

## 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

**REPORT DATE:** October 24, 2019

**MEETING DATE:** November 4, 2019

**SUBJECT:** Ordinance 2019-08, Zoning Amendments Batch #2, Following Adoption of Revised and Updated Zoning Code

### **Recommended Action**

Adopt Ordinance 2019-08.

### **Background**

As part of the recent adoption of the updated Zoning Code (on April 1, 2019) the Town Commission (Commission), Planning & Zoning (P&Z) Board and staff identified additional 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 Regular Workshop, the Commission provided direction to staff to prioritize these items into five separate groupings or batches of amendments (Attachment B).

The second phase, or batch, of Zoning Code amendments initially consisted of the following five items: 1) Zoning Determination Letters; 2) Commercial Revitalization – Administrative Waivers for Parking; 3) Swimming Pools; 4) Scrivener’s errors; and 5) Parks and Open Space Land Acquisition.

The P&Z Board held a public hearing on Ordinance 2019-08 on September 17, 2019 and recommended approval (7-0) of three of five items, as described below. One of the Batch #2 items, Parks and Open Space Land Acquisition, was initially not recommended to be amended by Staff. The P&Z Board also recommended no change to this Section. Therefore, it is not included in Ordinance 2019-08. The other Batch #2 item, Swimming Pools, was recommended by the P&Z Board to be reconsidered as a whole and brought back to the P&Z Board for future consideration. Staff will be bringing this item back to the Commission, following public hearing and recommendation of the P&Z Board, in the subsequent group of Batch #3 amendments.

At their first public hearing on October 1, 2019, the Town Commission requested that Staff provide additional information regarding appeals of Building Permits and a definition of Zoning Determination Letter. Additional information and descriptions of the amendments recommended for second reading and public hearing are provided below.

### **Appeals of Building Permits**

At their first public hearing on October 1, 2019, the Town Commission raised a question regarding the issuance of building permits, the potential to appeal such building permits and the potential for associated public notice of the issuance of building permits. The Town Commission provided direction to staff to research the potential for providing a mechanism for the public to appeal building permits that have been issued by the Town.

Staff and the Town Attorney researched this question and determined that State 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 (F.S. 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 State 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 building permit issuance.

### **Zoning Determination Letters**

At their March 19, 2019 Regular Workshop Meeting, the Town Commission identified the “Appeals to the Planning and Zoning Official” Section as one priority to focus on. The Commission discussed adding process requirements for Appeals of the Planning and Zoning Official to include notifying residents or affected parties. The intent being, to provide awareness of a Zoning Determination so that there would be an opportunity to be able to timely appeal, as provided for in Town Code. Currently, other than the individual/party requesting a Zoning Determination, there is no way for members of the public to know that a Zoning Determination has been requested and that there may be an opportunity to appeal such a decision the Zoning Board of Adjustment.

While, the Planning and Zoning Official has historically issued Zoning Determination Letters<sup>1</sup> when an applicant has requested such from the Town, this process has not been explicitly authorized in the Zoning Code. As part of this Zoning Text Amendment, staff has also recommended to specifically authorize inclusion of this process in the Zoning Code.

Staff had initially recommended that the notification process distinguish between Zoning Determination letters that are property specific and those would not be site specific. For site specific cases, Staff had initially recommended that an applicant would be responsible for providing notification to all property owners within 500 ft. by mail (only). If a Zoning Determination was not property specific, staff initially recommended providing notification by placing a notice on the Town’s website (only), as the costs for a Town-wide mail-out and/or a notification in local general circulation newspapers could potentially be overly burdensome for an applicant, as additional costs.

At their September 17, 2019 Meeting, the P&Z Board recommended (7-0) to require that, in addition to mail-out notification (to properties within 500 feet), that notice also be provided in local newspapers, and the Town website for property specific Zoning Determination Letters. The P&Z Board also recommended to require notification in local newspapers in addition to the Town website for non-property specific Zoning Determination Letters. The P&Z Board’s recommendation is based in part on the importance that is placed on an informed citizenry by providing as much information and transparency as possible.

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<sup>1</sup> Zoning Determination Letters are a written response to a request regarding interpretations and applicability of the provisions of the Zoning Code. They offer advisory guidance as to whether a code provision may be unclear or if a proposed project, such as a new building, an addition to an existing building, or a use change conforms to the Zoning Code. In comparison to a Zoning Verification Letter, Zoning Determination Letters are typically more complex and require further research on the part of the Planning, Zoning and Building Department. The appeal provision would not apply to a Zoning Verification Letter, which is also a written response to a request but deals with straightforward factual information on items such current land use and zoning for a specific property, information on variances, special exceptions, ordinances or conditions, and violations. This type of letter is routinely provided by the Planning, Zoning and Building Department.

