



**TOWN OF REDINGTON BEACH, FLORIDA
PLANNING BOARD
REGULAR MEETING AGENDA
June 30, 2021**

The Planning Board of the Town of Redington Beach, Florida will meet on Wednesday, June 30, 2021 at 7:00 p.m. in Redington Beach Town Hall, at 105-164th Avenue, Redington Beach Florida.

Pledge of Civility

We will be respectful of one another even when we disagree.

We will direct all comments to the issues.

We will avoid personal attacks.

"Politeness costs so little." – Abraham Lincoln

- 1. CALL TO ORDER**
- 2. PLEDGE OF ALLEGIANCE TO THE FLAG**
- 3. ROLL CALL**

David Christ	Chairman
Ed Fernandez	Member
Louis Golda	Member
Pete Mattson	Member
Tim Thompson	Member
Steven Miller	Alternate Member
Hayward Chapman	Alternate Member

- 4. AGENDA APPROVAL – June 30, 2021**
- 5. PAST MEETING MINUTES APPROVAL – April 27, 2021**
- 6. PUBLIC FORUM FOR NON-AGENDA ITEMS**
- 7. UNFINISHED BUSINESS**

a. ORDINANCE 2021-07 LAND DEVELOPMENT REGULATION AMENDMENT - An Ordinance of the Town of Redington Beach, Pinellas County, Florida, Amending Chapter 6 (Buildings and Building Regulations), Sections 6-65, Article VII, Including Sections 6-208 and 6-209, of the Town Code to Reconcile Said Sections and to Remove Conflicting Provisions, to Reflect The Town's Actual Experience with the Construction of the Regulated Mechanical Fixtures, to Make Related Changes; and to Remove Outdated, or Unenforceable Provisions; Making Related Findings; Providing for Severability, and Establishing An Effective Date. – Advertised Public Hearing

8. NEW BUSINESS

a. ORDINANCE 2021-11 LAND DEVELOPMENT REGULATION AMENDMENT: An Ordinance of the Town of Redington Beach, Pinellas County Florida, Repealing in Part Section 4 of Appendix A, of the Town Code Establishing a Fire Rating Requirement for Certain Walls and Requiring a Minimum Story Height, Making Related Findings; Providing For Severability; And Establishing An Effective Date. – **Advertised Public Hearing**

b. ORDINANCE 2021-12 LAND DEVELOPMENT REGULATION AMENDMENT: An Ordinance of the Town of Redington Beach, Pinellas County, Florida, Amending Town Code, Section 6-289 (f) by Clarifying the Circumstances in, and the Procedures by, which a De Minimis or Administrative Variance May be Granted by the Building Code Administrator, Providing For Severability; And Establishing an Effective Date. – **Advertised Public Hearing**

c. Re-review of the Future Land Use Element (FLUE) of the Comprehensive Plan

9. OTHER BUSINESS

10. ADJOURNMENT

One or More Elected or Appointed Officials May Be In Attendance

Please Note: If a person decides to appeal any decision made by the Planning Board with respect to any matter considered at the above cited meeting, the person will need a record of the proceedings and, for such purpose, may need to ensure that a verbatim record of the proceedings is made which record includes the testimony and evidence upon which the appeal is to be based. The Town maintains an audio recording of all public hearings. In the event that you wish to appeal a decision, the recording may or may not adequately ensure a verbatim record of the proceedings; therefore, you may wish to provide a court reporter at your own expense (F.S. 286.0105, Florida Statutes). In accordance with the Americans with Disability Act and Florida Statutes 286.26, persons with disabilities needing special accommodations to participate in the proceedings should contact the Town Clerk's Office with your request. Phone (727) 391-3875 or Fax (727) 397-6911 for assistance; if hearing impaired, contact the Florida Relay Service Numbers (800) 955-8771 (TDD).

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TOWN OF REDINGTON BEACH, FLORIDA
PLANNING BOARD MINUTES

Tuesday April 27, 2021
7:00 PM

Having been duly advertised as required by law, The Regular Meeting of the Planning Board of the Town of Redington Beach, Florida, was held on Tuesday April 27, 2021, at 7:00 PM, in Redington Beach Town Hall at 105 164th Avenue, Redington Beach, Florida.

Chair David Christ called the **Planning Board Meeting** to order and led the Pledge of Allegiance at 7:00 PM.

Roll Call

	Present	Absent
Chair David Christ	X	
Vice Chair Ken Lotterhos		Resigned
Member Ed Fernandez	X	
Member Lou Golda	X	
Member Peter Mattson		X
Alternate Steven Miller	X	
Alternate Tim Thompson	X	
Town Planner Bruce McLaughlin	X	
Building Official Bruce Cooper		X

Also in attendance were Mayor David Will; Lynn Barnett, PE, LTA Engineering; and Adriana Nieves, CMC, Deputy Town Clerk.

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Approval of Agenda of April 27, 2021

Chair David Christ moved Agenda Item 8B to be before Item 8A.
The amended Agenda was approved by the Planning Board.

	Motion	Second	Aye	Nay	Absent
Chair David Christ			X		
Member Ed Fernandez	X		X		
Vice Chair Lou Golda		X	X		
Member Peter Mattson					X
Alternate Steven Miller			X		
Alternate Tim Thompson			X		

Approval of Past Meeting Minutes of March 30, 2021

The Past Minutes was approved by the Planning Board.

	Motion	Second	Aye	Nay	Absent
Chair David Christ			X		
Member Ed Fernandez		X	X		
Vice Chair Lou Golda	X		X		
Member Peter Mattson					X
Alternate Steven Miller			X		
Alternate Tim Thompson			X		

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Election of New Vice-Chair

A motion by Steven Miller and seconded by Tim Thompson to appoint Lou Golda to Vice Chair was approved.

	Motion	Second	Aye	Nay	Absent
Chair David Christ			X		
Member Ed Fernandez			X		
Vice Chair Lou Golda			X		
Member Peter Mattson					X
Alternate Steven Miller	X		X		
Alternate Tim Thompson		X	X		

Public Forum for Non-Agenda Items

No comments from the public.

Unfinished Business**A. Wastop Valve Installation (former Agenda Item 8B).**

Update by LTA Engineer Lynn Burnett, PE.

LTA Engineers made a map from County data to demonstrate the effectiveness of the Wastop valves. The map displays the approximate protective coverage area of the proposed Wastop valves. Because we do not have a topographic map of the entire Town, we cannot determine the actual protective coverage area.

Currently undergoing is a field investigation to determine the outfall pipe cleaning, repairs, and sediment removal that is required prior to install the Wastop valves. The team will present an estimate of cost to the Board of Commissioners on the May 19, 2021 meeting.

Three Wastop valves are being installed per the received grant and an additional six Wastop valves will be installed in other areas of the town for a total of nine Wastop valves to be installed.

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Member Lou Golda: What are the sizes of the Wastop valves.

Lynn Burnett: The valves vary in sizes depending on the pipe diameters. The Town has 30 inch and some 36 inch pipes. The Wastop valves start at 12 inches.

Alternate Tim Thompson: If you had an outfall pipe say 15 feet away from the protective area, will water flow into the protective area from the unproductive outfall pipe?

Lynn Barnett: No, not necessarily.

Alternate Steven Miller: Does this project protect from water coming over the seawall?

Lynn Burnett: No. This project will protect to the lowest elevation of the lowest seawall.

Alternate Steven Miller: Do we know the elevation that the valves will be protected.

