

	LAND DEVELOPMENT STAFF REPORT AND RECOMMENDATION
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Subject/Agenda Item:

First Reading: A City-initiated request for a text amendment that will create a new Board entitled the Planning and Zoning Board of Appeals which combines the powers and responsibilities of the existing Planning Commission and Zoning Board of Adjustments and Appeals and adds Variance section.

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- Recommendation to APPROVE
 Recommendation to DENY
-
- Quasi-Judicial
 Legislative
 Public Hearing

Originating Department: Planning & Engineering Project Manager _____ Caryn Gardner-Young, Zoning Administrator	Reviewed By: Director of Planning & Engineering _____ Kara L. Irwin-Ferris, AICP _____ Glen J. Torcivia City Attorney
Approved By: City Manager _____ Andrea McCue	Public Notice: <input checked="" type="checkbox"/> Required <input type="checkbox"/> Not Required Dates: Paper: The Lake Worth Herald Mailing <input type="checkbox"/> Required <input checked="" type="checkbox"/> Not Required Notice Distance: _____
Attachments: <ul style="list-style-type: none"> • Ordinance 2021-16 	City Council Action: <input type="checkbox"/> Approval <input type="checkbox"/> Approve with conditions <input type="checkbox"/> Denial <input type="checkbox"/> Continued to: _____

I. Executive Summary

The City of Greenacres in 1966 created the Planning Commission which also serves as the Local Planning Agency and a separate board known as the Zoning Board of Adjustments and Appeals (Zoning Board) which hears variances and appeals. The Planning Commission is responsible for

hearing, considering and making recommendations on land and development activity within the City and the Zoning Board is responsible for hearing and deciding appeals concerning interpretations of the zoning regulations and hearing and deciding variances. Each Board consists of seven (7) volunteers and two (2) alternate members.

Historically, state law requires municipalities to have separate boards to handle the functions currently handled by the Planning Commission and the Zoning Board. In 1985, these state laws were repealed and municipalities could combine the separate boards if desired. Currently, the following municipalities have Planning Commissions which also function as the Zoning Board of Adjustment and Appeals: Boca Raton, Coral Springs, Davie, Hallandale Beach, Jupiter, Lake Park, Lake Worth Beach, Miramar, North Palm Beach, North Lauderdale, Palm Beach Gardens, Parkland, Palm Springs, Royal Palm Beach, Sunrise, Tamarac, and Vero Beach (just to name a few).

By merging the responsibilities of the City’s Planning Commission and Zoning Board, City Staff is being more responsive to the needs of residents and businesses by increasing efficiency and decreasing redundancy in logistics, paperwork and staff time involved in two separate boards. A joint Planning Commission and Zoning Board would:

1. Streamline the process for all development issues;
2. Reduce confusion as to which board hears which issues;
3. Increase frequency of one regular board meeting making zoning decisions more uniform and consistent; and
4. Reduce staff time, costs and logistics associated with two boards versus one board.

In addition, over the last few years, the City of Greenacres has had trouble in obtaining volunteers for the Planning Commission and Zoning Board. Further, at times, obtaining a quorum for one or both boards have been challenging since the regularly scheduled meetings are often cancelled.

The number of cancelled meetings during the year:¹

Commission or Board	2021	2020	2019
Planning Commission ²	9 out of 11	10 out of 13 meetings	11 out of 14 meetings
Zoning Board ³	0 out of 2	3 out of 3 meetings	2 out of 3 meetings

1. As listed in the City’s records under Minutes and Agendas for the years noted above.
2. Per Code of Ordinance, the Planning Commission meets twice a month.
3. Per Code of Ordinance, the Zoning Board of Adjustments and Appeals meets as needed.

Currently, there are four vacancies on the Zoning Board (2 full members and 2 alternates) and two vacancies on the Planning Commission (2 alternates) with one member who serves on both Boards.

The City Clerk has made repeated efforts to find members to fill these vacancies. The Clerk has used social media, newspapers and the City website. To date, no applications were received.

The proposed changes are as follows:

1. A new Board would be created called the Planning and Zoning Board of Appeals.

- a. The new Board would take on the responsibilities of the Planning Commission and Zoning Board.
 - b. The new Board will consist of five full members and two alternates.
 - c. Existing members of both Boards would resign but be able to apply for the new Board. (It is foreseeable that the new combined board may be comprised totally of sitting members of the Planning Commission and Zoning Board.)
 - d. The new Board members would serve staggered terms at the beginning so there is always an existing Board member sitting. Thereafter, they would serve 3 years with the ability to reapply.
 - e. Creates quorum
 - f. Clarifies there are no Board Member term limits
 - g. Reduce the number of meetings to once a month with the ability to add meetings if necessary
2. A new section would be created for Variances
 - a. States variances run with the land
 - b. Requires all ADA variance requests to follow ADA requirements before variance is requested.
 - c. Notes burden on property owner to prove variance appropriate
 - d. Notes that there is no precedence for a variance
 - e. Limits ability to refile variance for one year.
 3. A new section would be created for Administrative Approval of Variances
 - a. Provides certain minor situations when City Staff can approve a variance rather than the new Board
 - b. Notice of the intent to approve is provided to the city council and mailed to property owners within 300 feet of the subject property.
 - c. Letters of no objection by abutting property owners is required.
 - d. If determined by City Manager, the petition can be referred to the PZAB.