Two additional changes are included in Ordinance 2019-08. The proposed amendment adds Zoning Determination Letters to the “Decisions Chart” in Section 158.009 (Decisions) and adds the following language to Section 158.012 (Planning and Zoning Official),

*“Zoning Determination Letters. Upon written request for a determination, the Planning and Zoning Official shall issue written Zoning Determination Letters. The request shall be accompanied by an application fee as set by resolution of the Town Commission, and specifically identify the following: particular provision or regulation for which an interpretation is requested and the real property and the proposed development or redevelopment thereon to which the determination will be applied. The Planning and Zoning Official shall forward the Zoning Determination Letter to the person who requested the determination. The Town shall, at the requester’s expense, provide written notice to property owners immediately adjacent to and within 500 feet of the perimeter of the subject property identified in the request for determination, provide notice in a published newspaper of general circulation within the Town, and provide notice on the Town website. If the Planning and Zoning Official issues a Zoning Determination Letter that is not for a specific property, the Town shall, at the requester’s expense, provide notice in a published newspaper of general circulation within the Town and provide notice of the Zoning Determination on the Town website.”*

At their first public hearing on October 1, 2019, the Town Commission requested that the Zoning Code provide a definition for Zoning Determination Letter. Staff has added a new definition to Ordinance 2019-08, which reads:

*“Zoning Determination Letter.” A written response to a request regarding interpretations and applicability of the provisions of the Zoning Code. It offers advisory guidance as to whether a code provision may be unclear or if a proposed project, such as a new building, an addition to an existing building or a use change conforms to the Zoning Code. A Zoning Determination Letter is typically more complex and requires further research on the part of the Planning, Zoning and Building Department.”*

### **Commercial Revitalization – Administrative Waivers for Parking**

At their May 21, 2019, public hearing, the P&Z Board, recommended the elimination of the Parking Flexibility and Parking Waivers Section in its entirety, due to the concern over a number of factors, such as citizens and patrons of businesses largely arriving by motor vehicles and high parking demands during season. The Town Commission agreed with the P&Z Board’s recommendation by adopting Ordinance 2019-05 on July 1, 2019, which eliminated those parking provisions.

The Zoning Code currently provides additional flexibility for parking standards within Division 8, Commercial Revitalization. The intent of Commercial Revitalization is to provide reasonable flexibility and relief to nonconforming commercial uses that were in existence as of 2002. Staff proposes to eliminate additional administrative authority to provide parking waivers and parking flexibility approvals to maintain consistency with the recent actions to eliminate parking flexibility and waiver provisions overall, and to require that commercial uses provide, at a minimum, its required parking.

Zoning Code Section 158.046 (A) currently provides for,

*“(A) Administrative Waivers. Applicants may apply for one or more Administrative Waivers, which may be submitted and processed concurrently or individually. The Planning and Zoning Official, or designee, may approve, by administrative action, Waivers for: parking; parking*

*agreements; awnings projecting less than three feet from structure; and, additional building coverage described within this Section...*

*(1) Administrative Parking Waiver. This Subsection shall waive certain standards in Section 158.100, off-street parking, as appropriate.*

*(a) Permitted uses exempt from parking requirements:*

- 1. Necessary alterations to meet ADA or other federal or state mandates.*
- 2. Normal and customary functional alterations to existing businesses, such as lobbies, waiting areas, office reception; porte-cocheres; storage; kitchen updating; offices inside restaurants; areas restricted to employees (break room, locker room, offices), new or expanded restrooms.*
- 3. Cumulative alterations that are less than 500 square feet (for any purpose).*

*(b) Parking requirements:*

- 1. Parking standards located in Section 158.100, off-street parking, except as listed in this Section.*
- 2. Parking required for ADA compliance.*
- 3. Parking for alterations that are greater than 500 square feet shall be based on approved alterations only.*
- 4. Restaurant: One space per 100 net square feet (restrooms, waiting areas, food preparation and staging areas, hallways and other non-patron areas exempt).*