Lynn Burnett: The Town has some low sea walls we do not have the number of the lowest seawall.

Member Lou Golda: Will the Wastop valves increase flooding because water is being pushed to a different area?

Lynn Burnett: No. The Wastop valves will reduce the flooding in the town. The Wastop valves will not not completely stop flooding because a higher storm surge will go over the sea walls.

Member Ed Fernandez: How many valves and in what areas?

Lynn Burnett: Nine valves in five areas.

Public Comment

No comments from the public.

B. Ordinance 2020-01 Comprehensive Plan Amendment (former Agenda Item 8A). Has been properly advertised as an Advertised Public Hearing.

An Ordinance of The Town of Redington Beach, Pinellas County Florida, Amending the Town's 2008 Comprehensive Plan's Infrastructure Element to incorporate policies related to and adopting the Town's Ten Year Water Supply Facilities Work Plan, in accordance with the mandates set forth in Chapter 163, Florida Statutes, specifically Section 163.3177(6)(C)3, and based on updated data and analysis; Providing for Severability; And Establishing An Effective Date.

Town Planner Bruce McLaughlin: Read Agenda Item 8A and commented that this ordinance is back for a renewed finding of consistency to the Comprehensive Plan because of the Objections, Recommendations and Comments (ORC) report recommended changes to the Water Supply Work Plan. My attempt to the Water Supply Plan was to be very grainier because the Town is built out and only a few vacant lots remain. The expected population swing is 10 to 15 people. Not a large increase in the population in context to Pinellas County who provides the water supply. Pinellas County Utilities pointed out an error in the

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original WSWFP with respect to the volume of water supplied by PCU and that error is corrected. The ORC report recommended three changes.

1. Leave police IE 1.2.5 in the Comprehensive Plan to review the Water Supply Plan every five years because this is a re-occurring obligation.
2. Adopt the SWFMD numbers for the Water Supply Facilities projection.
3. Have two planning horizons a five year and beyond five year Future Land Use Map (FLU).

Staff recommends no change to the Ordinance 2020-01 in response to Comment 3 the Future Land Use Map because the FLU is attached to ordinance that will not change and with a population of at most 15 people no expected future changes to FLU.

Alternate Steven Miller: Why should we use the SWFMD numbers if you used actual numbers?

Bruce McLaughlin: The state has more confidence in the SWFMD numbers.

Alternate Steven Miller: What causes the difference in the numbers?

Bruce McLaughlin: SWFMD uses modeling to estimate the projections, I used actual numbers for the projection. However, the difference between the two sets of numbers is not that great.

Public Comment

No comments from the public.

A motion by Ed Fernandez and seconded by Lou Golda that the Redington Beach Planning Board find proposed ORDINANCE 2020-01, as revised, to be consistent with the balance of the Town Comprehensive Plan and recommend to the Town Board approval of the ordinance and the attached Water Supply Facilities Work Plan. The Planning Board endorses the Staff response to ORC Comment 3 was approved.

	Motion	Second	Aye	Nay	Absent
Chair David Christ			X		
Member Ed Fernandez	X		X		
Vice Chair Lou Golda		X	X		
Member Peter Mattson					X
Alternate Steven Miller			X		
Alternate Tim Thompson			X		

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New Business

A. Discussion of Proposed Ordinance 2021-07, Mechanical Location of Generators, Air Conditioning Units, and Pool Equipment

An Ordinance Of The Town Of Redington Beach, Pinellas County, Florida, Amending Chapter 6 (Building and Building Regulations), Section 6-65, 6-208, and 6-209, of the Town Code to reconcile said sections and to remove conflicting provisions, to reflect the Town's actual experience with the construction of the regulated mechanical fixtures, to make related changes; and to remove outdated, or unenforceable provisions; Making Related Finding; Providing For Severability; and establishing an Effective Date.

Bruce McLaughlin, Town Planner: Read Agenda Item 9A. This ordinance is for review because variance requests have revealed conflicts between different Town codes of similar mechanical equipment. The present code does not permit pool equipment in lot set-back areas however air conditioners ~~and generators~~ are allowed. The change to the ordinance is to allow generators, air-conditioning units, and pool equipment in back yards or side yards within specified set backs. This ordinance will need to go before a public hearing.

A discussion among the Planning Board that we have already reviewed this ordinance several years ago and agreed to these changes. It was determined that the changes previously approved by the Planning Board were never written into the ordinance.

Alternate Tim Thompson: Will the set backs work for corner lots?

Bruce McLaughlin: Corner lots have different set back rules, I will verify these set backs will function for corner lots.

Public Comment

No comments from the public.

A motion by Tim Thompson and seconded by Ed Fernandez that the Redington Beach Planning Board tentatively find ORDINANCE 2021-07 to be consistent Town Comprehensive Plan and make a tentative recommendation of approval and set the ordinance for an advertised public hearing was approved.

	Motion	Second	Aye	Nay	Absent
Chair David Christ			X		
Member Ed Fernandez		X	X		
Vice Chair Lou Golda			X		
Member Peter Mattson					X

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Alternate Steven Miller			X		
Alternate Tim Thompson	X		X		

Other Business

No other business.

Adjournment

Meeting was adjourned at 7:38 PM by Chair.

Next Planning Board meeting: To be called by Chair.

Adriana Nieves, CMC
Deputy Town Clerk

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BRUCE McLAUGHLIN CONSULTING SERVICES, INC.

900 Gulf Boulevard, Suite 303
Indian Rocks Beach, Florida 33785
Phone: 727/595-7634 Cell: 727/244-7311
Email BruceSandy@aol.com

June 28, 2021

Meeting Date: June 30, 2021
Advertised Public Hearing
Agenda Item 7 a

MEMORANDUM

TO: Redington Beach Planning Board
FROM: R. Bruce McLaughlin, AICP, MCIP, Town Planner
SUBJECT: Proposed Ordinance 2021-07, Mechanical Code Amendment

EXECUTIVE SUMMARY

Recent experience with permit applications for emergency generators and for swimming pool equipment has revealed conflicts between different Town codes and disparate treatment of similar mechanical equipment. Similar issues can reasonably be expected to arise with water conditioning and solar energy equipment. The Administration directed the preparation of an amending ordinance to cure these existing and anticipated conflicts and discrepancies. **STAFF RECOMMENDS THAT THE BOARD FIND ORDINANCE 2021-07 CONSISTENT WITH THE TOWN'S COMPREHENSIVE PLAN AND RECOMMEND ITS APPROVAL TO THE TOWN BOARD.**

BACKGROUND

Applicant	Town of Redington Beach
Affected Area	Entire Town

Ordinance 2021-07 amending aspects of the Town's land development regulations as to the permitted locations for emergency generators and for water conditioning, solar energy and swimming pool equipment, and amending parts of the town's Mechanical Code, is a land development regulation:

(26) "Land development regulations" means ordinances enacted by governing bodies for the regulation of any aspect of development and includes any local government zoning, rezoning, subdivision, **building construction**, or sign regulations or any other regulations controlling the development of land, except that this definition does not apply in s. 163.3213. [Emphasis Added]

Section 162.3164(26), F.S.

June 28, 2021

In turn, “development” is defined:

(1) The term “development” means the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels. [Emphasis Added]

Section 380.04(1), F.S.

Accordingly, Ordinance 2021-07 requires review by the Planning Board/Local Planning Agency to ensure its consistency with the Town’s Comprehensive Plan and for a recommendation of approval or disapproval of the Ordinance.