II. Proposed Comprehensive Plan Amendments:

The following is a proposed Zoning Text Amendment. Items which are proposed for deletion are in **~~Strike-Through~~**, items proposed for addition are in **Single Underline**.

~~DIVISION 3. – PLANNING COMMISSION/LOCAL PLANNING AGENCY~~^[3]

~~Sec. 16-81. – Creation.~~

~~(a) There is hereby established a planning commission which shall consist of seven (7) members, all of whom shall be appointed by the mayor upon advice and consent of the city council. The basic term of office for members of the commission shall be three (3) years. Vacancies shall be filled by the mayor upon advice and consent of the city council for the unexpired term of any member whose seat has become vacant. All members of the planning commission shall be residents of the city except as authorized by Article VIII Section 5 of the City Charter in order to obtain members with technical and professional expertise from within Palm Beach County to serve on the Commission, and shall serve without compensation except for reimbursement of out of pocket expenses, if any.~~

~~(b) In addition to the regular commission members, the mayor shall appoint upon the advice and consent of city council two (2) additional members designated as planning commission alternate #1 and alternate #2. The alternate members shall serve in that order for succession and voting purposes at meetings of the commission when such alternate member is substituting for an absent regular commission member. In the event of all seven (7) regular members being present at a meeting, the alternate members may take part in the discussion, but shall not cast a vote. In the case of vacancies as indicated in (a) above, the mayor may elect to fill such vacancies with the designated alternates and appoint new alternates upon the advice and consent of city council.~~

~~(c) The absence of a member for three (3) consecutive meetings, without an excuse approved by the chairman of the planning commission, and noted in the minutes, shall be deemed cause for removal by the city council. In the event of a vacancy on the planning commission, such vacancy shall be filled within a period of thirty (30) days from the occurrence of such vacancy in the manner provided herein.~~

~~(d) No member of the planning commission shall be an elected official of the state, county, or city, or a state, county or municipal officer, or an employee of the City of Greenacres. No two (2) members of the commission shall come from or represent the same business, profession, or occupation.~~

~~(e) Pursuant to, and in accordance with, F.S. § 163.3174, and the Local Government Comprehensive Planning and Land Development Regulations Act, the planning commission is hereby designated and established as the local planning agency for the incorporated territory of the city.~~

~~(Code 1966, § 32-91(a); Ord. No. 2011-07, § 4, 6-6-11)~~

Sec. 16-82.-- Conflict of interest.

~~(a) Members of the planning commission shall be subject to removal from office by the city council for nonfeasance, malfeasance, misfeasance, or for other good cause shown to the city council.~~

~~(b) No member shall have any interest, financial or otherwise, direct or indirect, or engage in any business, transaction or professional activity or incur any obligation of any nature which is in substantial conflict with the proper discharge of his duties in the public interest. To implement such policy and strengthen the faith and confidence of the citizens of the city, the members of the planning commission are directed as follows:~~

~~(1) Not to accept any gift, favor, or service that might reasonably tend to improperly influence the member in the discharge of official duties.~~

~~(2) To make known by written disclosure any interests which such members shall have in pending application or other matters prior to a hearing thereof. In the event the member is not aware of his interest or a conflict becomes known during a hearing thereof, the member shall immediately disclose his interest and shall abstain from voting on such matter.~~

~~(3) To refrain from disclosing confidential information gained by reason of official position and to refrain from using such information for personal gain or benefit.~~

~~(4) To refrain from accepting or receiving any compensation from any source which might impair his independence of judgment in the performance of his public duties.~~

~~(5) To refrain from participation in any matter in which such member shall have a personal investment which will create a substantial conflict between his private interests and the public interests.~~

~~(6) Willful violation of this provision shall constitute malfeasance in office and shall render the action voidable by the city council.~~

~~(Code 1966, § 32-91(b))~~

Sec. 16-83. — Officers, rules of procedures.

~~(a) The planning commission shall elect annually a chairman and vice-chairman from among its regular members, and the chairman and vice-chairman shall have the same voting rights as any other regular member.~~

~~(b) The planning commission shall be governed by Roberts' Rules of Order, latest edition, in all of its procedural matters.~~

~~(c) Meetings of the planning commission shall be regularly scheduled on a monthly basis on the first and third Wednesday of the month and at such other times as the commission chairman may determine to be necessary. The chairman, or in his absence, the vice-chairman, or in his absence the longest serving regular member, shall conduct the meeting. All meetings shall be open to the public. The commission shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its official actions, all of which shall be a public record and be filed in the office of the city clerk.~~

~~(Code 1966, § 32-91(c); Ord. No. 98-01, § 2, 7-20-98; Ord. No. 2011-07, § 4, 6-6-11)~~

Sec. 16-84. — Authority, functions, powers and duties.

