



Better Codes Make Better Places

MEMORANDUM - EXTERNAL

TO: Wayne Bergman, Director of Planning, Zoning & Building  
James Murphy, Deputy Director of Planning, Zoning & Building  
Jennifer Hofmeister, Planner III

FROM: Sean Suder, ZoneCo, Lead Principal

DATE: September 30, 2024

RE: Town of Palm Beach Zoning Code Review – **Administrative Review Draft #1**

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***This draft is intended for review by Town professional planning staff and is not intended for review by the general public, commissioners, or elected officials. A public review draft for review by the general public, commissioners, and elected officials will be available following receipt and inclusion of all comments from Town professional planning staff during this round of review and edits.***

We are pleased to provide the Town of Palm Beach with an administrative review draft of an updated zoning code – the first comprehensive revision to the Town’s zoning code since 1974. This is an administrative review draft only, meaning that this draft is the first opportunity for the Town’s professional planning staff to review and provide comments on a full set of revisions.

*“The overarching goal of this zoning review project is to craft custom-tailored, clear, consistent, user-friendly, and defensible zoning regulations that advance the Town’s development and quality-of-life vision. The new code should be streamlined, made more user-friendly and more effective at achieving the Town’s desired outcomes. Palm Beach is not a one-size-fits all community, and its zoning regulations should not be one size fits all.” Zoning Code Diagnostic Report 9/29/2022.*

Our work is guided by the September 29, 2022, Zoning Code Diagnostic Report (“Diagnostic Report”) and the following principles:

1. Zoning should regulate only what needs to be regulated to advance the Town’s vision and promote public health, safety, and welfare of its residents.
2. Zoning should respect both existing and desired development patterns.
3. Zoning should be the implementation of a plan, not a barrier to achieving desired outcomes.

We have observed that the current zoning code is unclear, inconsistent, not user friendly, ambiguous in parts, allows for and necessitates too many variances, and is overall broken and ineffective at regulating modern land use and development in the Town of Palm Beach.

We have reviewed in detail all sections of the current zoning code. There has been extensive discussion about certain aspects of the code and little of others. Some provisions are serving the Town well and will be carried forward, albeit with some wordsmithing and reorganization. Others will be revised significantly based on two years of review and study with robust public engagement online, in-person, in public hearings, and by way of an extensive week-long charrette.

Immediately apparent changes include the format and style of the draft code with the inclusion of tables and some illustrative graphics for ease of use and administration. The table of contents has been revised to be more intuitive and user-friendly as follows:

<b>Existing Article</b>	<b>New Article</b>
Article I – In General	Article I – Introduction and Using this Code
Article II – Administration	Article II – Districts
Article III – Site Plan	Article III – Generally Applicable Regulations (including off-street parking and loading, landscaping and open space, and signs)
Article IV – Nonconformities	Article IV – Nonconformities
Article V – Planned Unit Development Procedures	Article V – Administration and Procedures
Article VI – District Regulations	Article VI – Glossary
Article VII – Overlay Districts	
Article VIII – Supplementary District Regulations	
Article IX – Off-Street Parking and Loading	
Article X – On-Street Parking Permits	
Article XI – Signs	

Based on the extensive public comment around residential development pressures, particularly in the North and South Ends of Palm Beach, the most substantive revisions have been made to the residential districts.

Because of the significant changes to organization and formatting, a redline is not possible. Therefore, this memo serves to outline the proposed changes to the current code included in the administrative review draft.

#### **Article I – Introduction and Using this Code (formerly “In General”):**

This section has been amended to be a helpful guide to using the code. The current “In General” section includes definitions and rules of construction, along with explanation of interpretation and some legal provisions around classifying districts on a finding of unconstitutionality and severability.

There is quite a bit of information that would be helpful to understanding how to use the code that is currently missing from the introduction, including rules of measurement and calculation, including how to measure height, and general provisions about uses. Additionally, sections including definitions and administrative provisions have been relocated to new articles at the end of the draft code, which is more common in modern zoning codes.