THE REQUEST

That the Planning Board review proposed Ordinance 2021-07, find the Ordinance consistent with the Town’s Comprehensive Plan and recommend it to the Town Board for approval.

AUTHORITY

Pursuant to §§ 4 and 5 of the Town Charter, the Town is governed by the Board of Commissioners which may exercise all powers available to a municipality under the Constitution and laws of the State of Florida. Those powers include preparing and adopting (via § 15-56 of the Town Code), a comprehensive plan for the Town and related land development and other, related, regulations.

The proposed amendment to the Town’s Mechanical Code is an amendment to a land development regulation as defined by § 163.3164(26), F.S. Accordingly, § 163.3174(2)(c) and Town Code § 15-34 require this Board to review the subject ordinance and make a determination of its consistency with the Town’s Comprehensive Plan. The Board should also make a recommendation as to the adoption of Ordinance 2021-07.

NOTICE

The Clerk’s office will provide proof of the notice of this advertised public hearing.

ANALYSIS

Comprehensive Plan Consistency

Ordinance 2021-07 is consistent with the following Future Land Use Element policies:

Policy 1.1.2

Residential areas shall be located and designed to protect life and property from natural and manmade hazards such as flooding, excessive traffic, subsidence, noxious odors and noise.

Policy 1.1.4

The Town shall continue to implement performance standards, such as buffering and open space requirements, within the land development regulations, as appropriate.

Policy 3.1.4

6. Ensure the compatibility of adjacent land uses and provide for adequate and appropriate buffering;

Therefore, the buffering and noise control provisions of Ordinance 2021-07 for the governed mechanical equipment: HVAC, emergency generators, water conditioning, solar and swimming pool equipment, make the Ordinance consistent with the Town's Comprehensive Plan.

Other Factors

There are also conflicting regulations with respect to the locational criteria for generators. There is a general exemption from the setback requirements for HVAC equipment and, nominally, generators, contradicted by the specific, and therefore governing, regulation of generators. These contradictions require resolution and the code language of these sections is less than clear, another compelling reason to amend the code.

Unbeknownst to current staff, these issues also arose before the Planning Board in February, 2017. At that time, this Board recommended (a recommendation never acted upon), that all mechanical equipment be treated with similar regulations and that that treatment also be extended to water conditioning and solar energy equipment. The proposed Ordinance incorporates this Board's wishes, applying to HVAC, emergency power, solar, swimming pool and water conditioning equipment and establishing the same locational and noise standards for each of these types of technical equipment.

June 28, 2021

The setback requirement is also the same as that for sheds, thereby furthering the uniformity of the regulations throughout the accessory items that might be found in a side or rear yard. The proposed uniform setback is 2.5 (two and a half) feet – wide enough not to impede emergency egress but narrow enough to significantly improve the design flexibility for these standard accessory items.

RECOMMENDATION

**STAFF RECOMMENDS THAT THE BOARD FIND ORDINANCE 2021-07
CONSISTENT WITH THE TOWN'S COMPREHENSIVE PLAN AND MAKE A
RECOMMENDATION OF APPROVAL**

ORDINANCE 2021-07

AN ORDINANCE OF THE TOWN OF REDINGTON BEACH, PINELLAS COUNTY, FLORIDA, AMENDING CHAPTER 6 (BUILDINGS AND BUILDING REGULATIONS), SECTION 6-65, AND AMENDING ARTICLE VII, INCLUDING SECTIONS 6-208 AND 6-209, OF THE TOWN CODE TO RECONCILE SAID SECTIONS AND TO REMOVE CONFLICTING PROVISIONS, TO REFLECT THE TOWN'S ACTUAL EXPERIENCE WITH THE CONSTRUCTION OF THE REGULATED MECHANICAL FIXTURES, TO MAKE RELATED CHANGES; AND TO REMOVE OUTDATED, OR UNENFORCEABLE PROVISIONS; MAKING RELATED FINDINGS; PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Board of Commissioners of the Town of Redington Beach desires to more effectively and uniformly regulate the installation and operation of different types of mechanical equipment; and

WHEREAS, the Board of Commissioners of the Town of Redington Beach finds that such regulation is in the best interests of the public health, safety and welfare; and

WHEREAS, the Board of Commissioners of the Town of Redington Beach has determined that the amendment of those provisions of Chapter 6 of the Town Code which govern mechanical equipment is necessary to effectively regulate same; and

WHEREAS, the Town Planner has recommended that this Ordinance be adopted; and

WHEREAS, the Town's Planning Board, which serves as its Local Planning Agency, has found this Ordinance to be consistent with the Town's Comprehensive Plan and has recommended approval of the amendment to further consistency with the Town's Comprehensive Plan;

NOW, THEREFORE BE IT ORDAINED by the Board of Commissioners of the Town of Redington Beach, Florida, that:

Section 1. The foregoing whereas clauses are incorporated herein by reference and made a part of hereof.

Section 2. Section 6-65 of the Town Code is amended to read as follows:

Sec. 6-65. - Sheds permitted subject to governing criteria, other Ppermanent installations in building setback areas prohibited.

(a) Utility sheds: permitting, construction, placement and usage.

- (1) **Permitting:** A permit ~~must be issued by the Pinellas County Building Department, on behalf of the town,~~ issued by the Town's Building Official in compliance with established procedures for issuance of building permits, is required prior to construction and/or placement of any utility shed on any property within the town.
- (2) **Construction:** All utility sheds permitted by this section shall comply with structural building regulations in effect at the time of permitting including, without limitation, regulations pertaining to adequate corner tie-downs, and proper wind and water resistance. The wiring or plumbing of utility sheds for electrical, water, sewer, or gas is prohibited.

A maximum of two utility sheds may be erected on any property. The combined square footage of the two sheds shall not exceed 120 square feet (measured along the exterior ~~interior~~ of the walls). The maximum square footage of any single utility shed shall be 80 square feet. The maximum height of any utility shed shall be eight feet, above the adjacent finished grade. The maximum length of any one side of any utility shed shall be 15 feet. Utility sheds constructed in side yards shall be concealed from view from the street.

- (3) **Placement:** No utility shed of any type may be placed within the front yard of any property within the town. Utility sheds may be located in either side yards or rear yards; such utility sheds must meet a setback requirement of a minimum of two and one-half feet from the property line. Utility sheds in rear yards of waterfront properties must meet the same setback requirements for those set forth in this Code for primary structures.
- (4) **Usage:** Utility sheds may only be used for the storage of personal property, and not for the operation of motorized equipment, or for habitation.

(b) All permanent installations of any kind, located above grade, in building setback areas (front, side and rear) ~~is are~~ prohibited except for air conditioning condensing units, emergency power generation systems, swimming pool equipment, water conditioning systems, solar power generating systems, and similar mechanical equipment, and fuel tanks required for same. The placement and operation of permitted mechanical equipment is governed by sections 6-208 and 6-209 of this Code.

Section 3. Sections 6-208 and 6-209 of the Town Code are amended to read as follows:

Sec. 6-208. - Power generator systems.

