applicant believes in good faith that the Town through  
96 implementation of its Code has intentionally or unintentionally violated  
97 federal or state law for the reasons stated in the zoning relief request; and
- 98 (3) The applicant satisfies the standard set forth in the applicable federal or  
99 state statute(s), or legal precedent interpreting the applicable statute(s).

100           (g) Exhaustion required. Completion of the zoning relief procedures shall be a  
101           supplement to and not a substitute for any other pre-litigation dispute resolution  
102           processes available by law to the Town or the applicant. Completion of the  
103           zoning relief procedures shall constitute the exhaustion of all administrative  
104           remedies available from the Town.

105           (h) Effect while pending. While an application for zoning relief or appeal of a  
106           determination of same is pending before the Town, the Town will not enforce the  
107           Code, rules, policies, and procedures against the property owner, except the Town  
108           may seek injunctive relief if an imminent threat to the health, safety and welfare  
109           of the public is present.

110           **SECTION 3. Codification.** This Ordinance shall be codified in accordance with the  
111           foregoing. It is the intention of the Town Commission that the provisions of this Ordinance shall  
112           become and be made a part of the Town of Lauderdale-by-the-Sea Code of Ordinances; and that the  
113           sections of this Ordinance may be renumbered or re-lettered and the word “ordinance” may be  
114           changed to “section,” “article” or such other appropriate word or phrase in order to accomplish such  
115           intentions.

116           **SECTION 4. Severability.** If any section, sentence, clause, or phrase of this Ordinance is  
117           held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall  
118           in no way affect the validity of the remaining portions of this Ordinance.

119           **SECTION 5. Conflicting Ordinances.** All prior ordinances or resolutions or parts thereof  
120           in conflict herewith are hereby repealed to the extent of such conflict.

121           **SECTION 6. Effective Date.** This Ordinance shall become effective immediately upon  
122           passage on second reading.

123 Passed on the first reading, this \_\_\_\_ day of \_\_\_\_\_, 2010.

124 Passed on the second reading, this \_\_\_\_ day of \_\_\_\_\_, 2010.

DRAFT