The following is a side-by-side comparison of the existing Article I outline and the draft Article I outline:

<b>Existing Section</b>	<b>New Section</b>
Sec. 134-1. Purpose; objectives; division of town into districts to accomplish purposes.	Sec. 134-1. Title; Effective Date.
Sec. 134-2. Definitions and rules of construction.	Sec. 134-2. Purpose and Intent.
Sec. 134-3. Interpretation.	Sec. 134-3. Applicability; Conflicting Provisions; Savings Clauses; Severability.
Sec. 134-4. Classification of districts into less restrictive classifications on finding of unconstitutionality; severability.	Sec. 134-4. Zoning Districts.
Sec. 134-5. Effective date.	Sec. 134-5. Zoning Map.
Sec. 134-6. Violations.	Sec. 134-6. Rules for Interpreting District Boundaries on the Zoning Map.
Sec. 134-7. Violations and Penalties.	Sec. 134-7. Rules of Measurement and Calculation.
	Sec. 134-8. Rules of Interpretation.
	Sec. 134-9. Uses Generally.
	Sec. 134-10. Similar Use Determinations.
	Sec. 134-11. Changes to Lot Topography.
	Sec. 134-12. Prohibited Materials.
	Sec. 134-13. Other Relevant Regulations.
	Sec. 134-12. Code Roadmap – How to Use this Code.

All of the considerations contained in the Diagnostic Report (p. 14) have been implemented in the draft code except for the establishment of a board of adjustment, which is not desired by the Town.

For the Town's review and consideration, the proposed substantive policy changes in Article I are as follows:

- Renamed residential districts.
- Renamed commercial districts.
- Removal of the C-OPI – Office, Professional and Institutional District.

- Rezoning of C-OPI zones to C-OP District.
- Removal of planned development (PD) districts from the Code. Existing PD districts will be maintained but no new ones will be able to be created.
- Prohibiting changes to lot topography to raise the grade to meet base flood elevation requirements townwide.
- Inclusion of a list of prohibited building materials.
- Inclusion of provisions related to front porch encroachments in front yards.
- Establishment of essential services as special exceptions in all districts.
- Inclusion of prohibition on drive-through or drive-up windows townwide.
- Inclusion of regulations related to sidewalk sales.

## **Article II – Districts (formerly “Administration”):**

The administration section has been relocated toward the end of the draft code (Article V), which is more typical in modern zoning codes and more intuitive as one needs answers to basic questions about the use and development of their property prior to understanding how to apply for approvals.

The most utilized provisions are related to use and development standards, so they are front and center in the draft code following the introductory provisions. Most of the proposed changes to the current code are within the Districts section of the draft code.

Article II begins with introductory provisions for all residential districts, including a table listing the districts, a provision alerting the user that additional regulations may apply, and a general provision on accessory structures and uses. This approach avoids the need to repeat these provisions in every district section.

Prohibited uses have been removed in favor of a general provision in Article I stating that any land uses not specifically listed as permitted or permitted by special exception are deemed prohibited.

Article II is organized in a similar manner as the existing code with a progression from the least intense zoning districts to the most intense zoning districts.

Because there are only two uses permitted in each of the R-A and R-AA districts, we consolidated two sections into a single sentence.

Throughout the Districts section we eliminated redundancies, including provisions that appear in every district section such as “prohibited uses,” “exceptions to yard regulations,” “exceptions to height limitations,” lot grade, topography and drainage,” “supplementary district regulations,” “off-street parking and loading,” “signs,” and air conditioning and generator equipment.” These provisions have been consolidated and moved to Article III.

Coupling of like districts (i.e. the Estate Residential Districts of R-AA and R-A; the Neighborhood Residential Districts of R-B and R-C; the Multi-Unit Residential Districts of the R-D(1) and R-D(2)) to streamline the code.

We carried forward the exceptions to the development standards for redevelopment in the Sea Streets and the Worth Avenue special considerations. We did not incorporate the Worth Avenue Design Guidelines except by reference. The recently adopted CI - Cultural Institutional District was carried forward but reorganized and reformatted for inclusion in the draft code.

The C Conservation District and the B Beach Area District were both carried forward with minimal substantive changes.

#### *Residential Districts and Natural Area Districts:*

The Diagnostic Report did not recommend any considerations for the R-AA and R-A districts other than reformatting and inclusion of tables. The draft code reflects no substantive changes in these districts.

Many of the considerations in the Diagnostic Report (pp. 20, 21) relative to the R-B and R-C district have been implemented at least in concept.

The Diagnostic Report did not contain any considerations for the R-D(1) and R-D(2) districts, but substantive changes have been made based on feedback from surveys completed by the South End Condominiums in August 2024.

