

M E M O R A N D U M

TO: Tom Harmer, Town Manager
FROM: Allen Parsons, AICP
Director, Planning, Zoning and Building Department
DATE: May 21, 2019
SUBJECT: Ordinance 2019-05, Amending Chapter 158, Zoning Code

Recommended Action

Forward Ordinance 2019-05 to the July 1, 2019, Regular Meeting for second reading and public hearing.

Background

As part of the recent adoption of the updated Zoning Code (on April 1, 2019), the Town Commission, Planning & Zoning (P&Z) Board and staff identified 17 items that were deemed to be more substantive future issues that would be addressed separately from the overall Zoning Code update effort. At their March 19, 2019 Town Commission Regular Workshop, the Commission provided direction to staff to prioritize these items into five separate groupings or batches of amendments.

Two of those 17 issues were not included in the priority listing and were identified as “pending” and “ongoing.” The pending item has been considered separately (Ordinance 2019-03, scheduled for Second Reading and Public Hearing on June 3, 2019) by the Town Commission and addresses potential changes to Town Code Chapters 71, Traffic Rules and Chapter 74, Parking Schedules, generally regarding public right-of-way parking provisions in the Longbeach Village area and use of on-street parking by private valet operators Town-wide. The second item, addresses user/readability improvements throughout the Zoning Code, which will be an ongoing staff effort. The attached table, Zoning Code Future Work: List of Priorities, describes each issue, required steps and estimated timeline to bring amendments forward.

Staff has accelerated the phase one amendments from the original timeline for consideration by Town Commission prior to summer schedule. This first phase or batch of Zoning Code amendments consists of: 1) Pickle Ball Court Accessory Use Standards, to consider adding separate location and setback requirements for Pickle Ball Courts; 2) Docks/Structures Over Water, to consider the addition of provisions addressing docks within canals that may encroach into the maximum 30% width of the navigable waterway and potential provisions to include requiring docks to be staggered in location, where possible, when built directly across from a neighboring dock; 3) Parking Standards for Multi-Use Projects; 4) Parking Waivers and Parking Flexibility; and 5) Side Yard Setbacks, addressing potential additional dimensional standards for structures built on residentially zoned properties comprised of two or more lots. Descriptions of the amendments are provided below.

Consideration of Separate Accessory Use Standards for Pickleball

As part of the recent revision of the Zoning Code public hearings, an item was identified to consider adding separate accessory use standards for the private recreational activity of Pickleball as potentially being distinct from the accessory use standards for private tennis courts (Sec. 158.095; the Accessory Uses section of the Zoning Code). This section of the Zoning Code outlines various accessory uses that are allowed, in addition to permitted uses, in a Zone district. These uses include accessory uses, such as swimming pools, private recreational facilities, and private tennis courts.

As part of the Zoning Code update, Staff had initially recommended to include adding the name "Pickleball" to the Tennis accessory use provisions, with the same standards and requirements already found in the accessory use of tennis courts, due to the increasing popularity of the sport. Tennis courts are a permitted accessory use, with locational criteria. Tennis courts are not permitted to be located within the required yard setback areas, but by Special Exception, may be located up to 20 feet from a street and residential property, and up to 10 feet from commercial, hotel and motel uses. Additional standards are included for fencing, lighting, and maximum coverage on the lot. However, based upon input during the Zoning Code update public hearings, the Town Commission recommended this item be removed as an amendment and that further research be conducted regarding whether this use should be treated differently than tennis courts. This having primarily to do with associated sound levels created during this recreational activity that may be substantially different from tennis.

Pickleball is presently being played as a recreational activity through-out the Town. There are several existing tennis court venues in the Town, both within private communities and at condominium complexes, as well as at public parks. Many of the tennis courts at these venues are also regularly used to play pickleball as well. Slight adjustments to an existing tennis court easily allows these courts to be used for both tennis and pickleball. No review from the Town is required to utilize existing tennis courts for pickleball use. In addition, applications for new development projects that provide accessory tennis courts, could later utilize those courts for Pickleball or other recreational uses, also without any required review by the Town.