The following provisions shall regulate the installation and use of power generation systems:

- (a) **Applicability:** This ~~ordinance~~ section applies to all power generation systems for residential use. This section does not apply to governmental or commercial uses. ~~(Reference Florida Building Code, current version adopted, for applicability.)~~
- (b) **Definitions:** For purposes of this section, the following terms shall have the meaning given in this subsection:
- (1) **Generator.** A device used to convert mechanical energy into electrical energy. The mechanical energy is typically produced by an internal combustion engine which requires an external fuel source.
 - (2) **Permanent generator.** ~~Also termed permanently installed generator.~~ A generator fixed in place to a foundation or other immovable platform.
 - (3) **Portable generator.** A movable generator.
 - (4) **Trailer mounted generator.** A generator fixed to a vehicle towable trailer. Typically this is a generator, which if not trailer mounted, would be a permanently installed generator.
 - (5) **Fuel.** A substance consumed by a process and converted into mechanical or thermal energy.
 - (6) **Decibel (dB).** The practical unit of measurement for sound pressure level; the number of decibels of a measured sound is equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the sound pressure of the measured sound to the sound pressure of a standard sound twenty (20) micropascals; abbreviated "dB."
- (c) **Limitations:**
- (1) Generators shall not ~~exceed~~ create noise at a noise level in excess of 70 dB, measured at a distance of 23 feet or seven meters, from the exterior surface of the generator. The noise or sound level shown on the manufacturer's data sheet or specifications for the model in question may be accepted as the unit's noise level. ~~If no measurement distance is stated, it may be assumed that the manufacturer measured the noise level at a distance of 23 feet or seven meters.~~
 - (2) Only gasoline, propane or natural gas fuel may be used for internal combustion engine powered electrical generators.

- (3) Generators requiring ~~diesel fuel~~, or any other fuel, which, if spilled, would be considered so hazardous that an evacuation of the area would be required, or that chemical protective breathing masks and suits would have to be worn by a cleanup crew, are prohibited.
- (4) Wind powered generators for permanent installation on land are prohibited.
- (5) Fuel powered generators shall be used only during periods of power outages or for periodic testing and necessary maintenance operation.
- (6) Fuel powered generators shall not be used to re-sell power.
- (7) Fuel powered generators may be operated for routine testing and maintenance once per week, not to exceed 30 minutes, Monday through Friday only (excluding holidays as defined in section 6-69 of this Code), between the hours of 10:00 a.m. and 5:00 p.m.
- (d) **Location and installation of permanently installed generators:**
- (1) ~~Generators require the installation of e~~Electrical power regulation equipment if ~~connected to the main circuit of the building. Such equipment must be installed~~ by a licensed electrician familiar with power generators in accordance with the electrical code currently ~~adopted by~~ in force in the town.
- (2) Generators may be installed at ground level on an appropriate foundation, such as concrete, unless otherwise prohibited.
- (3) The generator shall be located in the side or rear yards ~~within appropriate setbacks of the subject property. No generator shall be located or operated within 2.5 (two and one half) feet of a side lot line or within 5 (five) feet of a rear lot line.~~
- (4) Generators shall be placed so as to minimize the visual impact on adjacent properties with the use of appropriate sight screening.
- (5) The generator's exhaust shall be, as much as practically feasible, vented upwards or directed away from neighboring properties.
- (6) Generators and fuel tanks may not be located in any easement.
- (e) **Portable generators; additional requirements:**
- (1) Trailer mounted generators are prohibited except during a power outage exceeding

four days.

- (2) Fuel not in containers attached to the generator must be stored at a safe distance from the generator and from any permanent structure as determined by the fire official or code enforcement officer. When such containers are employed, a fire extinguisher(s) suitable for the size of the generator and type of fuel shall be available, nearby the generator and in working order.
- (3) Generators in operation must be located away from any door, window, or other opening to the house, garages included, so that the exhaust does not flow into the house.
- (4) Generators and fuel when not in use must be stored in an enclosed location either in a garage or outside the living space of the house.

Sec. 6-209. - Air conditioning systems, and condenser units, water conditioning, solar and pool equipment.

The following provisions shall regulate the location, height and screening of air conditioning systems, and condenser units, water conditioning, solar and swimming pool equipment, including tanks, valves, inverters, racking, batteries, swimming pool filters, heaters, motors and pumps.

- (a) **Applicability:** This section applies to all permanent installations, such as outdoor air conditioning systems and condenser units, water conditioning, solar energy and swimming pool filters, heaters, motors and pumps, for residential or commercial use.
- (b) **Definitions:** For purposes of this section, the following terms shall have the meaning given in this subsection:
 - (1) **Air conditioning system:** An outdoor mechanical device or unit used to dehumidify, extract, heat and ventilate a residential structure. This shall not include window and through-wall air conditioning units, or portable air conditioning units.
 - (2) **Condenser units:** An outdoor device or unit using cooling water or surrounding air as the coolant of a residential structure.
 - (3) **Solar Power Inverter:** A device or circuitry that converts direct current into alternating current as part of the provision of solar power.
 - (4) **Solar Power Rackers:** A system used to safely affix solar panels to another

surface.

- (5) **Swimming pool filter:** A device that removes dissolved or suspended particles from water by recirculating the water through a porous substance (a filter medium or element). The three types of filters used in pools and spas are sand, cartridge and D.E. (diatomaceous earth).
- (6) **Swimming pool heater:** A fossil-fueled, electric or solar device used to heat the water of a pool, hot tub or spa.
- (7) **Swimming pool motor:** A fossil-fueled, electric or solar device machine that provides power to a swimming pool.
- (8) **Swimming pool pump:** A mechanical device, usually powered by an electric motor, which causes hydraulic flow and pressure for the purpose of filtration, heating and circulation of pool and hot tub water.

(c) **Limitations:**

- (1) All new and replacement air conditioners, ~~and condenser units~~ and water conditioning, solar energy and pool equipment installations shall not exceed a noise level of 60 dB, when measured from the nearest property line ~~or the nearest bedroom window of an adjacent property structure.~~ The noise or sound level shown on the manufacturer's data sheet or specifications for the model in question may be accepted as the unit's noise level. ~~If no measurement distance is stated, it may be assumed that the manufacturer measured the noise level at a distance of 23 feet or seven meters.~~

(d) **Location and installation of permanently installed air conditioner systems, or condenser units, solar energy, water conditioning or swimming pool equipment:**

- (1) All new or replacement air conditioning systems, ~~or condenser units,~~ water conditioning, solar energy or swimming pool equipment require the installation of electrical power regulation equipment if connected to the main circuit of the building. Such equipment ~~must~~ shall be installed by a licensed electrician in accordance with the electrical code currently ~~adopted by~~ in force in the town.
- (2) Air conditioning systems or condenser units, water conditioning or solar energy equipment may be installed at ground level or above grade. Swimming pool equipment shall be installed at ground level. Should any part of the mechanical unit be installed above six feet from grade, said mechanical unit ~~must~~ shall be

concealed using a decorative structure, or materials including, but not limited to louvers, lattice and the like, visually compatible with the building so as to minimize the visual impact on adjacent properties. Screening walls or decorative structures around the equipment may exceed the allowable height limitations provided the height is the minimum required to screen from view the full height of the equipment ~~and the projection into the required yard is the minimum encroachment necessary per manufacturers' specifications.~~

- (3) All new or replacement air conditioner systems, ~~or condenser units, water conditioning, solar energy or swimming pool equipment shall be located within appropriate setbacks.~~ Said mechanical units may not be installed within four feet from the property line 2.5 (two and one half) feet of a side lot line or within 5 (five) feet of a rear lot line.

Section 4. For purposes of codification of any existing section of the Redington Beach Code herein amended, words underlined represent additions to original text, words ~~stricken~~ are deletions from the original text, and words neither underlined nor stricken remain unchanged.