For the Town's review and consideration, the proposed substantive policy changes in Article II – Districts (Residential) are as follows:

- Renaming of the commercial districts.
- The height of accessory structures is tied to the principal structure (i.e. one-story principal structure may have a one-story accessory structure) rather than lot size.
- The height to the top of the roof of an accessory structure may extend to two feet less than the principal structure rather than capping it at 15 ft. for a one-story accessory structure and 25 ft. for a two-story accessory structure.
- Limitation on accessory structures to not more than 50% of the gross floor area of the principal structure.
- Removal of the angle of vision concept from the Code.
- Removal of building height plane concept from the Code.
- Removal of the CCR – cubic content ratio concept from the Code.
- In all residential districts, the introduction of 10-foot rear and side yard setbacks for accessory structures.
- In all residential districts, the introduction of maximum impervious surface coverage in lieu of landscaped open space requirements, the determination of coverage percentages, and the requirement for all other areas of a lot to be pervious surfaces.

- In all districts, requiring that at least 45% of the front yard must be landscaped.
- Allowing essential services only as a special exception use and eliminating all other special exception uses in the R-AA, R-A, and R-B districts.
- In the R-B district, the introduction of different minimum setbacks for one-story and two-story residences; larger setbacks for two-story residences than one-story residences.
- In the R-B district, the introduction of a maximum building footprint for one-story and two-story residences with no difference between one-and-two-story residences in the smaller-lot Sea Streets area of the R-B district.
- In the R-B district, the introduction a maximum second-floor gross floor area that is a maximum of 90% of the first-floor gross floor area to ensure the second floor will step back from the first floor in some manner.
- In the R-B district, the introduction of an incentive to construct one-story courtyard residences by allowing the minimum setback requirements for a courtyard residence to be reduced by up to five feet, allowing the building footprint to be increased by 10%, and not counting the courtyard toward maximum building footprint.
- In the R-C district, the introduction of the concept of townhouse building groups and a requirement that no fewer than three and no more than five townhouses are permitted in a townhouse group. The townhouse regulations in the R-C district apply to the R-D(1) district.
- In the R-D(1) and R-D(2), introduction of a prohibition on the use of building rooftops for recreational activities and resident amenities unless the rooftop is the top of a parking structure that is no higher than 20 feet above grade.
- Introduction of a shared access incentive along Highway A1A.
- Allowing beach and pool cabanas and private outdoor sporting facilities by right in the B Beach Area District.

#### Commercial Districts:

Most of the considerations in the Diagnostic Report (pp. 22-26) relative to the commercial districts have been implemented in the draft code at least in concept. Generally, the commercial districts have been coded to preserve and maintain the characteristics of the Town's four distinct commercial districts.

For the Town's review and consideration, the proposed substantive policy changes in Article II – Districts (Commercial) are as follows:

- New commercial districts.
- Removal of the C-OPI – Office, Professional and Institutional District.
- Rezoning of C-OPI zones to C-OP District.
- Simplification of use categories.
- Introduce requirement that properties along Peruvian Avenue comply with the Worth Avenue District Design Guidelines.

- New regulations on arcades and colonnades
- Allow up towers to extend up to 10 feet above the roofline rather than 5 feet.

### **Article III – Generally Applicable Regulations**

The existing Supplementary District Regulations have been moved to Article III and renamed “Generally Applicable Regulations.” These regulations apply generally to all districts. The following is a side-by-side comparison of the existing Article VIII – Supplementary District Regulations outline and the draft Article III – Generally Applicable Regulations outline:

<b>Existing Divisions</b>	<b>New Sections</b>
Division 1. Generally.	Parking & Loading
Division 2. Lot, Yard and Area Requirements.	Signs
Division 3. Height and Other Exceptions.	Landscape & Buffering
Division 4. Streets.	Walls, Fences & Gates
Division 5. Walls and Fences.	Other Generally Applicable Regulations
Division 6. Structures.	Telecommunication Towers & Antennas
Division 7. Accessory Uses.	Distribution Electric Substations
Division 8. Automotive Businesses.	Condominium Hotels
Division 9. Multifamily Dwellings (Apartments), Timeshares and Hotels.	Medical Marijuana Treatment Centers and Dispensaries
Division 10. Residential Uses.	
Division 11. Commercial Uses.	
Division 12. Telecommunication Towers and Antennas.	
Division 13. Distribution Electric Substations.	
Division 14. Conditional Approval of a Special Exception for Sidewalk and/or Private Property Outdoor Cafe Seating Only for Restaurants, Dining Rooms, Retail Specialty Food Including the Sale of Prepared Food for Takeout Only, and Private Social, Swimming, Tennis and Yacht Clubs.	
Division 15. Condominium Hotels.	
Division 16. Reasonable Accommodation Procedures.	
Division 17. Medical Marijuana Treatment Centers and Medical Marijuana Dispensaries.	