Regarding sound from athletic activities such as pickleball, the Town does have sound regulations to preserve the peace and quiet for its inhabitants, and to foster their comfort and enjoyment of the attractions of the Town. Noteworthy, however, the Town's sound regulations exempts the sound produced by recreational activities at publicly available venues. The exemption language in the sound regulations (Sec. 130.02(D)(14)) reads as follows: "*Sound produced by activities in the fields, grounds or facilities of any sporting venue to which the public or community has access*". This exemption does not apply to private grounds, or facilities, so enforcement of the sound regulations for pickleball recreation would be only be applicable to private sporting venues being operated in the Town.

The Planning & Zoning Board (P&Z Board), at its May 21, 2019, public hearing, provided a recommendation (7-0) to eliminate this exemption to the Town's Sound Ordinance provisions (Sec. 130.02) in order to provide for consistent provisions for all recreational activities, public or private, that may affect the public. The P&Z Board's recommendation regarding mitigating and enforcing sound impacts from recreational activities sought to have mitigation and enforcement of sound related impacts applying equally to private or public locations of such activities.

The Town's Sound Ordinance (Sec. 130.02) standards apply to "*whether sound annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of a reasonable person of normal sensibilities*" and include criteria such as: the volume of the sound; the intensity of the sound; whether the nature of the sound is usual or unusual within the town; the volume and intensity of the background sound, if any; the proximity of the sound to residential sleeping facilities; the nature and zoning of the area within which the sound emanates; the time of the day or night the sound occurs; the duration of the sound; and whether the sound is produced by a commercial or noncommercial activity. If the Commission were to accept and act upon the P&Z Board's recommendation, the exemption language in Sec. 130.02(D)(14) cited above, could be struck, thereby eliminating a different sound regulation standard applicable to recreational activities on private properties. This

potential change to the Sound Ordinance would, however, need to be separately advertised and considered, as it not currently among the Zoning Code changes that were directed by the Commission.

With regard to the Accessory Use standards in the Zoning Code, in conducting research of pickleball courts, staff contacted several of the Town's peer communities and conducted research more broadly, for comparison purposes, regarding potential model language for differently regulating the use of pickleball. Upon contacting these comparable beach and regional communities, staff found no separate or additional requirements for the use of pickleball. Staff is also of the opinion that potential differences in noise levels between pickleball and tennis are such that additional setback standards would likely have little difference in mitigation of sound. Given that pickleball or any other recreational activity that individuals may engage in on tennis courts are not prohibited, the potential value of having separate standards for the sport of pickleball is likely to be limited. Staff is of the opinion that because accessory use standards for locating private tennis courts somewhat closer to adjoining neighbors requires special exception approval, there is the ability to consider sound mitigation or other measures that may be appropriate due to potential impacts of the sport.

The staff recommendation initially was for new pickleball courts to utilize the same standards for accessory use as those for tennis courts. The P&Z Board recommended that the Accessory Use provisions for Tennis Courts be modified to be applicable to all recreational activities involving rackets or paddles so that that standards would be applicable to various burgeoning new games that may be developed that are similar in nature to tennis (e.g. Pickleball, Beckyball or other additional new games). The proposed language, pursuant to P&Z Board recommended, is provided below:

Section 158.095 (E) (1) and (2), is hereby modified to read:

(E) *Tennis, or similar courts.* Tennis, Pickle ball, and similar recreational activities that utilize a racket, paddle or similar apparatus.

