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Staff Analysis and Recommendation

To: Honorable Chair and Members of the Local Planning Agency
From: Darby P. Delsalle, AICP, Planning Director
Subject: Conditional Use Expirations
Date: January 23, 2018

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA RELATING TO CONDITIONAL USES; AMENDING SECTION 13-303, ENTITLED "CONDITIONAL USES", ESTABLISHING PROVISIONS REGARDING THE CESSATION OF OPERATIONS OF USES CLASSIFIED AS CONDITIONAL USES AND ANNUAL CERTIFICATE OF USE RENEWAL; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION INTO THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE. (Ceaser Mestre)

A. BACKGROUND

On May 2, 2017, the Town Council of the Town of Miami Lakes directed the Town Manager to explore provisions that address the disposition of conditional uses that have ceased operations, and to return, if possible, with an amendment to the Land Development Code (LDC) that allows such conditional use approvals to expire once they cease to operate for a specified period of time. As provided by Code, Conditional Uses are uses that would not be appropriate without additional restriction throughout a land use district in which they are located unless otherwise "controlled as to number, area, location, hours of operation, and relation to the neighborhood or impacted vicinity, so as to promote the public health, safety, welfare, order, comfort, convenience, appearance, or prosperity of the neighborhood." The principal concern is whether conditions within the neighborhood have changed to point where the original approval is no longer in harmony with the original approval of a Conditional Use that ceases operations. The question at hand in such a situation is, should the reestablishment of the Conditional Use require a new zoning application.

In the absence of greater specificity within the Town's LDC, general law provides for Conditional Use approvals to "run with the land" unless otherwise specified within a development order. In other words, unless it is so specified in the approving development order itself, a Conditional Use approval could potentially remain in perpetuity regardless of the amount of time that has passed

since its original approval or its cessation of operations. Our community is not static, it continues to change overtime as vacant parcels are built upon, residents move in, and business are established. A dormant approval reactivated after several years of inactivity may result in unintended land use conflicts not originally contemplated at the time of its approval, or for that matter, the approval of subsequent development in and around the neighborhood.

The majority of the Conditional Uses granted by the Town Council included a trigger within the development order that allowed the approval to sunset. They are typically tied to the renewal of the Business Tax Receipt (BTR), the Certificate Use (CU), or both. A complete list of those approvals was compiled, and the Town's Code Compliance Division is actively reaching out to those active businesses that need to renew their approvals. Code Compliance is also verifying those uses that have since shuttered so those related approvals can be closed-out. The proposed amendment would codify the conditions under which such approvals would expire.

It is worth noting that there remains other uses that were approved prior to the Town's Conditional Use provisions, that if they were to be established today, would be so classified. It is possible that some of those uses may have also ceased operations. The proposed amendment seeks to address this condition consistent with those approved through current Town requirements. Finally, and particularly as it pertains to such uses approved prior to the Town's Conditional Use provisions, language is provided clarifying that any addition, expansion, or intensification of a nonconforming Conditional Use requires review through the Conditional Use provisions.

B. STAFF RECOMMENDATION

Based on the analysis provided below and other factors contained in this report, Staff recommends approval of the ordinance amending the Conditional Use provisions to provide for the sunseting of such approvals when the uses cease operations.

C. ANALYSIS

The Land Development Code provides that all proposed amendments to the LDC shall be evaluated by the Administrative Official, the Local Planning Agency and the Town Council, and that, in evaluating the proposed amendment, the criteria in Subsection 13-306(b) shall be considered. All portions of this report are hereby incorporated into all portions of this analysis. The following is a staff analysis of the criteria as applied to this ordinance.

1. Whether the proposal is consistent with the Comprehensive Plan, including the adopted infrastructure minimum levels of service standards and the concurrency management program.