*(c) Parking flexibility:*

- 1. Credit for one required parking space may be given for an on-site bicycle rack that holds a minimum of three bicycles. Bicycle credits shall not exceed ten percent of overall required parking.*
- 2. If the parking deficit on an existing site is within 15 percent of the required parking, and proposed alterations generate additional parking requirements, those spaces may be provided in unimproved areas. Provided, however, that no more than 25 percent of the required parking is located in unimproved areas.*
- 3. Applicants may submit documentation for alternative parking methods (e.g. number of spaces, angles or driveway width, boat slips in lieu of vehicle spaces) utilizing one of the following: industry standards for a particular business; and, generally acknowledged parking industry standards or other technically accepted basis, including shared or off-site parking arrangements.*
- 4. Up to 50 percent of the overall required parking can be met in off-site parking areas. Off-site parking is permitted in all of the commercial, office and marina zones. The off-site parking area must be located within 600 feet walking distance of the structures nearest public entrance, and a pedestrian connection providing a suitable walking environment must be provided. Public sidewalks may be used for the connection. Off-site parking shall not be located west of GMD under any circumstances.*

*5. Valet parking on-site or on private off-site lots is permitted. Off-site locations require a recorded parking agreement, meeting the requirements of this Section. Motor vehicles may be stacked for valet operations.*

*(d) Parking agreements. Shared parking is permitted in all of the commercial, office and marina zones, subject to an agreement that addresses the following: Right of enforcement by the Town of Longboat Key; the agreement is valid only as long as the conditions described in the application for the shared parking exist; and, the agreement must be in the form of a reciprocal easement acceptable to the Town Attorney and shall be recorded with the clerk of the circuit court. A copy of the recorded agreement shall be submitted to the Town Attorney and the Planning and Zoning Official within ten days of recording.”*

Staff recommends removing the administratively approvable parking waivers Section above, in order to maintain consistency with the adoption of Ordinance 2019-05 and to recognize that commercial uses and their parking can have negative consequences when insufficient parking is provided. The P&Z Board concurred with the staff recommendation to remove the Administrative Waivers for parking.

### **Swimming Pools**

During the Zoning Code rewrite process, staff identified a number of provisions and Code Sections to revisit and revise, in part, to add clarity. Amendments to the Swimming Pool Code provisions were initially placed in this second phase of text amendments, as Staff had received ongoing feedback from the public that these Code provisions can be difficult to understand. At their September 17, 2019 Meeting, the P&Z Board voted (5-2) to table the clarifying amendments that were proposed to the Swimming Pool Code provisions and provided direction to staff to completely revise the Code provisions, rather than seek to amend the existing Code provisions. Direction was further provided to staff to simplify the requirements overall. Staff will add this item to the next “Batch” of zoning text amendments (Batch #3).

### **Scrivener’s Errors**

Staff identified a number of Scrivener’s errors, including internal Code references that were not updated and other non-substantive oversights unintentionally incorporated into the updated Zoning Code. Ordinance 2019-08 provides corrections to Sections 158.034, 158.045, 158.047, 158.094, and 158.098 to fix these errors and ensure consistency of internal references throughout the entire Zoning Code. The P&Z Board concurred with the staff recommendation to correct the scrivener’s errors.

### **Parks and Open Space Land Acquisition**

At the March 4, 2019 Regular Meeting Workshop, the Commission directed staff to consider changes to Section 158.115 (Parks and Open Space Land Acquisition), to consider eliminating the option to dedicate land for parks and open space, and provide only the land acquisition fee option. The intent was to ensure that any potential land donations, associated with new residential or tourism developments and their impact on the Town’s Recreation Level of Service goals, would be acceptable to the Town in terms of location and ongoing maintenance obligations.

After reviewing the Section, staff is of the opinion that the existing Code provisions are sufficient to ensure that the Town Commission retains its authority to either accept or deny any proposed land dedications. The Zoning Code gives the Town Commission discretion to accept or deny land dedication via criteria set forth in Section 158.115 (B), which includes, considering the inventory of existing parks and open space property; whether such a donation is located adjacent to existing

public owned/controlled lands; and whether the public interest would be served. If, in the discretion of the Town Commission, such findings cannot be made, the Town Commission can require a developer to pay the applicable land acquisition fee in lieu of land dedication. These funds can be used for acquisition, or for meeting additional recreation open space goals for parks/open space amenities and improvements. Therefore, staff is not recommending changes to this Section. The P&Z Board concurred with the staff recommendation.

### **Planning & Zoning Board Recommendation**

The Planning & Zoning Board held a public hearing on Ordinance 2019-08 on September 17, 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 2019-08.

### **Staff Recommendation**

Adopt Ordinance 2019-08.

### **Attachments**

- A. Ordinance 2019-08 (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)
- D. Florida Statute 553.79: Building Official Authority and State Pre-emption (Available in Town Clerk's office)

**End of Agenda Item**