The planning commission shall have the authority and duty to:

~~(a) Hear, consider, and make recommendations to the city council to approve, approve with conditions, or deny applications for:~~

~~(1) Annexations.~~

~~(2) Rezoning.~~

~~(3) Special exceptions.~~

~~(4) Site and development plans.~~

~~(5) Zoning text amendments.~~

~~(b) Serve as the local planning agency for the City of Greenacres to hear, consider and make recommendations to the city council for text amendments to the Comprehensive Plan and site-specific future land use amendments to the future land use map of the Comprehensive Plan.~~

~~(c) Hear, consider, and make recommendations to the city council with regard to community appearance as part of site and development plan petitions to:~~

~~(1) Balance carefully the natural environment with manmade systems which preserve, protect and conserve the natural environment;~~

~~(2) Sustain the comfort, health, tranquility and contentment of residents and attract new residents by reason of a desirable urban environment;~~

~~(3) Minimize incompatible surroundings and visual blight which prevent orderly community development and reduce property values;~~

~~(4) Encourage and promote development which features amenities and excellence in the form of variations of siting, types of structures and adaptation to and conservation of native vegetation and other environmental design features;~~

~~(5) Foster civic pride and community spirit by maximizing the positive impact of developments;~~

~~(6) Inspire creative approaches to the use of land and related physical developments;~~

~~(7) Encourage the realization and conservation of a desirable aesthetic urban environment through simple and cost-effective design elements;~~

~~(8) Foster the development of a positive visual character for the city by promoting a high degree of compatibility between land uses;~~

~~(9) Promote orderly growth, development and placement of all land uses so as to encourage a balanced natural, physical, and economic environment and advance the quality of life for city residents.~~

~~(d) Hear, consider and make recommendations to the city council with regard to the principles of crime prevention through environmental design (CPTED) as part of site and development plan petitions.~~

~~(e) Consider amendments to previously approved special exceptions and site and development plans.~~

~~(f) Conduct public hearings as may be required to gather information necessary for the maintenance of the Comprehensive Plan and such additional public hearings as required to perform their duties.~~

~~(g) Formulate and propose general recommendations to the city council regarding matters within the realm of community appearance and the scope of this chapter.~~

~~(h) Establish principles and policies for guiding action in the development of the area.~~

~~(i) Acquire and maintain information and materials as necessary to gain an understanding of past trends, present conditions and forces at work to cause changes in these conditions.~~

~~(j) Perform such other duties and assignments as are authorized by the city council.~~

~~(Code 1966, § 32-91(d); Ord. No. 98-01, § 3, 7-20-98; Ord. No. 2011-07, § 4, 6-6-11)~~

~~DIVISION 4. ZONING BOARD OF ADJUSTMENTS AND APPEALS⁽⁴⁾~~

~~Footnotes:~~

~~—(4)—~~

~~*Cross reference—Boards, committees, commissions, § 2-46 et seq.*~~

~~Sec. 16-101. Creation.~~

~~(a) There is hereby established a zoning board of adjustments and appeals, which shall consist of seven (7) members, all of whom shall be appointed by the mayor, with the advice and consent of the city council. The basic term of office for members of the board shall be three (3) years. Vacancies shall be filled by the mayor with the advice and consent of the city council for the unexpired term of any member whose seat has become vacant. All members of the zoning board of adjustments and appeals shall be residents of the city and shall serve without compensation.~~

~~(b) The absence of a member for three (3) consecutive meetings, without an excuse approved by the chairman of the board of adjustments and appeals, and noted in the minutes, shall be deemed cause for removal by the city council. In the event of a vacancy on the board of adjustments and appeals, such vacancy shall be filled within a period of thirty (30) days from the occurrence of such vacancy in the manner provided herein.~~

~~(c) No member of the board of adjustments and appeals shall be an elected official of the state, county, or city, or a public, state, county or municipal officer, or an employee of the City of Greenacres. No two (2) members of the board of adjustments and appeals shall come from or represent the same business, profession or occupation or job.~~

~~(Code 1966, § 32-95(a); Ord. No. 2011-07, § 5, 6-6-11)~~

~~Sec. 16-102. -- Conflict of interest.~~

~~(a) Members of the zoning board of adjustments and appeals shall be subject to removal from office by the city council for nonfeasance, malfeasance, misfeasance, or for other good cause.~~

~~(b) No member shall have any interest, financial or otherwise, direct or indirect, or engage in any business, transaction or professional activity or incur any obligation of any nature which is in substantial conflict with the proper discharge of his duties in the public interest. To implement such policy and strengthen the faith and confidence of the citizens of the city, the members of the zoning board of adjustments and appeals are directed as follows:~~

~~(1) Not to accept any gift, favor, or service that might reasonably tend to improperly influence the member in the discharge of official duties.~~

~~(2) To make known by written disclosure any interests which such member shall have in a pending application prior to the hearing thereof. In the event the member is not aware of his interest or a conflict becomes known during the hearing thereof, the member shall immediately disclose his interest and shall abstain from voting on such matter.~~

~~(3) To refrain from disclosing confidential information gained by reason of official position and to refrain from using such information for personal gain or benefit.~~

~~(4) To refrain from accepting or receiving any compensation from any source which might impair his independence of judgment in the performance of his public duties.~~

~~(5) To refrain from participating in any matter in which such member shall have a personal investment which will create a substantial conflict between his private interests and the public interests.~~

~~(6) Willful violation of this provision shall constitute malfeasance in office and shall render the action voidable by the city council.~~

