

**MINUTES
TOWN OF JUPITER ISLAND
BOARD OF ADJUSTMENT MEETING
MONDAY, JANUARY 29, 2024**

1. Call to Order

Director of Building Catherine Harding opened the meeting at 11:03 am, introducing herself and Director of Planning & Zoning Ruben Cruz. Director Harding noted that the meeting would be informal, discussing some proposed changes in the Land Development Regulations (LDR) language.

2. Public Comment

There was no public comment.

3. Review Draft Recommendations to Certain Land Development Regulations

The Board and Building Department will engage in an informal review of draft recommendations to certain land development regulations. Input will be submitted to the Commission during the February 13, 2024 Town Commission meeting.

Director Harding defined “living space vs. habitable space” as defined in Article 2, Section 1 by Florida Building Code, noting that they are not similarly classified within the Town’s LDR; moving forward the goal is for conformity and consistency. Board of Adjustment Chair Graham questioned where the term “habitable space” is used in the Town’s LDR. Director Harding noted the wording does not currently exist in the LDR’s but is being added because there appears to be confusion between the definition of each space. Habitable space has ventilation and lighting (such as a bedroom), whereas living space could be defined as a game room, theater or another area not used for sleeping according to the FL Building Code. Chair Graham also asked why the Town is clarifying the definition of the term unless it is used somewhere in the LDRs. Director Harding clarified that because the Town uses the term in its Building Code, and is also used in the FL Building Code, the term should be consistently used in the LDRs. Director Harding added that more plans are being submitted with defined basements, and it must be clarified if that space will be utilized for sleeping. The Building Code states that a basement is not a habitable space - unless it was designed as such when the plans were originally submitted. Chair Graham noted that bedrooms should also be clearly defined. Director Harding added that the FL Building Code defines a bedroom as a room with a closet in which to sleep.

Vice Chair Newman asked if the Building Department intends to apply the term “floor area” to basements, which Director Harding replied that if a basement has a floor area that space would be identified as such but added that storage and utility rooms are not considered living space. Attorney Marc Gaylord asked if a home has an existing basement and is not currently included in the floor plan of the structure, would it now be taxed as additional floor area. Director Harding explained that if the basement is used for living space it will be treated as such. Living space is defined as “a space within a dwelling utilized for living, sleeping, eating, cooking, bathing, washing and sanitation purposes”. She added that living space and floor area are identified as being the same under Florida Building Code, and that bedrooms will also be defined in the description.

Director Harding then discussed the term NAVD, which architects use as a reference to flood elevation, and the Town uses the acronym NGVD with a different interpretation. She proposed replacing NGVD with NAVD on plans when they are submitted and added that NAVD is the standard used for flood

elevations, noting the difference between the two is about 1.5 feet.

Director Harding advised that residential parking is currently allotted at one space per bedroom but is now proposing two spaces per bedroom as the maximum.

Additional topics included:

- State regulations associated with home-based businesses within a municipality that have been adopted by other municipalities will also be adopted by the Town.
- Maximum floor area of a building shall not exceed 10,000 square feet for the primary residence.
- Changing the terminology of a “building” to a “principle dwelling” in a residential zone.
- The maximum square feet of an accessory building shall not exceed 3,000 square feet.
- The definition of “floor area” and “living area” shall be the same.

Director Harding also recommended changing the wording “shall approve” to be consistent with the original BOA language of “may approve”, which infers “must approve” which limits the ability to deny approval. Mr. Gaylord cautioned that “may vs. shall” is not always appropriate as many dimensions must be precise and remain as stated, exempt from verbiage substitution.

Suggested changes for development standards included:

- Adding fencing or screens (without signage) in front of ongoing construction.
- Utilization of vehicle cleaning blankets on unpaved driveways.
- Construction gatekeeper to control site access and regulate traffic.
- Monthly pest control commencing on the clearing of acreage to eliminate disturbance on adjacent properties during construction activity.
- Port-a-let may be placed during construction at an approved location.

Director Harding concluded that Alternative Development Standards cannot result in the creation of a building being more visible than the adjacent properties, structures, or public rights-of-way. Vice Chair Newman noted that many existing structures on the Island are outdated; new structures may end up being taller than the existing neighboring homes and will be considered out of compliance, and those buildings may end up being demolished by its new owner. Director Harding opined that the community’s extensive use of landscaping may aid in averting the situation.

Chair Graham commented that although the recommendation is monthly pest control, exterminators are now advising application no sooner than every two months. She added that several of the proposed revisions classified as “mandatory” may be misconstrued as taking away an existing right, such as limiting accessory structures to 3,000 feet, so timely delivery of this information will be important for those impacted by the proposed changes. Town Attorney Baird confirmed that the Commission must approve any suggested modifications and verbiage. He confirmed there would be three public hearings before a final decision is determined.

In response to a question, Director Harding clarified that the Land Development Regulations (LDR) defines a basement as a subgrade level of occupiable space with no more than three (3) feet of exposed daylight at the top of the basement with the rest lying below grade fill; if there is an opening of any one of the four walls surrounding the basement it is considered a living space and is calculated as square footage. If it’s not definable by an area and less than three (3) feet we take five (5) feet in for the length

of the area that's exposed and calculate that as square footage or living space. The amount that qualifies for the living space under the LDRs is deducted from the 10,000 square feet approved. Accordingly, it is not a new concept to consider living space in the basement area.

Discussion ensued regarding fill, drainage, square footage and habitable space.

Attorney Baird cautioned that Takings Law is a very complex area of constitutional law, and it questions if someone's investment backed expectation resulted in them being deprived of the use of their property.

Furthermore, changing a word from *may* to *shall* is not going to be a Taking in itself, and reduction of a living space in a dwelling, or the way square footage is calculated is not going to be a Taking because there already exists a reasonable use of property. He explained that what he may be hearing is a concern about a change of regulation that results in a deprivation of property rights, which is a different category.

Property rights law talks about whether you have created an inordinate burden on someone's property rights.

Vice Chair Newman recapped that Director Harding is simply trying to conform with the Florida Building Code in respect to defining living space and habitable space. There were no further comments.

4. Adjourn

The meeting was adjourned at 12:00 pm.