

MEMORANDUM

TO: Planning and Zoning Board

FROM: Allen Parsons, AICP,
Director, Planning, Zoning and Building Department

REPORT DATE: November 6, 2020

MEETING DATE: November 17, 2020

SUBJECT: Continued Workshop Discussion: Commission Direction to Further Consider Ordinance 2020-07, Amending Chapter 158.098(D), Single-Family Residential Structure Buffering Requirements and an Overlay District Concept for Single-Family Redevelopment

Recommended Action

Provide direction to staff.

Background

At their October 20, 2020 meeting, the Planning and Zoning Board (P&Z Board) continued its Workshop Discussion, on the following two related items that the P&Z Board had previously deliberated and provided recommendations on:

1. Providing potential refinements to Ordinance 2020-07 and its provisions for **Privacy Guidelines and Standards**, including:
 - a. The addition of mechanisms to help ensure that privacy solutions provided have a clear ongoing responsibility to maintain; and
 - b. Evaluating options to assist with inadvertently limiting visual impacts to any associated waterfront views via the application of landscaping privacy solutions.
2. Further consideration of the potential **use of an overlay zoning district** as a mechanism to apply area-specific requirements that could address the compatibility of new or redeveloped single-family structures adjacent to older, at-grade, single-story structures.

Discussion of these two items derive from the Town Commission, which directed staff to seek additional input from the P&Z Board at their September 14, 2020 Regular Meeting.

At the P&Z Board's October 20, 2020 Workshop Discussion, most of the dialog was on the first item above. A summary of points discussed is provided below. The dialog on further consideration of the potential use of overlay zoning districts follows.

P&Z Board October 20, 2020 Discussion on Ordinance 2020-07- Privacy Guidelines and Standards:

As a reminder, at the Town Commission's, September 14, 2020 Regular Meeting, which was the 1st Reading and Public Hearing on Ordinance 2020-07, the Commission provided consensus direction to not incorporate the P&Z Board's recommended changes to Daylight Plane requirements¹.

The P&Z Board began considering the Commission's direction regarding the Ordinance 2020-07's newly proposed building permit review criteria (copied and highlighted below).

Sec. 158.098(E) Single-family residences, and any redevelopment of a nonconforming residential use in a single-family residential Zoning District, or any addition to an existing single-family residence, located immediately adjacent to the side yard of an existing at-grade single-family residence (constructed prior to 1975²), shall demonstrate the following to the satisfaction of the Planning & Zoning Official on the building permit application:

(1) Sight line views, from the newly constructed structure, to the immediately adjacent existing at-grade single-family property(ies) shall be controlled in a manner that preserves the privacy of the immediately adjacent at-grade property(ies) and shall consist of one or more of the following to minimize views into the side yard(s):

- i. Building design;*
- ii. Construction materials;*
- iii. Trees, shrubs or other landscaping;*
- iv. Screening by other means;*

Note: This provision shall not apply in the case where an immediately adjacent existing at-grade single-family residence has an active building permit for demolition.

The proposed criteria were intended to mitigate compatibility and privacy impacts associated with new or redeveloped single-family houses adjacent to lower-scale neighbors.

The Commission was seeking input on how best to have whichever chosen design solution(s), from the menu of these privacy-related standards options, be permanently maintained. The concern being that new, or subsequent, homeowners might intentionally, or unintentionally, remove the privacy measures that were approved and put in place during permitting review and approval of a newly constructed structure.

The P&Z Board discussed a number of issues on this topic including:

1. Questioning the wisdom of proposing design criteria to address differences in scale of new, or redeveloped, single-family houses adjacent to older, lower-scale ones. Such differences in scale could be considered self-correcting, over time, as redevelopment of pre-1975 housing occurs at the request of the new property owner(s) and newly constructed houses are required to be elevated to meet FEMA flood elevation requirements.

¹ The P&Z Board had recommended that the Daylight Plane provisions (Sec. 158.098(D)) be revised to eliminate variable Daylight Plane angle requirement and that they beginning measuring point for the Daylight Plane angle be from grade, rather than from the Town's Design Flood Elevation.

² Reminder: The significance of the 1975 date is that homes constructed prior to that date were not required to be elevated above grade to meet FEMA flood zone requirements

2. A suggestion to eliminate the first two of the privacy related options (Building Design and Construction Materials) to avoid the imposition of building design measures was discussed and that these are items that should be chosen by the homeowners.
3. Handling potential future disputes as to whether design solutions that are approved (or denied) to sufficiently minimize adjacent property owners' views into side yards. As discussed, per Section 158.013, persons "*aggrieved by any decision or determination of the Planning and Zoning Official*" may appeal to the Zoning Board of Adjustment (ZBA). ZBA hearings on these matters are quasi-judicial in nature and the ZBA's decision may be appealed to Circuit Court.