Section 5. If any section, subsection, sentence, clause, provision, or word of this Ordinance is held unconstitutional or otherwise legally invalid, same shall be severable and the remainder of this Ordinance shall not be affected by such invalidity, such that any remainder of the Ordinance shall withstand any severed provision, as the Board of Commissioners would have adopted the Ordinance and its regulatory scheme even absent the invalid part.

Section 6. The Codifier shall codify the substantive amendments to the Redington Beach Town Code contained in Section 1 of this Ordinance as provided for therein, and shall not codify the exordial clauses nor any other sections not designated for codification.

Section 7. Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon adoption.

ADOPTED ON FIRST READING on the ____ day of _____, 2021, by the Board of Commissioners of the Town of Redington Beach, Florida.

ADOPTED ON SECOND AND FINAL READING on the ____ day of _____, 2021, by the Board of Commissioners of the Town of Redington Beach, Florida.

David Will, Mayor

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Approved as to form:

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The first part of the paper discusses the importance of understanding the underlying mechanisms of the observed phenomena. It is argued that a comprehensive understanding of the system requires a detailed analysis of the various factors that influence its behavior. This involves identifying the key variables and their interactions, as well as the underlying processes that govern the system's dynamics.

In the second part, the authors present a series of experiments designed to test the proposed model. These experiments involve the manipulation of various parameters and the measurement of the resulting system response. The results of these experiments are compared with the predictions of the model, and the degree of agreement is discussed.

The third part of the paper focuses on the implications of the findings for the broader field of research. It is suggested that the results of this study have important implications for the understanding of the underlying mechanisms of the observed phenomena, and that these findings may have practical applications in the design and control of similar systems.

Finally, the paper concludes with a summary of the main findings and a discussion of the limitations of the study. It is noted that while the results of this study are promising, further research is needed to fully understand the underlying mechanisms of the observed phenomena and to develop more accurate models of the system's behavior.

BRUCE McLAUGHLIN CONSULTING SERVICES, INC.

900 Gulf Boulevard, Suite 303
Indian Rocks Beach, Florida 33785
Phone: 727/595-7634 Cell: 727/244-7311
Email BruceSandy@aol.com

June 29, 2021

Meeting Date: June 30, 2021

Advertised Public Hearing

Agenda Item 8 a

MEMORANDUM

TO: Redington Beach Planning Board
FROM: R. Bruce McLaughlin, AICP, MCIP, Town Planner
SUBJECT: Proposed Ordinance 2021-11, Appendix A Amendments

EXECUTIVE SUMMARY

Issues have been identified with the last two provisions of Section 4 of Appendix A, "Construction Materials." One provision is preempted by state law; the other is surplusage. Although codified in Appendix A, neither regulation is a "zoning regulation" which requires referendum approval. The preempted provision should be removed from the Town Code to avoid confusion and the surplus provision should be removed to eliminate its impact on development. These changes are consistent with the Comprehensive Plan. **STAFF RECOMMENDS THAT ORDINANCE 2021-11 BE FOUND CONSISTENT WITH THE TOWN'S COMPREHENSIVE PLAN AND BE RECOMMENDED FOR APPROVAL TO THE TOWN BOARD.**

BACKGROUND

Applicant	Town of Redington Beach
Affected Area	Entire Town

Ordinance 2021-11 deletes the last two provisions of Section 4, Construction Materials, of Appendix A to the Town Code;

Except that second story one (1) hour fire rated exterior walls of type VI construction shall be permitted in single-family residences.

For the purposes of Appendix A the minimum height of a "story" shall not be less than eight feet, eight inches (8'8").

The former provision is preempted by state law; the later is surplusage.

June 29, 2021

THE REQUEST

That the Planning Board review proposed Ordinance 2021-11, find the Ordinance consistent with the Town's Comprehensive Plan and recommend it to the Town Board for approval.

AUTHORITY

Pursuant to §§ 4 and 5 of the Town Charter, the Town is governed by the Board of Commissioners which may exercise all powers available to a municipality under the Constitution and laws of the State of Florida. Those powers include preparing and adopting (via § 15-56 of the Town Code), a comprehensive plan for the Town and related land development and other, related, regulations.

The proposed amendment to Appendix A is an amendment to a land development regulation as defined by § 163.3164(26), F.S. Accordingly, § 163.3174(2)(c) and Town Code § 15-34 require this Board to review the subject ordinance and make a determination of its consistency with the Town's Comprehensive Plan. The Board should also make a recommendation as to the adoption of Ordinance 2021-11

Pursuant to the Town Charter:

No amendment, repeal or change whatsoever or exception of any kind to those certain zoning ordinances of the Town of Redington Beach restricting, providing and establishing certain zones and zoning of the Town of Redington Beach, Florida shall be made or affected unless a resolution is duly passed and adopted by the Board of Commissioners of the Town of Redington Beach proposing such change and calling for an election, either at a special or general election or other specific election, whereupon, all of the registered voters of the Town shall vote upon the question for affirmation or approval or disaffirmation or disapproval of the resolution and the proposition contained therein respecting any amendment, repeal or change of any nature in the present zoning laws and ordinances of the Town of Redington Beach. Amendment, repeal or change or any exception of any kind must be approved by at least two-thirds (2/3) of the voters voting on such amendment, repeal or change.

June 29, 2021

However, according to the Town Attorney, the relevant provisions of Section 4 do not fall within the type of zoning regulation which requires referendum approval (see attached). Accordingly, this Ordinance can be treated as an ordinary land development regulation subject to this Board's general authority.

NOTICE

The Clerk's office will provide proof of the notice of this advertised public hearing.

ANALYSIS

Comprehensive Plan Consistency

Ordinance 2021-11 is consistent with the following Future Land Use Element policies:

Goal 3: Land development regulations shall continue to implement the requirements of this comprehensive plan.

Policy 3.1.1

The land development regulations shall contain guidelines for the administration of those land use categories adopted for the Town of Redington Beach.

Policy 3.1.4

The land development regulations shall contain specific and detailed provisions required to implement this comprehensive plan, which, at a minimum: ...

And with the following Housing Element policy:

Policy 1.1.2

The Town shall review ordinance codes, regulations and the permitting process for the purpose of updating and amending in order to increase private sector participation in meeting the housing needs of the town, while continuing to ensure the health, welfare and safety of the residents.

June 29, 2021

Other Factors

However, the first of the subject policies is preempted by the Florida Fire Prevention Code and the Florida Building Code. To avoid confusion, this regulation should be repealed so that it is clear that only the state codes comply.

The second existing provision is arguably inconsistent with the Comprehensive Plan since it is surplusage which has the potential to create difficulties in the lawful expansion of existing homes as developers try to match existing story heights while complying with the Code.

Accordingly, Ordinance 2021-11, repealing these two provisions, is consistent with the Town's Comprehensive Plan.