Much of the substance of the generally applicable regulations have been retained. The landscaping and buffering section has mostly been carried forward other than organization.

The following sections have not been reviewed and will be separately reviewed following the delivery of the administrative review draft. They have been placed in the draft in their unedited form pending review:

- Telecommunications Towers and Antennas
- Medical Marijuana Treatment Centers and Dispensaries

Most of the considerations in the Diagnostic Report (p. 28) relative to generally applicable regulations have been incorporated into the draft code.

For the Town's review and consideration, the proposed substantive policy changes in Article III – Generally Applicable Regulations are as follows:

- Allowing the Director to count on-street spaces within 400 feet for up to 25% of the required minimum parking in commercial districts.
- Increase minimum parking space dimensions to 9' x 20' rather than 9' x 18' to accommodate the lengths of modern personal pickup trucks and SUVs.
- No parking on any street narrower than 30 feet except for up to two service vehicle per lot for no more than 8 hours each day.
- No overnight parking on any street except for streets with a sidewalk on both sides of the street.
- No parking on any street divided by a double yellow line or other lined street.
- All driveway entrances on a street divided by a double yellow line or other lined street shall have at least one convex safety mirror of at least 24 inches in diameter always positioned to show traffic on the street.
- No parking on the first 20 feet of a driveway. All driveways must be at least 22 feet in length.
- No circle driveway shall have curb cuts separations of less than 30 feet.
- No circle driveway on any lot less than 10,000 sq. ft. in total area unless on a corner lot.
- No circle driveway that does not lead to a garage or carport unless on a corner lot.
- No more than two curb cuts per lot unless on a corner lot.
- No black or dark gray asphalt shingles permitted on any roof.
- R-AA districts allowed surface parking lots for household employees or other invitees up to one space per 2,500 square feet of GFA, in the side or front yard only, fully screened from view from the public right-of-way. No shared or off-site parking shall be allowed.
- No more than one principal building on a lot except in the R-D(1) and R-D(2) districts.



- Shared access in the R-D(2) district along Highway A1A, then allow for an additional 5% of impervious surface coverage.
- “Green roofs” and vegetative roofs shall be allowed on all commercial and multi-unit buildings.
- All flat roofs shall be by white or off-white EPDM rubber roofing materials. No black tar paper or dark colored roofs permitted.
- No commercial application shall have carports unless they have solar roofs.
- All walls shall be set back a minimum of 3 feet from the street no matter the height of the wall (currently above 4 feet only).
- The use of artificial turf is prohibited.
- No accessory structure shall be more than 50% of the GFA of the principal structure.
- No unfinished concrete or metal shall be located on the exterior of any building.
- Freestanding awnings, carports, portable beach and swimming pool cabanas do not count toward building coverage or impervious surface coverage.
- Prohibition on hard ball racquet sports like pickleball in single-unit residential districts.
- 10 ft. setbacks for all yard equipment rather than five foot setbacks.
- Remove requirement that pool and fountain equipment be no more than 25 feet from the pool or fountain.
- Stricter substation requirements for all districts not just residential districts.
- Relocation of off-street parking permit regulations from zoning code to other section of Town of Palm Beach Code of Ordinances.
- Establishment of four permitted sign types.
- Prohibition on use of razor or Constantine wire.
- Prohibition on use of exposed unfinished concrete, exposed concrete masonry units, exposed glass block, or other unfinished materials on walls.
- Removal of requirement that pool equipment be located 25 ft. or less from the pool.
- Requirement that all equipment in the side yard be setback 10 ft. instead of 5 ft.
- More specific landscaping requirement for dumpsters and recycle containers located near a residential district.