~~(Code 1966, § 32-95(b); Ord. No. 2011-07, § 5, 6-6-11)~~

~~Sec. 16-103. -- Officers and rules of procedure.~~

~~(a) The zoning board of adjustments and appeals shall elect annually a chairman and vice-chairman from among its members. The chairman and vice-chairman shall be voting members of the board. The city council shall appoint a secretary who shall record and transcribe all minutes for the zoning board of adjustments and appeals.~~

~~(b) The zoning board of adjustments and appeals shall be governed by Roberts' Rules of Order, latest edition, in all of its procedural matters.~~

~~(c) The city council shall establish a schedule of fees to be charged by the zoning board of adjustments and appeals on the hearing of appellate matters. Fees collected under this provision shall be deposited in the city general fund.~~

~~(d) Meetings of the zoning board of adjustments and appeals shall be held at the call of the chairman and at such other times as the zoning board of adjustments and appeals may determine. The chairman, or in his absence, the vice chairman, or in his absence the longest serving member, shall conduct the meeting, administer oaths and may compel the attendance of witnesses. All meetings shall be open to the public. The board of adjustments and appeals shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed with the city clerk who shall maintain the records.~~

~~(Code 1966, § 32-95(e); Ord. No. 2011-07, § 5, 6-6-11)~~

Sec. 16-104. Appeals.

~~(a) Appeals to the zoning board of adjustments and appeals concerning interpretation or administration of Chapter 12 and Chapter 16 of the City Code may be made by any person aggrieved or by any officer or bureau of the city council affected by any decision of the administrative official. Such appeal shall be made within a reasonable time, not to exceed sixty (60) days from the date of the action being appealed by filing with the planning and engineering department a notice of appeal specifying the grounds thereof. All notices of appeal shall be made by filing an application on forms provided by the planning and engineering department. The planning and engineering department shall transmit to the board of adjustment and appeals the applicant's notice of appeal as well as all papers constituting the record upon which the action appealed was based.~~

~~(b) No application shall be considered or construed to be filed until the required fee has been paid.~~

~~(c) The zoning board of adjustments and appeals shall fix a reasonable time for the hearing of the appeal not to exceed forty five (45) days from the date of filing. The zoning board of adjustments and appeals shall give public notice following the procedures set forth in section 16-33 for public hearings.~~

~~(d) At the hearing, any party may appear in person, by an attorney at law authorized to practice in the state, or by an agent who has received from the petitioner and submitted to the board, written authorization for his appearance.~~

~~(e) When an appeal is taken to the zoning board of adjustments and appeals, all work and proceedings shall stop on the project or premises in question unless the official whose decision is under appeal shall certify in writing that a stay would cause imminent peril to life or property. In such case, work and proceedings shall not stop unless the zoning board of adjustments and appeals or a court of competent jurisdiction issues a temporary restraining order after application to the board or court and notice to the official regarding whom the appeal is made and on due cause shown.~~

~~(Code 1966, § 32-95(d); Ord. No. 2011-07, § 5, 6-6-11; Ord. No. 2012-16, § 3, 10-15-12)~~

~~Sec. 16-105. – Powers, duties, authority and functions.~~

~~(a) To hear and decide appeals in accordance with section 16-104 where it is alleged there is an error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance or regulation.~~

~~(b) In exercising its powers, the zoning board of adjustments and appeals may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination made by the administrative official, in the enforcement of any zoning resolution or regulation adopted pursuant to this chapter and make such order, recommendation, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.~~

~~(c) Grant, grant with conditions, or deny variances from the provision of this chapter and from Chapter 12, Subdivision and Land Development Regulations.~~

~~(d) Variances and exceptions granted by this board shall become void if not exercised within six (6) months of the date granted. Prior to the expiration of such six-month period, the applicant may make a request to the zoning board of adjustments and appeals by letter for a six-month extension. Further extensions of time shall require a new application to be processed in the manner described herein.~~

~~(e) The zoning board of adjustments and appeals shall not be empowered or authorized to grant variances to permit a use in a zone or a district in which such use is not allowed by this chapter.~~

~~(Code 1966, § 32-95(e); Ord. No. 2011-07, § 5, 6-6-11; Ord. No. 2012-16, § 3, 10-15-12)~~

~~Sec. 16-106. – Variances.~~

~~(a) The zoning board of adjustments and appeals shall have the power to authorize upon appeal such variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary and undue hardship. In order to authorize any variance in the terms of this chapter, the board of adjustments and appeals must and shall find:~~

~~(1) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district.~~

~~(2) That the special conditions and circumstances do not result from the actions of the applicant.~~

~~(3) That granting the variance request will not confer on the applicant any special privilege that is denied by this chapter to the other lands, buildings, or structures in the same zoning district.~~

~~(4) That literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter.~~

~~(5) That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.~~

~~(6) No nonconforming use of neighboring lands, structures or buildings in the same or other districts and no permitted use of land, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.~~

~~(b) In granting any variance, the zoning board of adjustments and appeals shall prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter. The zoning board of adjustments and appeals may also prescribe a reasonable time limit within which the action for which the variance is required shall be begun or completed or both.~~

~~(c) Financial hardship is not to be considered alone as sufficient evidence of a hardship in the granting of a variance.~~

~~(d) Applications to the zoning board of adjustments and appeals for variances and/or relief from the provisions of this chapter may be made by the property owner or the owner's authorized agent. All requests for variances shall be made by filing an application on forms provided by the planning and engineering department by noon on the fifteenth of the month or previous regular business day.~~