RECOMMENDATION

**STAFF RECOMMENDS THAT THE BOARD FIND ORDINANCE 2021-11
CONSISTENT WITH THE TOWN'S COMPREHENSIVE PLAN AND MAKE A
RECOMMENDATION OF APPROVAL**

ORDINANCE 2021-11
LAND DEVELOPMENT REGULATION AMENDMENT

AN ORDINANCE OF THE TOWN OF REDINGTON BEACH, PINELLAS COUNTY FLORIDA, REPEALING IN PART SECTION 4 OF APPENDIX A, OF THE TOWN CODE ESTABLISHING A FIRE RATING REQUIREMENT FOR CERTAIN WALLS AND REQUIRING A MINIMUM STORY HEIGHT, MAKING RELATED FINDINGS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Board of Commissioners of the Town of Redington Beach desires to more effectively and uniformly regulate building construction in the Town; and

WHEREAS, the Board of Commissioners of the Town of Redington Beach finds that such regulation is in the best interests of the public health, safety and welfare; and

WHEREAS, the Board of Commissioners of the Town of Redington Beach has determined that the amendment of those provisions of Appendix A to the Town Code which regulate fire-resistant construction but which are preempted by state law and those provisions of Appendix A which regulate story height, should be repealed; and

WHEREAS, the Town Planner has recommended that this Ordinance be adopted; and

WHEREAS, the Town's Planning Board, which serves as its Local Planning Agency, has found this Ordinance to be consistent with the Town's Comprehensive Plan and has recommended approval of the amendment to further consistency with the Town's Comprehensive Plan;

NOW, THEREFORE BE IT ORDAINED by the Board of Commissioners of the Town of Redington Beach, Florida, that:

Section 1. The foregoing whereas clauses are incorporated herein by reference and made a part of hereof.

Section 2. Section 4 of Appendix A to the Town Code is amended to read as follows:

Sec. 4. - Construction material.

Districts Nos. 1, 2 and 3 are hereby zoned for the construction of buildings of masonry construction only as defined in the building code of the Town of Redington Beach and any amendments thereto; provided, however, that alterations or additions, otherwise

conforming to this and other ordinances of the Town of Redington Beach, may be made to any building now existent of the same structural material as that used in the original construction of such building.

~~Except that second story one (1) hour fire rated exterior walls of type VI construction shall be permitted in single-family residences.~~

~~For the purposes of Appendix A the minimum height of a "story" shall not be less than eight feet, eight inches (8'8").~~

Section 3. For purposes of codification of any existing section of the Redington Beach Code herein amended, words underlined represent additions to original text, words ~~stricken~~ are deletions from the original text, and words neither underlined nor stricken remain unchanged.

Section 4. If any section, subsection, sentence, clause, provision, or word of this Ordinance is held unconstitutional or otherwise legally invalid, same shall be severable and the remainder of this Ordinance shall not be affected by such invalidity, such that any remainder of the Ordinance shall withstand any severed provision, as the Board of Commissioners would have adopted the Ordinance and its regulatory scheme even absent the invalid part.

Section 5. The Codifier shall codify the substantive amendments to the Redington Beach Town Code contained in Section 1 of this Ordinance as provided for therein, and shall not codify the exordial clauses nor any other sections not designated for codification.

Section 6. Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon adoption.

ADOPTED ON FIRST READING on the ____ day of _____, 2021, by the Board of Commissioners of the Town of Redington Beach, Florida.

ADOPTED ON SECOND AND FINAL READING on the ____ day of _____, 2021, by the Board of Commissioners of the Town of Redington Beach, Florida.

David Will, Mayor

Attest:

Missy Clarke, CMC, Town Clerk

1 Approved as to form:
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6 Robert Eschenfelder, Town Attorney
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The first part of the paper discusses the importance of understanding the underlying mechanisms of the observed phenomena. This is followed by a detailed analysis of the data, which reveals several key findings. The results indicate that the proposed model is highly effective in capturing the essential features of the system under study. Furthermore, the analysis shows that the system exhibits a high degree of robustness and stability, even under varying conditions. These findings are supported by a series of experiments and simulations, which demonstrate the model's ability to accurately predict the system's behavior. The paper concludes by highlighting the potential applications of the proposed model and suggesting areas for future research.

BRUCE McLAUGHLIN CONSULTING SERVICES, INC.

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Email BruceSandy@aol.com

June 28, 2021

Meeting Date: June 30, 2021
Advertised Public Hearing
Agenda Item 8.b.

MEMORANDUM

TO: Redington Beach Planning Board

FROM: R. Bruce McLaughlin, AICP, MCIP, Town Planner

SUBJECT: Proposed Ordinance 2021-12 – *De Minimis* Variances

EXECUTIVE SUMMARY

A variance is a “safety valve” to preserve the constitutionality of a land development regulation in unusual and unforeseen circumstances. Usually administered by a quasi-judicial board, certain *de minimis* variances are appropriately considered and granted by staff. Ordinance 2020-06 attempted to establish a *de minimis* variance process but was not felt to be sufficiently clear in its grant of authority and establishment of criteria. Ordinance 2021-12 elaborates on staff’s authority to grant *de minimis* variances and on the governing criteria. **STAFF RECOMMENDS THAT THE BOARD RECOMMEND APPROVAL OF ORDINANCE 2021-12.**

BACKGROUND

Applicant	Town of Redington Beach
Affected Area	Entire Town

Ordinance 2021-12 clarifies that the Building Code Administrator (Building Official) has the authority to grant *de minimis* variances and elaborates on the criteria for the consideration of such variances. Ordinance 2020-06 was intended to create this authority and provide adequate criteria but was not felt to have achieved these goals.

In particular, a number of buildings in the Town are undergoing expansion but are being found to have been built in violation of the Town codes when they were built, in some cases more than 50 years ago. In many cases, actual side setbacks are 7.3' or 7.4' instead of the required 7.5 feet. In many cases, particularly if the new construction would represent a further encroachment into the required yards, the current nonconformity creates an impediment to the proposed building expansion.

June 28, 2021

The *de minimis* variance necessary to cure this type of nonconformity is an ideal candidate for an administrative variance or waiver. It should be noted that the grant of a *de minimis* variance is predicated on an absence of malfeasance in establishing the nonconformity in the first place. If there was malfeasance in creating the nonconformity, then a full variance process is required.

Variances generally can be sought from:

- Chapter 5, Boats, Docks and Waterways;
- Chapter 6, Buildings and Building Regulations
- Chapter 7, Concurrency Management System
- Chapter 9, Fire Prevention and Protection
- Chapter 10, Floodplain Management
- Chapter 17, Signs
- Chapter 18.5, Stormwater
- Chapter 19, Streets
- Chapter 19.5, Driveway Connections
- Appendix A, subject to the limitations of the Town Charter ¹

Ordinance 2021-12 grants the Building Code Administrator authority to hear **any** *de minimis* variance application from any land use related regulation in the Town Code, including from the Chapters listed above. However, variances to

- land uses
- residential density
- building height; and
- any provision of the Town's Comprehensive Plan

are specifically prohibited.

In considering an application for a *de minimis* variance, the Building Code Administrator applies the same criteria as the Board of Adjustment along with the special criteria enumerated in the Ordinance. Denial of a *de minimis* variance can be appealed to the Board of Adjustment as an application for a regular variance.

A nearby property owner, who would be entitled to notice of a Board of Adjustment hearing for a regular variance, may appeal the granting of a *de minimis* variance.

¹ Some variances from Appendix A are also variances from provisions of Chapter 6 and have been considered as such.

June 28, 2021

NOTICE

The Clerk's office will provide proof of the notice of this advertised public hearing.

THE REQUEST

That the Planning Board review proposed Ordinance 2021-12 and recommend it to the Town Board for approval.

AUTHORITY

Ordinance 2021-12 is **not** a land development regulation which must be reviewed by the Planning Board for consistency with the comprehensive plan. However, the Town of Redington Beach Planning Board is also the Town's Local Planning Agency (Town Code § 15-27). The Local Planning Agency has the responsibility to:

- (4) The local planning agency shall have the general responsibility for the conduct of the comprehensive planning program. ...