- (1) Courts shall not be permitted within the required yard area unless the Planning and Zoning Board grants a Special Exception, and in no event shall the courts be located as follows:
 - (a) Within 20 feet of a street.
 - (b) Within 20 feet of residential property.
 - (c) Within ten feet of any commercial property, including hotel and motel uses.
 - (d) Within any required gulf waterfront yard.
- (2) In required yards, only an open-wire-mesh fence shall be permitted not exceeding a height of 12 feet. No court lights shall be permitted in an R-4SF or R-6SF district. In other districts, upon application, court lighting may be permitted of such a type, intensity, frequency and design as will not interfere with the public safety or with neighboring uses. In determining the maximum coverage of a lot by a building, courts shall be counted in the computation if they are not open space. (See Subsection 158.030(E).)

Docks/Structures over Water

At the March 4, 2019 Town Commission Regular Meeting, staff was directed to consider the addition of provisions addressing docks within canals that may encroach into the maximum 30% width of the navigable waterway. Potential provisions identified included: requiring docks to be staggered in location, where possible, when built directly across from a neighboring dock; prohibiting mooring of vessels at the end of a dock that extends to the maximum 30% projection into a canal.

The primary issues or concerns raised had to do with the potential obstruction of navigable waterways by boat docks and lift structures constructed along the canals and waterways of the Town, especially those where these structures are located on both sides of the canal navigable waterway. To encourage the furtherance of unobstructed navigable waterways, more specific language is recommended to be added to the code. Staff had initially recommended adding language to provide that where new docks, boat lifts, pilings, or pile mounted davits are proposed, such structures should not be located directly across canals from existing structures over water, where possible. In this way, permitting for new structures would be required to be constructed with consideration of existing structures already located in the waterway, reducing the likelihood of creating a future navigational hazard or interference with navigating vessels. If it was not possible to avoid construction directly across from existing structures the code language recognized a property owner's riparian rights to construct such structures, within code requirements.

Section 158.099, Structures over water, of the Zoning Code outlines the requirements for the permitting and construction of pilings, boat lifts, pile mounted davits, boat docks and their accessory structures. This section provides that these structures may only project into an abutting canal, lagoon, bayou or pass a maximum of 30 feet, measured for the mean high-water line, or 30 percent of the width of the navigable waterway, whichever is less¹.

With regard to providing provisions addressing the mooring of vessels, Staff is of the opinion that Town Code regulations do not need to be modified, as Florida Statute addresses this potential issue and is subject to enforcement by Town Police. Florida Statutes, 327.44 (2) states in part: "A person may not anchor, moor, or allow to be anchored or moored, except in case of emergency, or operate a vessel or carry on any prohibited activity in a manner which unreasonably or unnecessarily constitutes a navigational hazard or interference with another vessel". This statute goes on to provide that any law enforcement agency or officer is authorized and empowered to relocate, remove, or cause to be relocated or removed a vessel that is in violation of this law. This law empowers Longboat Key Town Police the ability to enforce the mooring of vessels in Town canals and waterways that may impacting navigation.

Staff had proposed to incorporate the following language into Section 158.099(A)(4)(a):

To the extent possible a new dock, boat lift, piling, or pile mounted davit shall not be located directly across from existing structures over water in a manner that creates a navigational hazard or interference with another vessel.

The P&Z Board, at their May 21, 2019 public hearing, recommended that the proposed language be more direct with regard to preventing a navigational hazard, regardless of whether a proposed structure is located directly across from an existing structure. The P&Z Board's recommended language addition to Sec. 158.099(A)(4)(a) is provided below:

A new dock, boat lift, piling, or pile mounted davit shall not be located in a manner that creates a navigational hazard or interference with another vessel.

¹ Note: To ensure the accuracy of the construction of these structures over water, on April 1, 2019, as part of the Zoning Code update, the Town Commission approved a requirement that permit applications for structures over water that are within 25% of the maximum projection into the waterway must provide an as-built survey upon completion of the permitted work. This as-built survey will provide demonstrate compliance with this section of the Town Code, and provide assurance that the navigable area of the canal is free from obstruction.

