

**INDIAN RIVER COUNTY, FLORIDA
M E M O R A N D U M**

TO: Jason E. Brown; County Administrator

THROUGH: Stan Boling, AICP; Community Development Director

THROUGH: John W. McCoy, AICP; Chief, Current Development

FROM: Ryan Sweeney; Senior Planner, Current Development

DATE: August 31, 2018

SUBJECT: Consideration of a Land Development Regulation (LDR) Amendment to Chapters 911 and 971 Regarding the Review and Approval Process for Places of Worship

It is requested that the data herein presented be given formal consideration by the Board of County Commissioners at its regular meeting of September 18, 2018.

BACKGROUND

The proposed LDR amendment was conceptually presented to the Board of County Commissioners (BCC) by the County Attorney's Office at its March 1, 2016 meeting. At that meeting, the BCC passed a motion directing staff to initiate the changes as proposed (see Attachment 1). In response to the BCC's direction, staff has drafted an LDR amendment ordinance that will change the use classification and the review and approval process for places of worship from the special exception use review and approval process to the administrative permit use review and approval process, and will also change one of the specific land use criteria for places of worship. Staff anticipated combining the subject use table change with other use table changes, but no other changes of that type have arisen. Consequently, staff is moving forward with the subject use table change at the same time that other LDR amendments are being considered.

At the March 1, 2016 meeting, the BCC also included a directive to allow any applicant currently in the review and approval process to either choose to proceed forward under the current existing code, or give them the opportunity to wait until the revised ordinance is put into place. There are currently no applicants for a place of worship in the formal review and approval process, and several pre-applicants have been notified of this proposed change, which will provide a more streamlined and objective process.

The Planning and Zoning Commission (PZC) considered the proposed LDR amendment as part of a larger "installment" of LDR amendments on August 23, 2018, and voted unanimously to recommend that the Board adopt the proposed amendment (see Attachment 2). This particular amendment ordinance has been separated from the larger "installment" of LDR amendments because this use table amendment will require two public hearings by the BCC, while the other ordinances require only a single public hearing by the BCC (see the "ordinance adoption process" within the analysis section of this report).

The BCC is now to consider the proposed LDR amendment ordinance for changes to the places of worship use category and adopt, adopt with modifications, or deny the ordinance at a second (future) public hearing for final adoption.

ANALYSIS

The current LDRs allow places of worship as a permitted “by right” use in several commercial zoning districts (PRO, OCR, CL, CG, and CH), and as an administrative permit use in the two mobile home districts (RMH-6 and RMH-8) and two multifamily districts (RM-8 and RM-10). Places of worship are currently allowed as a special exception use in all of the agricultural and rural districts, all of the single-family residential districts, and three multi-family residential districts (RM-3, RM-4, and RM-6).

The proposed amendment will change the use classification and the review and approval process for places of worship from a special exception use to an administrative permit use within all of the agricultural and rural districts, all of the single-family residential districts, and three multi-family residential districts (RM-3, RM-4, and RM-6). The result of the proposed changes will allow places of worship as either a permitted use or an administrative permit use in all allowable zoning districts, and will not require special exception use approval for a place of worship in any zoning district. The review and approval process for a permitted use or an administrative permit use applies more objective criteria and is more streamlined than a special exception use, which requires two public hearings. These changes have been proposed at the recommendation of the County Attorney’s Office because recent federal caselaw has called into question whether places of worship, which involve First Amendment rights, can be reviewed and approved through special exception processes that involve more subjective criteria such as the general compatibility and no adverse impacts criteria listed in Section 971.05(9) (see Attachment 3).

The proposed changes also include a revision to one of the specific land use criteria for places of worship listed in Section 971.28(5) (see Attachment 4). The current LDRs include a locational/traffic criterion that require places of worship to have vehicular access from a major thoroughfare unless otherwise approved by the Public Works Department. This criterion is too subjective because of the clause “unless otherwise approved by the Public Works Department.” The revised criterion provides specific, objective standards for the location and/or traffic generated by a place of worship (e.g. number of project trips, project site’s road frontage, land use designation, or location within a Planned Development). Applying these new criteria is consistent with the County’s practice of allowing places of worship on a local street only if it is a small-scale facility or located within a higher density residential area. Otherwise, under the proposed criteria, a new and larger-scale place of worship will need to be located on a collector or arterial road or within a Planned Development, also consistent with County practice.

- **Ordinance Adoption Process**

Since the proposed amendment will change the list of allowable uses in a zoning district, the BCC must consider the subject LDR amendment ordinance at two separate hearings as required by state law (Florida Statutes Chapter 125.66). Under FS 125.66, those hearings must be held at least 10 days apart and one hearing must be held after 5:00 PM unless 4 or 5 BCC members vote to hold the hearings

before 5:00 PM. Consequently, the BCC may hold a special call 5:01 PM hearing on or after September 28 or at one of the regular October BCC meetings if 4 or 5 Board members vote to have the second hearing at a regular meeting. Staff believes that holding the second hearing at a regular BCC meeting in October will be adequate. One meeting date for the second (final) hearing which will meet state requirements upon a vote of 4 or 5 BCC members is the regular BCC meeting of October 16, 2016.

RECOMMENDATION

Staff recommends that the Board of County Commissioners:

1. Direct staff to make any changes necessary to the proposed ordinance, and
2. By a vote of 4 or 5 BCC members set the second, final adoption hearing for the regular BCC meeting of October 16, 2018 which is scheduled to begin at 9:00 AM.

ATTACHMENTS

1. Excerpt from March 1, 2016 BCC Minutes
2. Excerpt from Draft August 23, 2018 PZC Minutes
3. Section 971.05(9)
4. Proposed Ordinance