Section 163.3174(4), Florida Statutes, 2019.

ANALYSIS

The variance mechanism is like a "safety valve" to preserve the constitutionality of a land development regulation: *Crone v. Town of Brighton*, 119 N.Y.S.2d 877 (N.Y. Int. App. 1952), or as an "escape hatch" from the strict application of land development regulations: *Lincourt v. Zoning Board of Review, City of Warwick*, 201 A.2d 482 (R.I. 1964).

The year after the Supreme Court found zoning regulations to be constitutionally permissible, (*Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S.Ct. 121 (1926)), the Court decided *Gorieb v. Fox*, 274 U.S. 603, 47 S.Ct. 675 (1927). In *Gorieb*, the Court held:

... The proviso evidently proceeds upon the consideration that an inflexible application of the ordinance may under some circumstances result in unnecessary hardship. In laying down a

June 28, 2021

general rule, such as the one with which we are here concerned, the practical impossibility of anticipating and providing in specific terms for every exceptional case which may arise, is apparent. And yet the inclusion of such cases may well result in great and needless hardship, entirely disproportionate to the good which will result from a literal enforcement of the general rule. Hence **the wisdom and necessity here of reserving the authority to determine whether, in specific cases of need, exceptions may be made** without subverting the general purposes of the ordinance. We think it entirely plain that the reservation of authority in the present ordinance to deal in a special manner with such exceptional cases is unassailable upon constitutional grounds. [Citations Omitted, Emphasis Added]

Variances are not a way of avoiding the law: they are a recognition that no zoning ordinance or other land development regulation could possibly anticipate every land use situation that might arise and the provision of a mechanism for dealing with individual cases. *See, e.g.*, Brown, Robert N., *Varying the Variance*, Cleveland APA Planning & Zoning Workshop, Cleveland, Ohio, November 13, 2015:

In fact, variances are essential to the proper functioning and administration of a zoning code. *Ibid.*

The difference between regular variances adjudicated by the Board of Adjustment and *de minimis* variances adjudicated by the Building Code Administrator is simply one of scale: the Board deals with larger variances while the BCA deals with smaller requests that in almost every case would be considered to be *pro forma* if submitted to the Board.

RECOMMENDATION

That the Planning Board, sitting as the Town's Local Planning Agency pursuant to Chapter 163, Florida Statutes, exercise its authority pursuant to § 163.3174(4), Florida Statutes, 2019 for the general conduct of the Town's comprehensive planning program and recommend that the Town Board adopt Ordinance 2021-12.

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ORDINANCE 2021-12

AN ORDINANCE OF THE TOWN OF REDINGTON BEACH, PINELLAS COUNTY, FLORIDA, AMENDING TOWN CODE, SECTION 6-289 (f) BY CLARIFYING THE CIRCUMSTANCES IN, AND THE PROCEDURES BY, WHICH A *DE MINIMIS* OR ADMINISTRATIVE VARIANCE MAY BE GRANTED BY THE BUILDING CODE ADMINISTRATOR, PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Town Board of Commissioners regularly adopts ordinances amending the Code; and

WHEREAS, part of the Commission's duties include the necessity to ensure that the Town's ordinances, as codified in the Code, are up to date, reflect current actual Town operations, do not contain outdated, redundant or erroneous provisions, and are harmonious with other provisions in the Town Code; and

WHEREAS, in light of the foregoing, the Commission desires to update the authority and clarify the powers and duties of the Town's Building Code Administrator with respect to *de minimis* variances from the provisions of the Town Code's land development and related regulations; and

WHEREAS, the Commission therefore finds that it is in the best interests of the Town, and its citizens, property owners and businesses to adopt this Ordinance and

WHEREAS, the Redington Beach Planning Board has recommended adoption of this Ordinance.

NOW, THEREFORE BE IT ORDAINED by the Board of Commissioners of the Town of Redington Beach, Florida, that:

SECTION 1. Chapter 6 – Buildings and Building Regulations, Article XI. – Board of Adjustment, as amended by Ordinance 2020-06, is further amended by the deletion of section 6-289 (f):

~~—— (f) — A *de minimis* or administrative variance may be granted by the Town's building code administrator without being presented to the board of adjustment so long as it meets the following criteria:~~

~~—— (1) — The structure or use at issue was constructed or commenced lawfully and with the proper permits;~~

~~(2) Such a variance would not be contrary to the public interest or give special benefit to the property owner requesting such a variance;~~

~~(3) The variance, if granted, would not be in violation of the Town's Comprehensive Plan; and~~

~~(4) The deviation being sought does not exceed twelve inches for setbacks and accessory structure heights, or one percent for measurements pertaining to lot dimensions or area. All other prohibitions on the granting of variances contained in Section (d) above are applicable to *de minimis* variances.~~

~~Denial of a *de minimis* variance may be appealed to the board of adjustment subject to the variance criteria set forth in section (b) above.~~

~~When a *de minimis* variance is granted by the Building Official, any "person affected" by the grant of said variance may appeal the granting of the variance to the Board of Adjustment as provided for in section 6-289(c) of the Town Code. A "person affected" by the grant of a *de minimis* variance is a person who would be entitled to notice of a Board of Adjustment hearing on a non-*de minimis* variance pursuant to Code section 6-290(b). No other person shall have standing to appeal the granting of a *de minimis* variance.~~

SECTION 2. Chapter 6 – Buildings and Building Regulations, Article XI. – Board of Adjustment, as amended by Ordinance 2020-06, is further amended by the insertion of a new section 6-289-1, as follows:

Sec. 6-289-1. -*De Minimis* Variances, Approval by the Building Code Administrator

(a) **Statement of Purpose and Intent.** The Town recognizes that:

(1) *De minimis* discrepancies may exist between code-compliant construction and actual construction; and

(2) Therefore situations exist wherein a structure exists that is nonconforming pursuant to the Town's Code; and

(3) Such nonconformity may occur with respect to setbacks, vertical features in required setbacks, landscaping, lot grading or elevations, utility connections, or other requirements of the Town's land development and related regulations; and

(4) There is a rebuttable presumption that said discrepancies are the result of errors in the design, construction and/or permit administration processes and are not the

1 result of malfeasance; and

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3 (5) Said rebuttable presumption may be overcome only by clear and convincing
4 evidence of malfeasance; or

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6 (6) Said *de minimis* discrepancies are the result of code changes since an existing
7 building was constructed; and

8
9 (7) In the absence of malfeasance in the creation of the *de minimis* discrepancy, it is
10 in the public interest to waive strict compliance with the relevant codes or to
11 allow property improvements that incorporate the *de minimis* discrepancy; and

12
13 (8) It is in the public interest that said *de minimis* variances may be granted by the
14 Building Code Administrator without the need for a full Board of Adjustment
15 proceeding.

16
17 (b) ***De Minimis Variance Defined.*** For the purposes of this Code, a *de minimis*
18 variance is a variance which does not exceed twelve inches for setbacks and accessory structure
19 heights, or one percent for all other measurements including those pertaining to lot dimensions or
20 area. All prohibitions on the granting of variances contained in Section 6-289(d) above are
21 applicable to *de minimis* variances.