#### **Article IV – Nonconformities.**

The nonconformities provisions have been rearranged generally under the categories of Nonconforming Uses and Nonconforming Buildings & Structures.

For the Town’s review and consideration, the proposed substantive policy changes in Article IV – Nonconformities are as follows:

- Remove the concept of allowing variances for nonconformities.

#### **Article V – Administration and Procedures.**

Existing Article II - Administration has been relocated to Article V – Administration and Procedures, and has been rearranged for legibility and ease of use. The following section has not been reviewed and will be separately reviewed following the delivery of the administrative review draft. It has been placed in the draft in its unedited form pending review:

- Reasonable Accommodation Procedures

Other than significant rearranging and rewording, there are only a few substantive policy changes for the Town’s review and consideration:

- Removal of the town serving requirement for determining special exceptions.
- Requiring site plan review of all new construction, additions, and alterations townwide.

### **Article VI – Glossary.**

Definitions currently located in Article I – “In General” and have been relocated to Article VI – Glossary. All defined terms have been updated according to any changes in usage in the Code.

Generally, outmoded and imprecise terms were removed. Additionally, defined terms that act as regulations were removed in favor of regulations in the substantive sections of the Code. The “Palm Beach Acre” of 40,000 square feet has been revised to the true area of an acre, 43,560 square feet.

The following terms were added to the Glossary:

- Accessory Structure
- Accessory Use
- Aisle
- Arcade
- ARCOM
- Auditorium
- Colonnade
- Courtyard Residence
- Cultural and Arts Institution, Not-For-Profit
- Density
- Dining, Accessory
- Dining, Full-Service
- Dining, Limited Service
- Director
- Easement Area
- Façade
- Fence

- Gable
- Home Occupation
- Impervious Surface
- Lighting, External Direct
- Lodging
- Lot, Irregular Shaped
- Lot Line, Front
- Lot Line, Rear
- Lot Line, Side
- Lot Line, Street
- Lot Line, Interior
- Pedestrian Via
- Pharmacy
- Portico
- Primary Pedestrian Entrance
- Private Outdoor Sporting Facility
- Public Services
- Recreation, Outdoor
- Religious Services
- Residential, Upper Floor
- Retail
- Sales
- School
- Services
- Setback, Front
- Setback, Rear
- Setback, Side
- Sign, Building Entrance
- Sign, Facade
- Sign, Pedestrian Via Overhead
- Sign, Temporary Yard
- Sign, Window and Door
- Single-Unit Dwelling
- Sleeping Quarters
- Solar Panel
- Special Event
- State
- Statue or Sculpture
- Street, Side
- Structure, Habitable
- Studio Activities

- Studio, Art
- Swimming Pool
- Theater
- Two-Unit Dwelling
- Townhouse Group
- Vehicular Parking
- Vehicular Services
- Veterinarian Clinic
- Zone

The following terms were removed from the Glossary as they are no longer used in the draft Code or are adequately addressed or defined elsewhere in the Code:

- Auto Rental Lot
- Awning, Sidewalk
- Bar/Lounge
- Building Angle of Vision
- Building, Height of
- Building Height Plane
- Business Services
- Change in Generic Use
- Commercial Use
- Cubic Content Ratio (CCR)
- Drive-In Use
- Executive/employee/group Vacation Retreat
- Executive Office Suites
- Family
- Floor Area Total
- Foster Care Facility
- Garage, Storage
- Generic Use
- Historically or Architecturally Significant Multifamily Structure
- Motel
- Landscaping, Required
- Manufactured Housing
- Municipally Owned or Operated
- Office, Veterinarian
- Parking, Principal of Equivalency
- Parking, Required
- Parking, Supplemental
- Public/Private Group
- Public Structures

- Quasi-Commercial
- Residential Use
- Restaurant
- School, Professional or Studio-Type
- Service Station
- Sign, Artisan
- Sign, Awning
- Sign, Banner
- Sign, Business Directory
- Sign, Building Identification
- Sign, Development
- Sign, Illuminated
- Sign, Individual Business
- Sign, Menu
- Sign, Official Traffic
- Sign, Property Identification
- Sign, Sale or Rental
- Sign, Tow-Away
- Sign, Yard
- Structure, Public
- Timesharing
- Town-serving
- Variance

We look forward to discussing the administrative review draft with you and receiving your comments/questions.