Parking Standards for Multi-Use Projects

During the Zoning Code rewrite process, Staff identified a number of policies and code sections to revisit and revise. Off-street parking was placed in the first phase of text amendments, as it has been an issue that the Town has recently dealt with in the redevelopment of properties. The Zoning Code currently provides an exception to required parking for multiple uses in a single building. Section 158.100 (G)(1) states, “*Multiple uses in a single building or development that cannot meet the criteria of the schedule of off-street parking in this Section shall provide a minimum of 90 percent of the total off-street parking that would be required for each separate use.*” Staff has found this exception to be problematic for redevelopment, as there have been complaints of insufficient parking for many commercial properties due to limited space and high demand. Staff conducted an analysis of other Zoning Codes from similar jurisdictions in Florida (Naples, Sanibel Island, Marco Island, Town of Jupiter and the City of St. Pete Beach) and found that this type of automatic reduction provision is not common for other Zoning Codes to provide such an exception to required parking without justification. Staff recommends removing this automatic reduction provision from the code, which will require multiple uses within a single building or development to provide the entirety of the required parking. The P&Z Board unanimously (7-0) recommended this change.

Parking Flexibility

The P&Z Board recommended a number of changes that would require all permitted land uses to provide the full amount of required parking and would eliminate all existing parking Flexibility and Waiver allowances. The Zoning Code allows developments request substituting required parking spaces in exchange for providing alternative methods of parking. The Code refers to this type of request as “Parking Flexibility” (Sec. 158.100 (O)). The Code gives the Planning and Zoning Board authority to grant Parking Flexibility if an applicant can demonstrate that they are providing the required number of parking spaces on-site via alternative methods, such as valet or shared parking. The Code limits the use of parking flexibility to commercially zoned properties. Staff had initially proposed that the Zoning Code be amended to include the T-3 and T-6 districts among the type of properties that could request approval of parking flexibility provisions, because developments in those zoning districts similarly have the ability to provide for flexible parking options, such as valet and shared parking. The addition of T-3 and T-6 zoning districts in the parking flexibility standards is not an entitlement to receive approval, as the Planning and Zoning Board has the authority to approve the flexibility through Site Development Plan.

Staff initially proposed to incorporate the following additional districts into the first sentence in Section 158.100 (O): *T-3, Low-Medium Density Tourist Resort Commercial District, or T-6, High-Density Tourist Resort Commercial District.*

At their May 21, 2019 public hearing, the P&Z Board, recommended not to accept staff’s recommendation and to eliminate the Parking Flexibility section in its entirety. The recommendation maintains support for the encouragement of transportation alternatives within the Town. However, the P&Z Board expressed concern over a number of factors, such as citizens and patrons of businesses largely arriving by motor vehicles and parking demands in peak periods can often exceed typical parking standard requirements, and ultimately voted to eliminate the Parking Flexibility standards.

Parking Waivers

In addition to parking flexibility provisions, Section 158.100 (P) of the Zoning Code also provides another option to request approval of alternative parking options referred to as Parking Waivers that can reduce the amount of required parking provided by incentivizing alternative parking measures. The P&Z Board has the authority to grant parking waivers for varying percentages of required parking, if an applicant can provide evidence to support that the property's parking demands can be met by alternative parking methods. There are parking waivers for commercial uses patronized by pedestrians, bicycle spaces, commercial uses abutting the water, and on-street parking adjacent to commercial uses. Staff has received inquiries regarding parking waivers for alternative modes of transportation or parking methods. In comparing various Zoning Codes from Naples, Sanibel Island, Marco Island, Town of Jupiter and the City of St. Pete Beach, Staff found that the allowance for incentivizing alternative modes of transportation via parking requirement reductions was a common feature. In part, based on the Town's Comprehensive Plan¹, which encourages using alternative modes of travel to reduce traffic, staff had proposed the addition of another method of seeking parking reductions, if an applicant can make a compelling case. Staff proposed to incorporate the following language into the Parking Waivers Section 158.100 (P):