22
23 (c) ***Criteria for Granting a De Minimis Variance.*** A *de minimis* variance is
24 intended to provide relief when the literal or strict enforcement of the provisions of the Town's
25 land development and related regulations causes unusual, exceptional, unnecessary difficulties or
26 hardship because of the size of the tract, parcel or lot, the topography, the condition or nature of
27 adjoining areas or the existence of other unusual physical conditions, including existing
28 construction features. In such circumstances, the Building Code Administrator, after conferring
29 with the Building Commissioner and the Town Clerk and such other officials as the
30 Administrator deems appropriate, may grant a *de minimis* variance subject to the following
31 criteria:

32
33 (1) The variance request complies with the requirements of Code Section 6-289(b)(3);

34
35 (2) The structure or use at issue was constructed or commenced lawfully and with the
36 proper permits;

37
38 (3) Such a variance would not be contrary to the public interest or give special benefit
39 to the property owner requesting such a variance; and

40
41 (4) The variance, if granted, would not be in violation of the Town's Comprehensive
42 Plan.

(d) **Appeals from the Grant or Denial of a *De Minimis* Variance.** Denial of a *de minimis* variance may be appealed to the board of adjustment subject to the variance criteria set forth in section 6-289(b). When a *de minimis* variance is granted by the Building Code Administrator any “person affected” by the grant of said variance may, within 30 days of the grant of the *de minimis* variance, appeal the granting of the variance to the Board of Adjustment as provided for in section 6-289(c) of the Town Code. A “person affected” by the grant of a *de minimis* variance is a person who would be entitled to notice of a Board of Adjustment hearing on a non-*de minimis* variance pursuant to Code section 6-290(b). No other person shall have standing to appeal the granting of a *de minimis* variance.

SECTION 3. For purposes of codification of any existing section of the Redington Beach Code herein amended, words underlined represent additions to original text, words ~~stricken~~ are deletions from the original text, and words neither underlined nor stricken remain unchanged.

SECTION 4. If any section, subsection, sentence, clause, provision, or word of this Ordinance is held unconstitutional or otherwise legally invalid, same shall be severable and the remainder of this Ordinance shall not be affected by such invalidity, such that any remainder of the Ordinance shall withstand any severed provision, as the Board of Commissioners would have adopted the Ordinance and its regulatory scheme even absent the invalid part.

SECTION 5. The Codifier shall codify the substantive amendments to the Redington Beach Town Code contained in Section 1 of this Ordinance as provided for therein, and shall not codify the exordial clauses nor any other sections not designated for codification.

SECTION 6. Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon adoption.

ADOPTED ON FIRST READING on the ____ day of _____, 2021, by the Board of Commissioners of the Town of Redington Beach, Florida.

ADOPTED ON SECOND AND FINAL READING on the ____ day of _____, 2021, by the Board of Commissioners of the Town of Redington Beach, Florida.

David Will, Mayor

Attest:

Missy Clarke, CMC, Town Clerk

1 Approved as to form:
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6 Robert Eschenfelder, Town Attorney
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10 C:\Red Bch\Board of Adjustment\De Min VariancesB.wpd
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Subject: **RE: Red Bch Code Amendment Question**
Date: 6/16/2021 3:52:52 PM Eastern Standard Time
From: Rob@cityattorneys.legal
To: brucesandy@aol.com
Cc: townclerk@townofredingtonbeach.com, bcooper@safebuilt.com,
mayor@townofredingtonbeach.com, tdorgan@townofredingtonbeach.com,
sskjoldager@townofredingtonbeach.com, tkornijtschuk@townofredingtonbeach.com,
rcariello@townofredingtonbeach.com

Mr. McLaughlin,

Mr. Daigneault was correct that just because a given regulatory provision was included in a local government's zoning code does not make it a zoning provision. It is indeed the case that there are many areas of the Town's zoning code which, had we to do it all over, would better be placed in either the building code, or one of the general police power chapters.

But until the next opportunity comes to more comprehensively revise the zoning code, since Section 4 is (with the exception of the last sentence) effectively a statement of what type of building materials are to be used in construction, and you correctly point out that at least part of it is arguably preempted by the Florida Building Code, I advise that it can be removed by way of ordinance.

As to the last sentence of Section 4 of Appendix A, it provides:

For the purposes of Appendix A the minimum height of a "story" shall not be less than eight feet, eight inches (8'8").

The only other place in the Town Code which uses the word "story" is Section 5(b) of Appendix A, which provides in relevant part:

...and provided further, that in the case of apartments and/or hotels constructed in areas other than that designated for business, the following lot line regulation shall apply, to wit: That in the event of a one-story or more apartment or hotel, the construction of any part thereof shall not approach nearer than ten (10) feet to the side line of the lot or lots upon which the same is constructed, excepting eaves which may approach two and one-half (2½) feet nearer to side lines.

The Section 4 sentence has no impact on the use of the word "story" in Section 5(b), and as it does not appear to have any other referential use in the Code, it is essentially a stray provision and so it, too, can be removed by ordinance. Indeed, while your note states that the sentence is causing problems with respect to remodeling options, since the sentence is confined to "the purposes of Appendix A, and Appendix A doesn't really deal with

stories apart from the passage in Section 5(b) noted above, I'm not even sure how it would be being cited as an impairment to remodeling single family structures.

With respect to whether a referendum would be required to cause the ordinance to become effective, Section 21 of the Town Charter requires a referendum vote on the "amendment, repeal or change...to those certain zoning ordinances of the Town...restricting, providing and establishing certain zones and zoning of the Town..."

Section 4 of Appendix A does not restrict, provide for, or establish any zone or zoning of the Town. Rather, it requires a certain kind of building material be used. Therefore, no referendum would be required to cause the ordinance to come into effect.

Finally, should you recommend that the Town Commission adopt such an ordinance, I would advise that, even though it is not really a zoning matter, since the language is being removed from the zoning code, to remove the argument, the Town should run the ordinance as if it were a zoning ordinance, including having the planning board review it.

I hope that provides the analysis you were requesting. Please let me know if you have any other questions on the matter.

Regards,

Robert M. Eschenfelder, Esquire

Board Certified in City, County and Local Government Law

Rob@cityattorneys.legal

TRASK DAIGNEAULT, LLP

Harbor Oaks Professional Center

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From: Bruce McLaughlin <brucesandy@aol.com>
Sent: Wednesday, June 16, 2021 10:46 AM
To: Robert Eschenfelder <Rob@cityattorneys.legal>
Cc: sskjoldager@townofredingtonbeach.com; townclerk@townofredingtonbeach.com; deputyclerk@townofredingtonbeach.com; bcooper@safebuilt.com
Subject: Red Bch Code Amendment Question

Rob, some time ago Jay opined that not every provision of Appendix A was a zoning regulation, the amendment or repeal of which would require referendum approval. On that premise, may the Town delete the last two provisions of Appendix A, § 4:

Except that second story one (1) hour fire rated exterior walls of type VI construction shall be permitted in single-family residences.

For the purposes of Appendix A the minimum height of a "story" shall not be less than eight feet, eight inches (8'8").

without referendum approval?

The former is obviously preempted by the FBC and the FFPC and the latter serves no apparent legitimate purpose, limits a builder's flexibility under our height limits, and is beginning to potentially cause problems with remodeling projects.

Please advise, thank you.

Sent from [AOL Desktop](#)

Bruce McLaughlin Consulting Services, Inc.
[Bruce](#)
R. Bruce McLaughlin, AICP, MCIP
President
900 Gulf Blvd., Suite 303
Indian Rocks Beach, FL 33785
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**AGENDA ITEM 8c
IS CONTINUED TO A
FUTURE MEETING, DATE
TO BE DETERMINED.**