~~(e) No application shall be considered or construed to be filed until the required fee has been paid.~~

~~(f) Requested variances shall be reviewed by the land development staff and a land development staff report and recommendation prepared and forwarded to the zoning board of adjustments and appeals at least four (4) days prior to the scheduled hearing.~~

~~(g) The zoning board of adjustments and appeals shall fix a reasonable time for the hearing of the variance request not to exceed forty five (45) days from the date of satisfaction of all comments and questions of the land development staff. The zoning board of adjustments and appeals shall give public notice following the procedures set forth in section 16-33 for public hearings.~~

~~(h) At the hearing, any party may appear in person, by an attorney at law authorized to practice in the state, or by an agent who has received from the petitioner and submitted to the board, written authorization for his appearance.~~

(Code 1966, § 32-96; Ord. No. 2011-07, § 5, 6-6-11)

~~Sec. 16-107. – Review of decisions; venue.~~

~~(a) No person aggrieved by any decision of the zoning board of adjustments and appeals may apply to the court for relief unless the applicant has first exhausted the remedies provided for herein and has taken all available steps provided by this chapter. The decision of the board may be reviewed by the filing of a petition for a writ of certiorari in the circuit court for the fifteenth judicial circuit in and for the county, in accordance with the procedure and within the time provided by court rule for the review of the rulings of any commission or board; and such time shall commence to run from the date of the decision sought to be reviewed.~~

~~(b) No change of venue from the area in which the premises affected is located shall be had in any cause arising under the provisions of this section.~~

~~(c) Costs shall not be allowed against the board of adjustments and appeals.~~

~~(Code 1966, § 32-97; Ord. No. 2011-07, § 5, 6-6-11)~~

DIVISION 3. - PLANNING AND ZONING BOARD OF APPEALS/LOCAL PLANNING AGENCY

Sec. 16-81. - Creation.

(a) There is hereby established a planning and zoning board of appeals (PZAB) which shall consist of five (5) members, all of whom shall be appointed by the mayor upon advice and consent of the city council. During the month of January 2022, five members shall be appointed to the following terms:

- i. One member to a one-year term
- ii. Two members to a two-year term
- iii. Two members to a three-year term

Thereafter, as each term shall expire, all appointments or reappointments shall be for a term of three years. Members can be reappointed to the PZBA for an indefinite number of terms; the reappointments shall be by the mayor upon advice and consent of the city council. Vacancies that arise during the term shall be filled by the mayor upon advice and consent of the city council for the unexpired term of any member whose seat has become vacant. In the case of vacancies, the mayor may elect to fill such vacancies with the designated alternates and appoint new alternates upon the advice and consent of city council. All members of the PZAB shall be residents of the city except as authorized by Article VIII Section 5 of the City Charter in order to obtain members with technical and professional expertise from within Palm Beach County to serve on the PZAB. All members of the PZAB shall serve without compensation except for reimbursement of out-of-pocket expenses, if any.

(b) In addition to the regular PZAB members, the mayor shall appoint upon the advice and consent of city council two (2) alternate members designated as PZAB alternate #1 and alternate #2. The alternate members shall serve in that order for succession and voting purposes at meetings of the PZAB when such alternate member is substituting for an absent regular PZAB member. In the event that all five (5) regular members and the two (2) alternate members are present at a meeting, the alternate members may take part in the discussion, but shall not cast a vote

(c) The absence of a member for three (3) consecutive meetings, without an excuse approved by the chair of the PZAB, and noted in the minutes, shall be deemed cause for removal by the city council. In the event of a vacancy on the PZAB such vacancy shall be filled within a period of thirty (30) days from the occurrence of such vacancy in the manner provided herein.

(d) No member of the PZBA shall be an elected official of the state, county, or city, or a state, county or municipal officer, or an employee of the city.

(d) Pursuant to, and in accordance with section 163.3174 Florida Statutes (and the Community Planning Act), the PZAB is hereby designated and established as the local planning agency for the incorporated territory of the city.

Sec. 16-82. - Conflict of interest.

(a) Members of all of the PZAB shall be subject to removal from office by the city council for nonfeasance, malfeasance, misfeasance, or for other good cause shown to the city council.

(b) No member shall have any interest, financial or otherwise, direct or indirect, or engage in any business, transaction or professional activity or incur any obligation of any nature which is in substantial conflict with the proper discharge of the member's duties in the public interest. To implement such policy and strengthen the faith and confidence of the citizens of the city, the members of the PZAB are directed as follows:

(1) Not to accept any gift, favor, or service that might reasonably tend to improperly influence the member in the discharge of official duties.

(2) To make known by written disclosure any interests which such members shall have in pending application or other matters prior to a hearing thereof. In the event the member is not aware of the member's interest or a conflict becomes known during a hearing thereof, the member shall immediately disclose the member's interest and shall abstain from voting on such matter.

(3) To refrain from disclosing confidential information gained by reason of official position and to refrain from using such information for personal gain or benefit.

(4) To refrain from accepting or receiving any compensation from any source which might impair his independence of judgment in the performance of his public duties.

(5) To refrain from participation in any matter in which such member shall have a personal investment which will create a substantial conflict between the member's private interests and the public interests.