Analysis: It is the continuing objective the Comprehensive Development Master Plan to ensure a proper mix of permitted uses in a manner that minimizes impact and maximizes benefit to the community. This is particularly reflective of the Objective 1.2 as provided below:

Objective 1.2: LAND DEVELOPMENT CODE

Maintain an effective and efficient Land Development Code (LDC), which implements the community vision underlying the goals, objectives and policies of adopted Comprehensive Plan, regulates the quality, scope and impacts of new development and redevelopment, coordinates future land uses with topography and soil conditions, and incorporates innovative land development techniques.

The proposed amendment allows conditional use approvals to sunset after they cease operations. This provision is provided for as the community is not static, change occurs overtime. Uses that expire are not always taken into account when new development comes on line. The provision provides for reconsideration when a Conditional use is reactivated so that its full impact can be mitigated within the existing community.

Finding: Complies

2. Whether the proposal is in conformance with all applicable requirements of this Code of Ordinances, including this chapter.

Analysis: The proposed ordinance conforms with the Town's LDC's. A review of the LDC's found no conflicts.

Finding: Complies.

3. Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations, and whether such changes support or work against the proposed change in land use policy.

Analysis: See Section "A", Background, and Criterion 1. Unless otherwise specified within the development order, a Conditional Use approval "runs with the land." In other words, the approval never expires unless superseded by a follow up development order that specifically sunsets it. Conditions within the Town are not static, and older approvals may not be taken into account as the Town continues to grow and change. The proposed provisions address this concern by providing provisions that allow Conditional Use approvals to expire should operations cease over a period of time.

Finding: Complies.

4. Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved, the impact on adjacent or neighboring properties, consistency with existing development, as well as compatibility with existing and proposed land use.

Analysis: See Section "A", Background, and Criteria 1 and 3. The proposed ordinance does not change the existing permitted use of land. It does provide for procedures to reestablish a conditional use that has ceased operations to ensure continued compatibility with the neighborhood in which it is located.

Finding: Complies.

5. **Whether, and the extent to which, the proposal would result in demands on transportation systems, public facilities and services, exceeding the capacity of such facilities and services, existing or programmed, including schools, transportation, water and wastewater services, solid waste disposal, drainage, water supply, recreation, education, emergency services, and similar necessary facilities and services.**

Analysis: See Section “A”, Background, and Criteria 1, 3, and 4. The very intent of the proposed ordinance is to ensure such potential impacts can be reviewed prior to the reestablishment of a Conditional Use.

Finding: Complies.

6. **Whether, and the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetland protection, preservation of any groundwater aquifers, wildlife habitats, and vegetative communities.**

Analysis: See Section “A”, Background, and Criteria 1, 3, 4, and 5. Implementation of the ordinance seeks to ensure that the natural environment is not negatively affected.

Finding: Complies.

7. **Whether, and the extent to which, the proposal would adversely affect the property values in the affected area, or adversely affect the general welfare.**

Analysis: See Section “A”, Background, and Criteria 1, 3, 4, and 5. Implementation of the ordinance seeks to ensure property values are not negatively affected.

Finding: Complies.

8. **Whether the proposal would result in an orderly and compatible land use pattern. Any positive and negative effects on such pattern shall be identified.**

Analysis: See Section “A”, Background, and Criteria 1, 3, 4, and 5. The very intent of the proposed ordinance is to ensure the orderly and compatible land use pattern of development.

Finding: Complies.

9. **Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and intent of this chapter.**

Analysis: See Section “A”, Background, and Criteria 1, 3, 4, 5, and 8. No portion of the proposed amendment is in conflict with the existing regulations of the LDC. The proposed ordinance provides a review procedure for previously authorized Conditional Uses to reestablish operations while ensuring such uses are in harmony with the intent and purpose of the LDC.

Finding: Complies.

10. Other matters which the Local Planning Agency or the Town Council, in its legislative discretion, may deem appropriate.

Analysis: See Summary Section and all portions of this analysis. The Local Planning Agency and the Town Council may consider other appropriate factors to determine whether the proposed code amendment is appropriate and consistent with the public interest. The Analysis Section addressed the conditions suggested by the Planning and Zoning Board.

Finding: As determined by the Town Council.