This led to a discussion of the notification of parties, such as neighboring property owners, and how they could seek to appeal the Planning and Zoning Official's decision. Staff and the Town Attorney have previously researched this question and determined that Florida Statutes regarding building permitting establishes a pre-emption relating to the applicable standards the Building Official must follow in their permit review. Based upon the language contained in these statutes (Fla. Stat. 553.79(2), attached), the Building Official is required to issue a building permit when a building permit application meets the applicable Sections of the Florida Building Code (FBC) and Life Safety Code. The Florida Statutes provide no means to appeal a building permit when an application meets the necessary requirements. Per the Town Attorney, making a change to the existing Code to allow for appeals of a building permit, would not be advisable as it would have the potential to create a "rights of entry" to challenge all building permit issuance creating potential significant costs and legal impediments to landowners being able to even remodel or renovate existing structures. It would also potentially pull the Town into neighbor disputes.

In addition to any legal limitations, providing notice to nearby property owners of pending building permits would add both additional time and expense to home construction, along with adding a high degree of uncertainty.

The P&Z Board's initial and preliminary discussion on this issue indicated diverging viewpoints. There was an expression of supporting a notice requirement to surrounding property owners regarding the submission of building permits that would result in increased building heights. And there was an expression not supportive of such notice requirements.

P&Z Board October 20, 2020, Discussion on Overlay Zoning Districts

The P&Z Board was provided a refresher on aspects already considered at two prior workshop meetings (December 17, 2019 and January 23, 2020) on the subject of overlay zoning districts including: what an overlay zoning district is; how they work; where they are typically applied; and the typical types of overlays.

The P&Z Board's preliminary discussion on this topic continued to reflect a lack of support for further development of this concept to address compatibility of new houses that would be taller than their older, at-grade, neighboring properties.

The P&Z Board provided direction to return and further consider the rationales as to why the usage of overlay zoning districts would not be recommended. Initially noted challenges include:

1. Zoning Overlays are an inefficient tool for addressing jurisdiction-wide issues as they rely upon extensive input and then are applied in an area-by-area approach, with quasi-judicial public hearings to apply each instance of an overlay zoning district.
2. Overlays can be viewed unequal in their application by applying regulations and restrictions to some similarly situated properties and not others.
3. The application of more restrictive standards can subject the Town to individual property rights claims, as provided for in the Bert J. Harris Private Property Rights Protection Act (Fla. Stat. Ch. 70). Such increased restrictions, if desired by individual neighborhoods are better handled by the imposition of private deed restrictions where the property owners can consent to the imposition of such requirements on their properties and on successor purchasers of their property.
4. Additional regulations, associated with overlays, may increase time and expense both for developers and for the public bodies involved in the development approval process.
5. Introduction of such a program within the Town would likely require reprioritization of work efforts in order to staff the legislative development and implementation of overlay zoning districts. Once such an overlay zoning district was legislative created, then areas desiring to enter such districts would then be subject to a series of quasi-judicial public hearings.

Staff Recommendation

Depending on consensus of direction, staff may bring back item(s) for additional workshop discussion and direction or may proceed with bringing revised language or concepts back to the Planning and Zoning Board for subsequent consideration.

Attachments

- A. Ordinance 2020-07 (Available in the Planning, Zoning & Building Dept.)
- B. P&Z Board Packet, October 20, 2020 (Available in the Planning, Zoning & Building Dept.)
- C. Florida Statutes Sec. 553.79(2) (Available in the Planning, Zoning & Building Dept.)
- D. Florida Statutes Sec. 70.001, Bert J. Harris, Jr., Private Property Rights Protection Act. (Available in the Planning, Zoning & Building Dept.)
- E. Florida Bar Journal Article "The Bert J. Harris, Jr., Private Property Rights Protection Act: An Overview, Recent Developments and What the Future May Hold", 89 Fla. Bar J. 49 (Sept./Oct. 2015) (Available in the Planning, Zoning & Building Dept.)
- F. Local Government Law Symposium: Local Government Digest: Ocean Concrete Inc. v. Indian River Co., 241 So.3d 181 (Fla. 4th DCA 2018); 48 Stetson L. Rev. 690 (Summer 2019). (Available in the Planning, Zoning & Building Dept.)
- G. Local Government Law Symposium: Local Government Digest: GSK Hollywood Development Group, LLC v. City of Hollywood, 246 So. 3d 501 (Fla. 4th DCA 2018); 48 Stetson L. Rev. 737 (Summer 2019). (Available in the Planning, Zoning & Building Dept.)