(6) Willful violation of this provision shall constitute malfeasance in office and shall render the action voidable by the city council.

Sec. 16-83. - Officers, rules of procedures.

(a) The PZAB shall elect annually a chair and vice-chair from among its regular members, and the chair and vice-chair shall have the same voting rights as any other regular member.

(b) The PZAB shall be governed by Roberts' Rules of Order, latest edition, in all of its procedural matters. The presence of at least three (3) PZAB members (inclusive of alternate members) shall constitute a quorum.

(c) Meetings of the PZAB shall be regularly scheduled on a monthly basis on the third Wednesday of the month and at such other times as the PZAB chair or majority of the members may determine to be necessary. The chair, or in the chair's absence, the vice-chair, or in the vice-chair's absence the longest serving regular member, shall conduct the meeting. All meetings shall be open to the public. The PZAB shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its official actions, all of which shall be a public record and be filed in the office of the city clerk.

Sec. 16-84. - Authority, functions, powers and duties.

The PZAB shall have the authority and duty to:

(a) Hear, consider, and make recommendations to the city council to approve, approve with conditions, or deny applications for:

(1) Annexations.

(2) Rezoning.

(3) Special exceptions.

(4) Site and development plans.

(5) Zoning text amendments.

(b) Serve as the local planning agency for the city to hear, consider and make recommendations to the city council for text amendments to the Comprehensive Plan and site-specific future land use amendments to the future land use map of the Comprehensive Plan.

(c) Serve as a design review body to hear, consider, and make recommendations to the city council with regard to community appearance as part of site and development plan petitions to:

(1) Balance carefully the natural environment with manmade systems which preserve, protect and conserve the natural environment;

(2) Sustain the comfort, health, tranquility and contentment of residents and attract new residents by reason of a desirable urban environment;

(3) Minimize incompatible surroundings and visual blight which prevent orderly community development and reduce property values;

(4) Encourage and promote development which features amenities and excellence in the form of variations of siting, types of structures and adaptation to and conservation of native vegetation and other environmental design features;

(5) Foster civic pride and community spirit by maximizing the positive impact of developments;

(6) Inspire creative approaches to the use of land and related physical developments;

(7) Encourage the realization and conservation of a desirable aesthetic urban environment through simple and cost-effective design elements;

(8) Foster the development of a positive visual character for the city by promoting a high degree of compatibility between land uses;

(9) Promote orderly growth, development and placement of all land uses so as to encourage a balanced natural, physical, and economic environment and advance the quality of life for city residents.

d) Hear, consider and make recommendations to the city council with regard to the principles of crime prevention through environmental design (CPTED) as part of site and development plan petitions.

(e) Consider amendments to previously approved special exceptions and site and development plans.

(f) Conduct public hearings as may be required to gather information necessary for the maintenance of the Comprehensive Plan and such additional public hearings as required to perform their duties.

(g) Formulate and propose general recommendations to the city council regarding matters within the realm of community appearance and the scope of this chapter.

(h) Establish principles and policies for guiding action in the development of the area.

(i) Acquire and maintain information and materials as necessary to gain an understanding of past trends, present conditions and forces at work to cause changes in these conditions.

(j) Perform such other duties and assignments as are authorized by the city council.

(k) Hear and decide appeals in accordance with section 16-85 where it is alleged there is an error in any interpretation or administration of Chapter 12 and 16 of the City Code by the administrative official.

(l) In accordance with Section 16-103 , grant, grant with conditions or deny variances from the provisions of Chapter 12 and Chapter 16 of the City Code.

Sec. 16-85. - Appeals.

(a) Appeals to the PZAB concerning interpretation or administration of Chapter 12 and Chapter 16 of the City Code may be made by any person aggrieved or by any officer or department of the City affected by any decision of the administrative official. Such appeal shall be made within a reasonable time, not to exceed fifteen (15) days from the date of the decision being rendered by filing a notice of appeal with the development and neighborhood services department. The notice of appeal shall be made by filing a written application on forms provided by the development and neighborhood services department and paying the applicable fee. The notice of appeal must contain the following information:

(1) A written description of the decision by the administrative official that is being appealed;

(2) A brief statement of facts and issues involved in the appeal;

(3) A brief statement of the alleged error(s) made by the administrative official in rendering the administrative official's decision;

(4) Any exhibits or materials relevant to the issues forming the basis of the appeal, such as vegetative surveys, environmental assessments and relevant permits issued by other governmental agencies;

(5) The name, address and telephone number of the property owner;

(6) A legal description of the property;

(7) A boundary survey of the property, completed within twelve (12) months of the appeal; and

(8) Such other information as may reasonably be requested by the development and neighborhood services department.

(b) The development and neighborhood services department shall transmit to the PZAB the applicant's notice of appeal as well as all documents constituting the record upon which the administrative official's decision was based.

(c) No notice of appeal shall be considered or construed to be filed until the required fee has been paid.

(d) The development and neighborhood services department shall fix a reasonable time for hearing the appeal which shall not to exceed forty-five (45) days from the date the notice of appeal is deemed as filed. The development and neighborhood services department shall give public notice of the appeal hearing following the procedures set forth in section 16-33 for public hearings.

(e) At the hearing, the party filing the appeal may appear in person, by an attorney-at-law authorized to practice in the state, or by an agent who received written authorization from the party filing the appeal which is submitted to the PZAB no later than the commencement of the hear.