“The Planning and Zoning Board may grant a Parking Waiver, not to exceed ten percent of the required parking spaces, for alternative transportation options. Alternative transportation options that may be considered by the Town include, but are not limited to, the following:

- (a) Private and public carpools and vans;*
- (b) Subscription bus service;*
- (c) Ride sharing;*
- (d) Park and Ride program; and*
- (e) Shuttle Service.”*

The proposed language would have allowed an applicant to propose alternative transportation options, potentially in furtherance of the Comprehensive Plan's Mobility Policy. Similar to the other Waiver provisions, the P&Z Board would have retained the authority to revoke parking waivers if an applicant failed to maintain or comply with any approved transportation alternatives.

As noted above, the P&Z Board, at its May 21, 2019 public hearing, recommended to eliminate the Parking Flexibility and Parking Waivers sections in their entirety. The P&Z Board's recommendations maintain support for the encouragement of transportation alternatives. The P&Z Board would like to explore other potential incentives that can be provided to encourage alternative transportation modes, but not at the expense of meeting required parking demands. As also noted above, the P&Z Board's recommendations include experience that, due to a number of factors, citizens and patrons of businesses largely arrive by motor vehicles and that parking demands in peak periods can often exceed typical parking standard requirements.

¹ Policy 1.2.1 of the Mobility Element states, “Ensure new development and redevelopment provides a mixture of complimentary land uses and designs that promote internal trip capture, all alternative modes of travel (pedestrian, bicycle, local and regional transit, trolley, etc.) and explore transportation demand management strategies such as park and ride facilities on the mainland; in an effort to reduce vehicular trips onto the island and within the Town.”

Setbacks

At the March 4, 2019, Town Commission Regular Meeting Workshop, Staff was directed to consider additional setback regulations when a property owner combines two lots. The Town Commission expressed some concern over larger homes built on combined lots, which could potentially affect the character in a neighborhood. The Zoning Code currently has several provisions that protect neighboring properties: daylight plane, density, height, and lot coverage. These regulations ensure that neighboring properties are protected from over-shadowing, building massing, and stormwater runoff.

Staff is of the opinion that the existing regulations are sufficient to protect neighboring properties in the event that a lot is combined. Furthermore, because there are such a wide variety of unknown circumstances for development, it is difficult to create an overall blanket standard. A property owner may choose to combine two lots but build a relatively small or similar character home to others nearby. In addition, there are many small lots within the Town that could be developed to their maximum intensity and that may be developed with larger homes than those that could be developed on larger or combined lots. Staff is of the opinion that the wide variety of potential development scenarios does not necessarily mean that larger lots would necessarily produce larger scale homes than individual zoning lots. Zoning Code standards addressing height, bulk and daylight plane may be more appropriate to consider if the Town believes that out of scale development is or may be occurring. No change is therefore recommended.

The P&Z Board concurred with the staff recommendation and further encouraged the review of height and daylight plane standards. The P&Z Board expressed concern with the many new homes being constructed in existing predominately single-story neighborhoods that appear to be out of scale and character with their surroundings and that existing provisions do not appear to be providing sufficient controls to mitigate such juxtapositions.

Recommendations

The Planning and Zoning Board held a public hearing on Ordinance 2019-05 on May 21, 2019 and recommended approval (7-0), with the incorporation of their recommendations, as noted above. The P&Z Board's recommendations have been incorporated into Ordinance 2019-05. Staff recommends forwarding Ordinance 2019-05, with a recommendation of approval, to the July 1, 2019, Regular Meeting for second reading and public hearing.

Attachments

- A. Ordinance 2019-05 (Available in Town Clerk's Office)
- B. Future Policy Issues, Zoning Code Amendments Grouping Table, Per March 19, 2019 Commission Direction (Available in Town Clerk's Office)
- C. PowerPoint Presentation (Available in Town Clerk's Office)

End of Agenda Item