(f) When an appeal is made to the PZAB, all work and proceedings shall stop on the project, premises and/or property in question unless the administrative official whose decision is under appeal certifies in writing that a stay would cause imminent peril to life or property. In such case, work and proceedings shall not stop unless a court of competent jurisdiction issues a temporary restraining order.

(g) In exercising its powers, the PZAB, in conformity with the provisions of Chapter 12 and Chapter 16, revers or affirm, wholly or partly, or may modify the order requirements, decision or determination made by the administrative official and make such order, recommendation, decision or determination as ought to be made, and to that end shall have all the powers of the administrative official from whom the appeal is taken,

DIVISION 4. -VARIANCE

Sec. 16-101. Purpose

(a) The purpose of this section is to provide for relief from certain provisions in Chapter 12 and Chapter 16 of the City's Code when the strict administration of such regulations prevents an important need and the reasonable use of the property for which a variance is sought. In so doing, the following rules apply:

(1) Use variances are not permitted.

(2) All variances run with the land.

(3) All variance requests to the requirements of the Florida Americans with Disabilities Accessibility Implementation Act must be preceded through the procedures required under such act.

(b) The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Practical difficulty means use of all or a portion of the property at issue cannot occur with reasonable physical accommodation that is economically reasonable.

Unnecessary hardship means a practical difficulty which exists due to an unintended effect of the land development regulation.

Use variance means an exception to the uses permitted in a particular zoning district by right, special exception or conditional use.

Section 16-102 Application requirements

(a) Application by a property owner for a variance shall include the following:

(1) Completed application form signed by the property owner including reasons identifying why a variance is warranted. (Note The burden of proof is the obligation of the applicant. Justification for compliance with the criteria for a variance must be fully documented and proven by the applicant. Each variance must stand on its own merits. Past variances will not be grounds for approval of future variances.).

(2) Agent's authorization or power of attorney if the applicant is other than the property owner.

(3) Warranty deed.

(4) Survey including a legal description of the property and all easements of record, referenced by Official Records Book and page, prepared by a surveyor registered in the State of Florida.

(5) List of property owners within a three hundred-foot radius and mailing envelopes as necessary to meet the requirements of [section 16-33](#) for two (2) public hearings.

(6) One set of stamped plain envelopes with the typed names of owners within a 300' radius of the boundary lines of the subject property. No return address.

(b) All requests for variances shall be made by filing an application on forms provided by the neighborhood and development services department by noon on the fifteenth of the month or previous regular business day.

(c) No application shall be considered or construed to be filed until the required fee has been paid.

Section 16-103 Standards of Review

(a) The PZAB shall have the power to authorize upon appeal such variance from the terms of Chapter 12 and Chapter 16 as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of Chapter 12 and Chapter 16 will result in unnecessary and undue hardship. In order to authorize any variance in the terms of Chapter 12 and Chapter 16, PZAB must and shall find:

(1) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district.

(2) That the special conditions and circumstances do not result from the actions of the applicant.

(3) That granting the variance request will not confer on the applicant any special privilege that is denied by this chapter to the other lands, buildings, or structures in the same zoning district.

(4) That literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter.

(5) That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.

(6) No nonconforming use of neighboring lands, structures or buildings in the same or other districts and no permitted use of land, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

(b) In granting any variance, the PZAB shall prescribe appropriate conditions and safeguards in conformity with Chapter 12 and Chapter 16 and as the PZAB determines are reasonably necessary in keeping with the above stated six (6) criteria. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of City's Code. The PZAB may also prescribe a reasonable time limit within which the action for which the variance is required shall be begun or completed or both. If no such limit is stated, section 16-105 shall apply.

(c) Financial hardship is not to be considered alone as sufficient evidence of a hardship in the granting of a variance.

(d) Requested variances shall be reviewed by the development and neighborhood services department and a development and neighborhood services department staff report and recommendation shall be prepared and forwarded to the PZBA at least four (4) days prior to the scheduled hearing.

(e) The development and neighborhood services department shall fix a reasonable time for the hearing of the variance request not to exceed forty-five (45) days from the date the application is deemed filed and the applicant has satisfied all comments and questions of the development and neighborhood services department staff. The development and neighborhood services department shall give public notice of the variance following the procedures set forth in section 16-33 for public hearings.

(f) At the hearing, the applicant may appear in person, by an attorney-at-law authorized to practice in the state, or by an agent who has received written authorization from the applicant which is submitted to the PZAB no later than the commencement of the hearing.

Sec. 16-104. - Review of decisions; venue.

(a) No person aggrieved by any decision of the PZAB may apply to the court for relief unless the person aggrieved has first exhausted the remedies provided for herein and has taken all available steps provided by the City Code. A decision of the PZAB may be reviewed by filing a petition for a

writ of certiorari in the circuit court for the fifteenth judicial circuit in and for the county, within thirty (30) days from the date of the decision sought to be reviewed.

(b) Costs shall not be allowed against the PZAB.

Sec. 16-105. - Timeframe.

(a) Variances granted by the PZAB shall become void if not exercised within six (6) months of the date granted. It shall be the obligation of the owner to file written notice with the neighborhood and development services department that the proposed work has begun. Prior to the expiration of such six-month period, the applicant may make a written request to the development and neighborhood services department for a six-month extension. Further extensions of time shall require a new application to be processed in the manner described herein.

(b) Variance requests which have been denied may not be resubmitted for a period of one year. An application for reconsideration will be filed with the neighborhood and development services department along with the appropriate documentation and fees. The city council shall consider the following in granting a waiver of the one year waiting period:

(1) Whether conditions affecting such property materially changed.

(2) Whether there has been an error in substantive or procedural law before the planning and zoning board of appeals.

(3) Whether competent and substantial new evidence is available which was not presented to the planning and zoning board of appeals.

(4) Whether a modified plan is presented.

(5) Whether the particular facts and circumstances otherwise warrant another hearing before the planning and zoning board of appeals.

Sec. 16-106. - Administrative variances

(a) Administrative variances may be approved by the city manager or designee pursuant to this section. An administrative variance may be considered only for:

(1) An adjustment up to ten percent for nonresidential development.

(2) An adjustment of a lot(s) within an area where at least 50 percent of the lots within approximately 300 feet, have already been developed or platted.

(3) An adjustment of no more than ninety percent of a setback required by the underlying district regulations.

(4) An adjustment of no more than ten percent of the lot coverage for a principal and/or accessory structure as required by the underlying district regulations.

(5) An adjustment of spacing between structures on the same lot may be reduced; provided, however, in no event shall such spacing be less than five feet.

(6) An adjustment for shared parking when minimum is not met; provided, however, in no event shall such adjustment be less than ten percent of the required parking.

(7) An adjustment to screening, type/mixing of materials, reduced landscape heights due to availability.

(8) An adjustment for non-residential properties to provide fences and landscaping in lieu of walls.

(9) An adjustment for the construction of an addition or an accessory structure within a single-family or two-family residential lot, where the minimum yard requirements were made more restrictive since the principal residence was lawfully constructed.

(b) At any time prior to the final decision, the city manager or designee shall have the authority to refer the decision to the PZAB.

(c) In addition to any other application requirements of this section, an application for administrative variance shall include letters of no objection from all abutting property owners and the governing homeowners' association, if applicable. If such letters of no objection cannot be obtained, then the applicant may apply for a variance to the PZAB.

(d) In consultation with the development and neighborhood services department staff, the city manager or designee shall consider applications for administrative variance according to the criteria set forth above and the following standards:

(1) The variance is necessary because of practical difficulty peculiar to the land, structure or building involved and which is not applicable to other lands, structures and buildings in the same zoning district.

(2) The variance is the minimum variance necessary to alleviate the practical difficulty.

(3) The variance will be in harmony with the general intent and purpose of the zoning code and will not be injurious to the area involved or otherwise detrimental to the public welfare.

(e) The city manager or designee shall set forth his or her findings and conclusions on the application in a "notice of intent to approve" or a "notice of intent to deny" and provide such notice to the applicant in writing. A "notice of intent to approve" may include conditions necessary for the mitigation of any external impacts of the administrative variance and/or are necessary to accomplish the goals, objectives and policies of the Comprehensive Plan and this chapter, including but not limited to, limitations on size, bulk, location, requirements for lighting and provision of adequate ingress and egress.

(f) Any "notice of intent to approve" shall be provided to the city council and mailed to surrounding property owners within three hundred (300) feet of the subject property.

(g) No sooner than ten (10) but no later than twenty (20) days after the mailing of the "notice of intent to approve," the city manager or designee shall consider any public comments or additional information submitted in relation to the application and render a final decision, setting out in writing the reasons for such approval or denial, and any conditions of approval. If any applicant is aggrieved by a final decision rendered by the city manager or designee, such applicant may appeal such decision to the PZAB as authorized by this chapter.

(h) Unless otherwise provided in the final decision, an administrative variance approval shall become null and void if a development application for the development contemplated in the administrative variance application is not issued within one (1) year of the final decision or if a building permit has not been issued or the building permit has expired in accordance with the plans and conditions upon which the administrative variance was granted and is not renewed pursuant to applicable provisions regarding renewal of building permits.

III. Zoning Text Amendment Criteria:

A. *The need and justification for these changes:*

The principal intent of these proposed text amendments to the Zoning Code is to more responsive to the needs of residents and businesses by decreasing bureaucracy and paperwork while increasing efficiency.

B. *The relationship of the proposed amendments to the purpose and objectives of the City's Comprehensive Plan, and whether the proposed change will further the purposes of the City's Zoning Code regulations and other City codes, regulations and actions designed to implement the Comprehensive Plan.*

The proposed amendments are consistent with the City's Comprehensive Plan and will further the purposes of the City's Zoning Code regulations and other City codes.

IV. Staff Recommendation:

The Land Development Staff met on September 23, 2021 to discuss the proposed amendment. No objections were received.

Approval of ZTA-21-01 through the adoption of Ordinance 2021-16.

PLANNING COMMISSION ACTION – October 20, 2021

The Planning Commission on a motion made by Commissioner Edmundson and seconded by Commissioner Roberts, by a vote of five (5) to zero (0) recommended approval of Zoning Text Amendment ZTA-21-01 as presented by staff

CITY COUNCIL ACTION First Reading – November 1, 2021

CITY COUNCIL ACTION Adoption Hearing –
